

# PART 5

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

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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

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

-A-

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

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

**Affiliate.** As defined in the General Conditions of Contract.

**Agreement.** As defined in the General Conditions of Contract.

**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 Department 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.

**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.

**Channel.** A watercourse or drainage way.

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

**Commonwealth.** Commonwealth of Virginia.

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

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

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

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

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

**Contract Time(s).** As defined in Article 5 of the General Conditions of Contract.

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

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

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

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

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

**-D-**

**Day.** As defined in the General Conditions of Contract.

**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 with the Department to perform the Work.

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

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

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

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

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

-E-

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

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

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

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

**Engineer.** As defined in the General Conditions of Contract.

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

**Escrow Agreement.** As defined in the General Conditions of Contract.

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

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

-F-

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

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

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

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

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

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

**-G-**

**Gage.** U.S. Standard Gage.

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

**-H-**

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

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

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

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

**-I-**

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

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

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

**-J-K-**

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

**-L-**

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

**Liquidated Damages.** As defined in Article 11 of the Agreement.

**-M-**

**Major Item.** Any Pay Item specifically indicated as such in the Schedule of Values 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 the General Conditions of Contract.

-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.

**Payment Bond.** As defined in Section 10.2.2.2 of the Agreement.

**Performance Bond.** As defined in Section 10.2.2.1 of the Agreement.

**Performance Security.** As defined in the General Conditions of Contract.

**Person.** As defined in the General Conditions of Contract.

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

**Prequalification.** The procedure for qualifying a Design-Builder to bid or work on Department contracts specified in the Department's Rules Governing Prequalification Privileges which are available on the Department's website at: [www.virginiadot.org/business/const/prequal.asp](http://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.** As defined in the General Conditions of Contract.

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

**Proposal:** As defined in the General Conditions of Contract.

-R-

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

**Request for Proposals (RFP).** As defined in the eleventh (11<sup>th</sup>) recital to the Agreement.

**RFP Documents.** As defined in the General Conditions of Contract.

**Request for Qualifications (RFQ).** As defined in the ninth (9<sup>th</sup>) recital to the Agreement.

**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).** As defined in the General Conditions of Contract.

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

**Select Borrow.** Borrow material that has specified physical characteristics.

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

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

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

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

**Special Provision (SP).** See Specifications.

**Special Provision Copied Note (SPCN).** See Specifications.

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

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

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

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

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

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

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

**Standard Specifications.** As defined in the General Conditions of Contract.

**State.** As defined in the General Conditions of Contract.

**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 the General Conditions of Contract.

**Subcontractor.** As defined in the General Conditions of Contract.

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

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

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

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

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

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

**Supplemental Specifications (SS).** See Specifications.

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

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

**Technical Requirements.** The requirements set out in Exhibit 2 to the Agreement.

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

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

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

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

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

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

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

U-

**Unsuitable Material.** As defined in Exhibit 2 to the Agreement (“Technical Requirements”). All unsuitable material shall be disposed of and/or treated as discussed in Section 106.04 at no additional cost to the Department.

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

-V-

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

-W-X-Y-Z-

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

**Work.** As defined in General Conditions of Contract.

**Work Order.** As defined in Article 9 of the General Conditions of Contract.

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

## **SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS**

### **102.01—Prequalification**

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

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

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

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

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

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

### **102.02—Contents of RFQ and RFP (Not Used)**

### **102.03—Interpretation of Quantities in RFP (Not Used)**

### **102.04—Examination of Site of Work and Proposal**

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

(b) **Subsurface Data**

Subsurface data may be included in the RFP Documents or may be made available for review by the Offeror in the office of the District Materials Engineer or State Materials Engineer or as stated elsewhere in

the RFP Documents is made available to the Offeror in good faith to notify the Offeror of information in possession of the Department. Except with respect to the Geotechnical Baseline Report and the Geotechnical Data Report, the Department does not warrant the accuracy of any such data, and the Offeror is at sole risk for any conclusions drawn from such data, either expressly or by implication. Prior to submitting a Proposal, the Offeror shall make his own interpretation of the subsurface data that may be available and satisfy himself with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. After the Date of Commencement, the Successful Offeror shall comply with Article 4.2.2 of the General Conditions.

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

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

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

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

**(d) Utilities (Not Used)**

**102.05—Preparation of Proposal**

**(a) General (Not Used)**

**(b) Design Options (Not Used)**

**(c) Debarred Suppliers**

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

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

**(d) Required Certifications (Not Used)**

**(e) Acknowledgement of Receipt of Revisions (Not Used)**

**(f) Signing the Proposal (Not Used)**

**(g) Additional Proposal Requirements (Not Used)**

**102.06—Irregular Proposals (Not Used)**

**102.07—Proposal Guaranty (Not Used)**

**102.08—Disqualification of Offeror**

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

1. The Offeror does not have sufficient financial ability to perform the Contract. If a bond is required to ensure performance of a Contract, evidence that the Offeror can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the Offeror to perform the Contract.
2. The Offeror or any current officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted of, or pled guilty or nolo contendere within the past 10 years to a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Ethics in Public Contracting Statutes, § 2.2-4367 et seq. of the Code of Virginia, (ii) the Virginia Governmental Frauds Act, § 18.2-498.1 et seq. of the Code of Virginia, (iii) Conspiracy to Rig Bids to Government statutes § 59.1-68.6 et seq. of the Code of Virginia, (iv) any substantially similar law of the United States or another state, or (v) any criminal offense indicating a lack of moral or ethical integrity as may reasonably be perceived to relate to or reflect upon the bidder's business practices.
3. The Offeror or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government.
4. The Offeror failed to respond to the Department's request for clarifying information requested relevant to the preceding paragraphs 1 through 3.
5. The Offeror fails to register and participate in the E-Verify program as required by § 2.2-4308.2 et seq. of the Code of Virginia.
6. The Offeror or any officer, director, or owner thereof has had a judgement entered against them for violation of the Virginia Fraud Against Taxpayers Act (Code of Virginia § 8.01-2161 et seq.).
7. More than one Proposal for the same work is submitted by an individual, partnership, Corporation, or Joint Venture under the same or different name. A Proposal submitted by an Affiliate of an individual, partnership, Corporation, or any party of a Joint Venture will be considered as more than one Proposal submitted for the same work. Affiliate as used herein shall conform to the definition in Section 101.02—Terms, with the term "Offeror" being used in lieu of the term "Design-Builder".
8. Evidence of collusion among Offerors in which case the participants in such collusion will not be considered for future bids until new applications for prequalification are approved according to the Rules Governing Prequalification Privileges.
9. Incompetency or inadequate machinery, plants, or other Equipment as revealed by the Offeror's financial and experience statements required by the RFP and Contract Documents and the Rules Governing Prequalification Privileges.

10. Unsatisfactory workmanship or unsatisfactory progress toward timely completion of the Work as demonstrated by performance records of current or past work for the Department, other agencies or departments of the Commonwealth, other public bodies in the Commonwealth, or agencies or departments of other states in the United States or federal government.
  11. The Design-Builder may be temporarily disqualified from bidding on contracts with the Department when progress on the Work is determined by the VDOT Project Manager to be unsatisfactory. If its name is removed from the list of prequalified Offerors, the Design-Builder will not be reinstated as a prequalified Offeror until the Department deems that progress of the Work has improved to the extent that the Work can be completed within the Contract Time or until Final Completion of the Project.
  12. Uncompleted work under contract with the Department that in the judgment of the Department might hinder or prevent prompt completion of additional work if awarded.
  13. Failure to promptly pay or settle satisfactorily all undisputed bills for Materials, labor, Equipment, supplies, or other items specified in contracts in force at the time the new work comes before the Board for Award.
  14. Failure to comply with any Prequalification rule or regulation of the Department.
  15. Failure to cooperate properly with representatives of the Commonwealth inspecting, monitoring, or administering construction or disorderly conduct toward any such representative in previous contracts.
  16. Default under a previous contract with the Commonwealth.
  17. Failure to pay amounts owed to the Department as specified in Section 103.08.
  18. Making materially false statements in a bid or certified statement submitted to the Department.
  19. Documentation of the failure to meet SWaM or DBE requirements on the Department's projects according to Section 107.
- (b) Temporary disqualification of an Offeror as provided herein will result in the temporary disqualification of each member of a Joint Venture and any Affiliate. Temporary disqualification will also result in disqualification of the Offeror, each member of a Joint Venture, and Affiliates as defined herein, for performance of work as Subcontractors that in the opinion of the VDOT Project Manager could adversely affect other work under contract to the Department.
- (c) The above listed reasons for possible disqualification are not exclusive and disqualification may also occur based on other requirements within the RFP or Contract Documents and in the Rules Governing Prequalification Privileges.
- (d) Disqualified Offerors may challenge and appeal their disqualification according to the Rules Governing Prequalification Privileges. Disqualified Offerors may be allowed to re-apply for prequalification and be reinstated on the List of Prequalified Vendors at the discretion of the State Contract Engineer, upon satisfactory compliance with the requirements of the RFP. In addition the disqualified Offeror shall submit a new prequalification application package and satisfy all prequalification requirements of these specifications and the Rules Governing Prequalification Privileges.

**102.09—Submission of Proposal (Not Used)**

**102.10—Withdrawal of Proposal (Not Used)**

### **102.11—eVA Business-To-Government Vendor Registration**

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

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

### **102.12—Public Opening of Proposals (Not Used)**

### **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 (Not Used)**

### **103.02—Award of Contract**

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

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

- (b) **Affidavits and Documents:** Affidavits and documents set forth in the RFP and executed by the Successful Offeror.
- (c) **Escrow Agreement:** The Successful Offeror shall have delivered the executed Escrow Agreement to Department
- (d) **Insurance Coverages and Certificates of Insurance:** The Design-Builder shall procure and maintain the insurance coverages required pursuant to the Comprehensive Agreement.

**103.03—Cancellation of Award (Not Used)**

**103.04—Return of Proposal Guaranty (Not Used)**

**103.05—Requirements of Contract Bond (Not Used)**

**103.06—Documents Required as a Condition to Award (Not Used)**

**103.07—Failure to Furnish Bonds or Certificate of Insurance (Not Used)**

**103.08—Contract Audit**

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

- (a) Those that were used to prepare and compute the Proposal, prepare all schedules used on the Project, record the progress of Work on the Project, accounting records, purchasing records, personnel payments or records necessary to determine Employee credentials, vendor payments and written policies and procedures used to record, compute and analyze all costs incurred on the Project, including those used in the preparation or presentation of claims to the Department.
- (b) Records pertaining to the Project as the Department may deem necessary in order to permit adequate evaluation and verification of Design-Builder's compliance with Contract requirements, compliance with the Department's business policies, and compliance with provisions for pricing Work Orders or claims submitted by the Design-Builder or Subcontractors, shall be made available to the auditor(s) at the Department's request. The Design-Builder shall make his personnel available for interviews when requested by the Department.
- (c) Upon request, the Design-Builder shall provide the Department with data files on data disks, or other suitable alternative computer data exchange format. Data furnished by the Design-Builder that cannot be verified will be subject to a complete audit by the Department.

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

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



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

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

### **103.09—Execution of Contract (Not Used)**

### **103.10—Assignments, Transfers, or Assumptions of the Contract**

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

## **SECTION 104—SCOPE OF WORK**

### **104.01—Intent of Contract**

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

### **104.02—Changes in Quantities or Alterations in the Work**

#### **(a) General**

The Department reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to complete the Project satisfactorily. Such changes shall be administered under Article 9 of the General Conditions, and shall not invalidate the Contract or release the Surety, and the Design-Builder shall agree to perform the Work as altered.

#### **(b) Value Engineering Proposals**

The Design-Builder may submit to the Department written Value Engineering Contractor Proposals (VECP) for modifying the requirements of Contract Documents for the purpose of reducing the total Contract Price or Contract Times without reducing the design capacity or quality of the finished product. A VECP is defined as a proposal developed and documented by the Design-Builder which (i) produces a net savings to the Department without impairing essential functions or characteristics of the Project (including the meeting of requirements contained in all Governmental Approvals); and (ii) would modify or require a change in any of

the requirements of or constraints set forth in the Contract Documents in order to be implemented. A VECP cannot be based solely upon a change in quantities.

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. The Design-Builder, when developing a VECP, must address environmental requirements and similar concerns as part of the VECP. VECPs may be developed by the Design-Builder or may be based on proposals from the Department or any unsuccessful Offeror's work product.

### **1. Submittal of Conceptual VECP**

A conceptual VECP is required for all VECPs. The conceptual VECP should outline the general technical concepts associated with the VECP and the estimated direct cost savings which may result. The conceptual VECP will be reviewed by the Department and may result in one of the following actions:

- Approval of the VECP;
- Conceptual approval, and a request for the Design-Builder to submit a formal VECP;
- A request for additional information; or
- Rejection of the VECP.

The conceptual VECP should contain sufficient information to enable concept evaluation and review. The conceptual VECP will include the following, at a minimum:

- A) Conceptual plans;
- B) An initial estimate of costs which should include sufficient information to determine the reasonableness of the conceptual VECP;
- C) The most recently approved Baseline Schedule update showing the impact of the VECP on the schedule. This schedule shall include the time required to develop a formal VECP; approve a Work Order to incorporate the required changes into the Agreement; order, fabricate, and deliver long-lead material; and obtain or modify any environmental approvals or other required approvals. In addition, the Design-Builder must indicate the latest dates that the conceptual VECP and the VECP Work Order must be approved so as not to affect the currently approved schedule update. Should the Department find that insufficient time is available for review and processing, it may reject the conceptual VECP solely on that basis. If the Department fails to respond to the conceptual VECP by the date specified, the Design-Builder will consider the VECP rejected and will have no claims against the Department as a result thereof.
- D) A description of any previous use or testing of the conceptual VECP on another project of the Department or elsewhere and the conditions or results therewith. The Design-Builder shall submit the technical aspects of the conceptual VECP in sufficient detail as to enable reviewers to determine the suitability of the VECP from an engineering perspective. If the technology is new, test information must be provided to the Department's satisfaction. If the conceptual VECP was submitted previously on another project of the Department, indicate the date, contract number, and action taken by the Department.

An original and three copies of the conceptual VECP must be submitted to the Department, plus any additional information requested by the Department. The Department may accept conceptual VECPS that

require Contract Time extensions if sufficient cost savings or other benefits are anticipated, at the sole discretion of the Department. Schedules for these conceptual VECPs must include all of the above information plus the new anticipated Contract Times.

## **2. Submittal of Formal VECP**

Upon notification by the Department's Project Director that the conceptual VECP is approved and a formal VECP will be considered, the Design-Builder may submit an original and three copies of the following information with each formal VECP, plus any additional information requested by the Department:

- A) A statement identifying the submittal as a VECP; the difference between the existing Contract requirements and the proposed change; and the comparative advantages and disadvantages of each, including considerations of service life, reliability, economy of operation, ease of maintenance, aesthetics, safety, traffic flow, risk, and environmental impacts;
- B) A description of the performance of the Work under the existing Contract requirements and under the proposed changes;
- C) An engineering analysis including plans, computations, and other documents necessary for evaluation by the Department;
- D) A listing of the Contract requirements that must be changed if the VECP is adopted, and a recommendation as to the manner in which the change(s) should be made;
- E) A detailed estimate for performing the design and construction work under the existing contract and for performing it under the VECP. An estimate of the cost to the Design-Builder for developing and implementing the changes must also be included;
- F) A listing of the Schedule of Values items and schedule activities affected by the VECP; and
- G) An assessment of the effects that the adoption of the VECP will have on other costs to the Department, including future right-of-way acquisition, maintenance, and operations.

The Design-Builder may be required to conduct a technical presentation as a part of the review process. In preparing VECPs, the Design-Builder must perform an independent examination of the affected work site. The Department shall rely exclusively upon the accuracy of the engineering data upon which the VECP is based. The Department is not required to perform additional investigations, cross checks, or site examinations.

Adoption of a Design-Builder's VECP shall not be construed to alleviate or reduce the Design-Builder's full and absolute liability if the VECP upon implementation (i) is impacted by risks that would not have materialized but for the VECP or (ii) fails to satisfactorily perform because of the Design-Builder's use of inaccurate or incomplete engineering data or because of the Design-Builder's failure to adequately investigate and examine the affected construction site. In the case of (ii), the Department may require the Design-Builder to revert to the original scope with no additional compensation in cost or time.

## **3. Conditions**

The Design-Builder acknowledges and agrees that its Price Proposal was not based on the anticipated approval of a VECP and recognizes that any VECP may be rejected. If a VECP is rejected, the Design-Builder will be required to complete the contract in accordance with the Contract Documents. A VECP will be considered only after the Contract is awarded, and the following conditions shall apply:

- A) The approval of the conceptual VECP in no way obligates the Department to accept the formal VECP. Furthermore, the Design-Builder shall have no claim against the Department as a result of the rejection of any such conceptual or formal VECP.
- B) The Department will not be liable to the Design-Builder for failure to accept or act on any VECP submitted pursuant to these requirements or for delays in the Work attributable to any VECP. Until a VECP is put into effect by a Work Order, the Design-Builder shall remain obligated to the terms and conditions of the existing Contract.
- C) The Department will be the sole judge as to whether a VECP qualifies for consideration and evaluation. It may reject any VECP that requires excessive time or costs for evaluation or which is not consistent with the Department's policies for the Project.
- D) A VECP must provide the same or greater service life, facilitate economy of operations and ease of maintenance, and achieve the desired appearance and safety. A VECP will not be allowed that changes the type and/or thickness of the pavement structure and material or solely substitutes one material for another. Examples of material that fall into inappropriate substitution situations are drainage pipes, bridge coatings, and pavement markings. Also, elimination of work does not necessarily constitute a VECP.
- E) The VECP will not be experimental in nature, but must have been proven to the Department's satisfaction under similar or acceptable conditions on another project of the Department or at another location acceptable to the Department.
- F) A VECP will be considered only if equivalent options are not already provided in the Contract Documents.
- G) The Department will be the sole judge in determining if the proposed VECP will result in a sufficient amount of direct or indirect savings to offset the Department's effort to review the VECP.
- H) If the Department requires any additional information to evaluate the VECP, this information must be provided in a timely manner. Unless mutually agreed to otherwise, failure to do so will result in the rejection of the VECP. An incomplete or a poor quality VECP which hinders the Department's review may also result in the rejection of the VECP.
- I) The Design-Builder shall encourage submission of VECPs from subcontractors, provided that reimbursement is made by the Department to the Design-Builder and that the terms of payment to the subcontractor are satisfactorily negotiated and accepted before the VECP is submitted to the Department. Subcontractors may not submit a VECP except through the Design-Builder.
- J) The Design-Builder will receive written notification from the Department when the VECP is accepted. The Design-Builder will not order any materials until it has received the acceptance.
- K) The Department may adopt a VECP for general use in contracts the Department administers if it determines that the VECP is suitable for application to other contracts. VECPs identical with or similar to previously submitted VECPs will be eligible for consideration and compensation under these provisions if the Department has not previously adopted the VECPs for general application to other contracts administered by the Department. When a VECP is adopted for general use, compensation pursuant to these requirements will be applied only to those awarded contracts for which the VECP was submitted prior to the date of adoption of the VECP. Subject to the provisions herein, the Department or any other public agency shall have the right to use all or part of an accepted VECP without obligation or compensation of any kind to the Design-Builder.

#### 4. Payment

If the Department accepts a VECP, the changes and payment will be authorized through a Work Order. Reimbursement to the Design-Builder for the total cost of the revised Work will be paid in accordance with the General Conditions of Contract. Progress payments may be made on a schedule adopted by the Department's Project Director.

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

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

If Department accepts a VECP, the Contract Price shall be adjusted in accordance with the following:

- A) For VECPs which reduce the Design-Builder's costs, the Contract Price shall be reduced by an amount equal to 50% of estimated net savings (or 75% in the case of a VECP based on any unsuccessful Offeror's work product). For such VECPs, the term "estimated net savings" shall mean: (i) the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform the Work, as modified by the VECP, less (ii) the actual costs of studying and preparing the VECP as substantiated by Design-Builder and approved by Department in writing in accordance with the change procedures set forth herein. Design-Builder's profit shall not be considered part of the cost.
- B) For VECPs that result in an increase in the Design-Builder's costs, the Contract Price shall be increased by an amount equal to (i) 100% of any additional costs incurred by Design-Builder and approved by Department minus (ii) 50% of estimated net savings. For such VECPs, the term "estimated net savings" shall mean (x) the amount of any savings in Department's costs resulting from the VECP, less (y) the actual costs of studying and preparing the VECP as substantiated by Design-Builder and approved by Department in writing in accordance with the change procedures set forth herein, less (z) the amount described in clause (i) above. Design-Builder's profit shall not be considered part of the cost.
- C) Design-Builder is not entitled to share in either collateral or future contract savings. The term "collateral savings" means those measurable net reductions in Department's costs of operation resulting from the VECP, including costs of maintenance by Department or any third party, logistics, Department-furnished property and future costs associated with the Project. The term "future contract savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VECP submitted by Design-Builder.
- D) In a case where a VECP involves acquisition of additional property and/or reduces Department's cost of property acquisition, the analysis of the VECP shall consider the additional costs or savings associated with the adjustment in the real property requirements for the Project, including the costs involved in adjusting the Governmental Approvals, Department's additional costs, including costs of personnel, Design-Builder's out-of-pocket costs such as the price of the additional property, and the incremental reduction in Department's costs (if any) for property

acquisition. The estimated net savings shall be shared between Department and Design-Builder as described above.

- E) In the event that Design-Builder proceeds with a Design-Builder-requested Work Order that Department believes should be characterized as a VECP, and it is later determined through the dispute resolution process that the change meets the technical qualifications for a VECP, the Contract Price shall be reduced by an amount equal to the sum of: (a) 100% of any additional costs incurred by Department resulting from the VECP plus (b) 75% of estimated net savings.

The Department's Project Director will be the sole judge of the estimated net savings in construction cost and costs incurred by the Department resulting from the adoption of all or any portion of a VECP.

The Design-Builder's share will be considered full compensation to the Design-Builder for effecting all changes pursuant to the Work Order stemming from the VECP. There will be no reimbursement for any costs incurred prior to the acceptance of the conceptual VECP.

#### **104.03—Differing Site Conditions (Not Used)**

### **SECTION 105—CONTROL OF WORK**

#### **105.01—Notice to Proceed (Not Used)**

#### **105.02—Pre-Construction Conference (Not Used)**

#### **105.03—Authorities of Project Personnel, Communication and Decision Making**

##### **(a) Authority of Department**

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

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

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

##### **(b) Authority of Inspector**

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

The Inspectors are not authorized to make Final Acceptance of the Project, approve any operation or item, or act as foreman for the Design-Builder. However, the Inspectors will have the authority to reject defective work and material and suspend work that is being improperly performed, subject to the concurrence of the Department. Such inspections shall not relieve the Design-Builder of any obligation to furnish acceptable Materials or provide completed construction that is in accordance with the Contract requirements.

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

**(c) The Design-Builder**

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

**105.04—Gratuities**

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

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

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

**105.05—Character of Workers, Work Methods, and Equipment**

**(a) Workers**

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

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

due the Design-Builder and may suspend the Work until the Design-Builder has complied with the Department's directive.

**(b) Equipment**

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

**(c) Work Methods**

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

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

**105.06—Subcontracting**

- (a) The Design-Builder shall notify the Department of the name of the firm to whom the work will be subcontracted, and the amount and items of work involved. Such notification shall be made and verbal approval given by the Department prior to the Subcontractor beginning work.
- (b) The Design-Builder shall perform with his own organization work amounting to not less than thirty percent (30%) percent of the total original Contract Price unless otherwise indicated in the Contract.

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

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



2. The Design-Builder remains responsible for the quality of the work of the leased employees;
  3. The Design-Builder retains all power to accept or exclude individual employees from work on the Project; and
  4. The Design-Builder remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- (c) The Design-Builder shall not subcontract any part of the Contract work to a contractor who is not prequalified with the Department in accordance with Section 102.01, unless otherwise indicated in the Contract. This restriction does not apply to service providers, Design Consultants, consultants, manufacturers, suppliers, or haulers. Consent to subcontract or otherwise dispose of any portion of the Contract work shall not relieve the Design-Builder of any responsibility for the satisfactory fulfillment of the entire Contract. All subcontracts shall be evidenced by written binding agreements that shall be available to the Department upon request, before, during, and after their approval.

#### **105.07—Cooperation of Design-Builder**

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

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

#### **105.08—Cooperation With Regard to Utilities**

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

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

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

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

The Design-Builder shall protect existing, adjusted, or new utilities that are shown on the RFP Concept Plans, marked by Miss Utility, or otherwise known to the Design-Builder that are to remain within the Right of Way

so as to prevent disturbance or damage resulting from construction operations. If during prosecution of the Work the Design-Builder encounters an existing utility that requires adjustment, he shall not interfere with the utility but shall take the proper precautions to protect the utility and shall promptly notify the Department of the need for adjustment.

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

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

Except as provided under Section 9.2.1.11 of the General Conditions of Contract, the Department will not be responsible for any claims for additional compensation from the Design-Builder resulting from delays, inconvenience, or damage sustained by him attributable to interference by utility appurtenances or the operation of moving the same.

#### **105.09—Cooperation among Contractors (Not Used)**

#### **105.10—Plans and Working Drawings**

##### **(a) General**

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

##### **(b) Plans**

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

##### **(c) Working Drawings**

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

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

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

Deviations from the Contract requirements initiated by the Design-Builder shall be requested in writing and clearly identified on the Working Drawings. Explicit supporting justification shall be

furnished specifically describing the reason for the requested deviations as well as any impact such deviations shall have on the schedule of Work. Failure to address time or other impacts associated with the Design-Builder's request will be cause for rejection of the Design-Builder's request. Deviations from the Contract requirements shall not be made unless authorized by the Engineer. If authorized by the Engineer, such authorization shall not relieve the Design-Builder from the responsibility for complying with the requirements of the Contract for a fully functional finished work item as specified or designed.

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

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

#### **1. Steel Structures**

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

#### **2. Falsework**

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

#### **3. Concrete Structures and Prestressed Concrete Members**

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

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

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

#### **5. Reinforced Concrete Pipe**

When specified, and prior to manufacture of reinforced concrete pipe, the Design-Builder shall furnish to the Department a certification of the acceptability of the design of such pipe, as

determined from a review that has been signed and sealed by a PE. Such certification shall cover all design data, supporting calculations, and materials. Pipe designs previously certified or approved by the Department will not require recertification.

#### **105.11—Conformity with Contract Documents**

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

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

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

#### **105.12—Coordination of Contract Documents**

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

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

#### **105.13—Construction Stakes, Lines, and Grades**

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

#### **105.14—Maintenance During Construction**

##### **(a) Traffic Control**

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

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

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

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

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

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

**(b) Maintenance of Traffic**

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

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

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

The Design-Builder shall keep the portions of the road being used by the public free from irregularities and obstructions that could present a hazard or annoyance to traffic. When directed by the Department,

allaying of dust shall be performed in accordance with Section 511. Holes in hard surface pavements shall be filled with approved asphalt patching material. Where such work is not specified in the Contract and determined to be required by the Department, and not the result of any failure or fault of the Design-Builder and due to causes beyond the Design-Builder's control, the cost to remedy such hazards will be handled according to Section 109.05.

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

3. **Detours:** Detours may be indicated on the plans or in the special provisions or may be used with the Department's approval. Unless otherwise designated in the Contract, the Design-Builder shall furnish, install and maintain all directional markings, for through-traffic on off-Project detours authorized or requested by the Department with the exception of municipalities. Municipalities shall be responsible for off-Project roadway maintenance within their own corporate limits. Detours over existing state roads shall be designated, marked, and maintained by the Design-Builder. Directional markings for detours shall include signs. Responsibility for installation and maintenance of the signs shall be in accordance with Section 512.03(a). If any project is located wholly or in part within a municipality's corporate limits and through traffic is to be detoured at the municipality's request, the municipality will provide and maintain the detours within the corporate limits and will furnish, install and maintain all directional markings. The provision of detours and marking of alternate routes will not relieve the Design-Builder of the responsibility for ensuring the safety of the public or from complying with any Contract requirements affecting the rights of the public within his Contract area of operations, including those concerning lights and barricades. Maintenance of all other detours shall be the Design-Builder's responsibility.
4. **Maintenance of Traffic During Suspension of Work:** During any suspension of work, the Design-Builder shall temporarily open to traffic such portions of the Project and temporary roadways as may be agreed upon by the Design-Builder and the Department.
5. **Minimizing Traffic Delays:** Two-way traffic shall be maintained at all times unless the Contract or the Department permits one-way traffic. The Design-Builder shall not stop traffic without the Department's permission.

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

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

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

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

closing of any access routes unless other approved access is provided and is acceptable to the property owner.

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

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

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

- b. **Entrances:** Entrances shall be graded concurrently with the roadway with which they intersect. Once an entrance has been disturbed, it shall be completed as soon as is practicable, including placing the required base and surface course or stabilization. If the entrance must be constructed in stages, such as when there is a substantial change in the elevation of the roadway with which it intersects, the surface shall be covered with a temporary aggregate stabilization course or other suitable salvaged material until the entrance can be completed and the required base and surface or stabilization course can be placed.
7. **Obstruction Crossing Roadways:** Where the Design-Builder places obstructions such as suction or discharge pipes, pump hoses, steel plates, or any other obstruction that must be crossed by vehicular traffic, they shall be bridged as directed by the Department at the Design-Builder's expense. Traffic shall be protected by the display of warning devices both day and night. If operations or obstructions placed by the Design-Builder damage an existing traveled roadway, the Design-Builder shall cease operations and repair damages to the roadway at no additional cost to the Department.
  8. **Patching Operations:** Where existing hydraulic cement concrete pavement is to be patched, the operation of breaking and excavating old pavement shall extend for a distance of not more than two miles. Patching shall be coordinated with excavating so that an area of not more than one-half mile in which excavated patches are located shall be left at the end of any day's work. Necessary precautions shall be taken to protect traffic during patching operations.
  9. **Temporary Structures:** The Design-Builder shall construct, maintain, and remove temporary structures and approaches necessary for use by traffic. After new structures have been opened to traffic, temporary structures and approaches shall be removed. The materials contained therein shall remain the property of the Design-Builder.

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

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

## 11. Opening Sections of Projects to Traffic

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

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

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

If the Design-Builder is not continuously prosecuting the Work to the Department's satisfaction as determined by the Baseline Schedule, 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 Completion with adequate equipment and forces to keep the roadway and structures in a safe and satisfactory condition at all times and to ensure the continuous and effective day by day prosecution of the Work.

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

2. Where the Contract specifies placing a course on another course or subgrade of embankment, base, subgrade, concrete, asphalt pavement, or other courses previously constructed, the Design-Builder shall maintain the courses or subgrades previously constructed in accordance with the Contract requirements when placing such course. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or, if unacceptable or destroyed, the removal of work the Department previously accepted.
3. **Grading Operations:** When the Design-Builder elects to complete the rough grading operations for the entire Project or exceed the length of one full day's surfacing operations, the rough grade shall be machined to a uniform slope from the top edge of the existing pavement to the ditch line.

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



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

**(d) Maintenance Cost**

The Design-Builder shall bear all costs of performing maintenance work before Final Completion, and of constructing and maintaining necessary approaches, crossings, intersections, and other features without direct compensation except as provided for herein. When the Design-Builder confines his operation to the surface of the roadway and reasonable width of the shoulder and the surface is disturbed or damaged by his operations or equipment, he shall be responsible for the restoration and maintenance of the surface that is disturbed or damaged.

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

**105.15—Removing and Disposing of Structures and Obstructions**

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

- (a) Signs:** The Design-Builder shall relocate all signs within the construction limits that conflict with construction work as approved by the Department. Signs that are not needed for the safe and orderly control of traffic during construction as determined by the Department shall be removed and stored at a designated location within the Project limits. The removed signs shall be stored above ground in a manner that will preclude damage and shall be reinstalled in their permanent locations prior to Final Completion. If any of the removed signs are not to be reinstalled, the Design-Builder shall notify the Department at the time the signs have been properly stored. Such signs will be removed from the storage area by the Department. Any sign that is damaged or lost because of the fault of the Design-Builder shall be repaired or replaced at his expense. Costs for removing, storing, protecting, and reinstalling such signs shall be included in the Contract Price and no additional compensation will be made.
- (b) Mailboxes and Newspaper Boxes:** When removal of existing mailboxes and newspaper boxes is made necessary by construction operations, the Design-Builder shall place them in temporary locations so that access to them will not be impaired. Prior to Final Completion, boxes shall be placed in their permanent locations as designated by the Department and left in the same condition as when found. Boxes or their supports that are damaged through negligence on the part of the Design-Builder shall be replaced at his expense. The cost of removing and resetting existing boxes shall be included in other pay Contract items. New mailboxes designated in the plans shall be paid for in accordance with Section 521 of the Specifications.

**105.16—Cleanup**

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

Before Final Completion, 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 Completion, the Design-Builder shall remove his Equipment, Materials and debris from the Right of Way and from property adjacent to the Project that he does not own or control.

#### **105.17—Inspection of Work**

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

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

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

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

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

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

#### **105.18—Removal of Unacceptable Work**

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

price and a warranty extended to five (5) years for the subject portion of the work when acceptance is considered to be in the best interest of the public.

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

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

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

#### **105.19—Submission and Disposition of Claims (Not Used)**

### **SECTION 106—CONTROL OF MATERIAL**

#### **106.01—Source of Supply and Quality Requirements**

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

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

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

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

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

### **106.02—Material Delivery**

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

### **106.03—Local Material Sources (Pits and Quarries)**

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

- (a) Local Material sources shall be concealed from view from the completed Roadway and any existing public Roadway. Concealment shall be accomplished by selectively locating the pit or quarry and spoil pile, providing environmentally compatible screening between the pit or quarry site and the Roadway, or using the site for another purpose after removal of the Material, or restoration equivalent to the original use (such as farm land, pasture, turf, etc.). The foregoing requirements shall also apply to any pit or quarry opened or reopened by a Subcontractor. However, the requirements will not apply to commercial sand and gravel and quarry operations actively processing Material at the site prior to the date of the execution of the Contract.
- (b) The Design-Builder shall furnish the Department a statement signed by the property owner in which the property owner agrees to the use of his property as a source of Material for the Project. Upon completion of the use of the property as a Material source, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored. The requirements for a signed statement and release will not apply to commercial sources, sources owned by the Design-Builder, and sources furnished by the Department.
- (c) Local Material pits and quarries that are not operated under a local or State permit shall not be opened or reopened without authorization by the Department. The Design-Builder shall submit for approval a site plan, including, but not limited to, the following:
  1. The location and approximate boundaries of the Excavation; with a slope gradient of 3:1 or greater;
  2. Procedures to minimize erosion and siltation;
  3. Provision of environmentally compatible screening;
  4. Restoration;
  5. Cover vegetation;
  6. Other use of the pit or quarry after removal of Material, including the spoil pile;
  7. The drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations;

8. Location of haul Roads and stabilized construction entrances if construction Equipment will enter a paved Roadway;
9. Constructed or natural waterways used for discharge;
10. A sequence and schedule to achieve the approved plan;
11. The total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three (3) acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized.

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

If the approved plan provides for the continued use or other use of the pit or quarry beyond the date of Final Completion, the Design-Builder shall furnish the Department a bond made payable to the Commonwealth of Virginia in an amount equal to the Engineer's estimate of the cost of performing the restoration work. If the pit or quarry is not used in accordance with the approved plan within eight months after Final Completion, the Design-Builder shall perform restoration work as directed by the Department, forfeit his bond, or furnish the Department with evidence that he has complied with the applicable requirements of the State Mining Law.

- (d) Topsoil on Department owned or furnished Borrow sites shall be stripped and stockpiled as directed by the Department for use as needed within the construction limits of the Project or in the reclamation of Borrow and Disposal Areas.
- (e) If payment is to be made for Material measured in its original position, Material shall not be removed until Digital Terrain Model (DTM) or cross-sections have been taken. The Material shall be reserved exclusively for use on the Project until completion of the Project or until final DTM or cross-sections have been taken.
- (f) If the Design-Builder fails to provide necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate the Department will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the Department. If the Design-Builder does not perform such work, the cost of performing the Work plus twenty five percent (25%) for supervisory and administrative personnel will be deducted from monies due the Design-Builder.
- (g) Costs for applying seed, fertilizer, lime, mulch, and for restoration, drainage, erosion and siltation control, regrading, haul Roads, and screening shall be included in the Contract price for the type of Excavation or other appropriate Contract items.
- (h) If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Material sources, the Department may withhold and use for the purpose of performing such work any monies due the Design-Builder. The Design-Builder shall be held liable for penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation and take restorative action.
- (i) After removing all the Material from the local material sources, the Design-Builder shall remove metal, lumber, and other debris resulting from his operations and shall shape and landscape the area in accordance with the approved plan for such work.

- (j) **Sources Furnished by the Department:** Sources furnished by the Department will be made available to the Design-Builder together with the right to use such property as may be required for a plant site, stockpiles, and haul roads. The Design-Builder shall confine his Excavation operations to those areas of the property specified in the Contract. The Design-Builder shall be responsible for Excavation that shall be performed in order to furnish the specified Material.
- (k) **Sources Furnished by the Design-Builder:** When the Design-Builder desires to use local Material from sources other than those furnished by the Department, he shall first secure the approval of the Department. The use of Material from such sources will not be permitted until test results have been approved by the Department and written authority for its use has been issued by the appropriate agency, organization or individual.

The Design-Builder shall acquire the necessary rights to take Material from sources he locates and shall pay all related costs, including costs that may result from an increase in the length of the haul. Costs of exploring, sampling, testing, and developing such sources shall be borne by the Design-Builder. The Design-Builder shall obtain representative samples from at least two (2) borings in parcels of ten (10) acres or less and at least three (3) additional borings per increment of five (5) acres or portion thereof to ensure that lateral changes in Material are recorded. Drill logs for each test shall include a soil description and the moisture content at intervals where a soil change is observed or at least every five (5) feet of depth for consistent Material. Samples obtained from the boring shall be tested by an approved Laboratory for grading, Atterberg limits, CBR, maximum density, and optimum moisture. The Department will review and evaluate the Material based on test results provided by the Design-Builder. The Department will reject any Material from a previously approved source that fails a visual examination or whose test results show that it does not conform to the Contract Documents.

#### **106.04—Disposal Areas**

The Design-Builder shall dispose of unsuitable or Surplus Material shown in the Contract Documents according to Contract requirements as specified herein. Material not used on the Project shall be disposed of by the Design-Builder off the Right of Way. The Design-Builder shall obtain the necessary rights to property to be used as an approved Disposal Area. For the purpose of these Division I Amendments to the Standard Specifications an approved Disposal Area is defined as that which is owned privately, not operated under a local or State permit, and has been approved by the Department for use in disposing of Material not used on the Project.

The Design-Builder shall furnish the Department a statement signed by the property owner in which the owner agrees to the use of his property for the deposit of Material from the Project. Upon completion of the use of the property as an approved Disposal Area, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for commercial sources, sources owned by the Design-Builder, and sources furnished by the Department.

If an approved Disposal Area is not designated in the Contract, the Design-Builder shall obtain the necessary rights to property to be used as an approved Disposal Area.

If the Design-Builder, having shown reasonable effort, is unsuccessful in obtaining the necessary rights to property to be used as an approved Disposal Area, the Department will obtain rights for a disposal area unless otherwise provided for in the Contract. If not shown in the Contract, compensation will be in accordance with Sections 104.02 and 109.05.

Prior to the Department approving the Design-Builder's Disposal Area, the Design-Builder shall submit a site plan that shall show:

1. The location and approximate boundaries of the Disposal Area.

2. Procedures to minimize erosion and siltation.
3. Provision of environmentally compatible screening.
4. Restoration.
5. Cover vegetation.
6. Other use of the Disposal Area.
7. The drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations.
8. Location of haul roads and stabilized construction entrances if construction Equipment will enter a paved Roadway.
9. Constructed or natural waterways used for discharge.
10. A sequence and schedule to achieve the approved plan.
11. The total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three (3) acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized. Costs for the work described herein shall be included in the Contract Price. The Design-Builder shall certify that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations, all local, state, and federal ordinances, and Section 107.16.

Disposal Areas shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and haul roads thereto. After the Material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance with the approved plan for such work or shall be used as approved by the Department. The Design-Builder's design and restoration shall conform to the Contract requirements and federal, state, and local laws and regulations.

Excavated rock in excess of that used in Embankments in accordance with the requirements of Section 303 shall be deposited off the Right of Way in an approved Disposal Area. Deposits whose surface is composed largely of rock shall be leveled by special arrangement of the Material or reduction of the irregularity of the surface by crushing projections to create a reasonably uniform and neat appearance.

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

If the Design-Builder fails to provide and maintain necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate, the Department will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the Department, and deduct the cost of performing the Work plus twenty five percent (25%) for supervisory and administrative personnel from monies due or to be become due the Design-Builder.

Costs for applying seed, lime, fertilizer, and mulch; reforestation; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Contract Price.

(a) **Materials encountered by the Design-Builder** shall be handled and disposed of as follows:

1. **Unsuitable Material.** The Design-Builders' geotechnical engineer shall confirm that slopes, earthwork, pavement, and foundation subgrades satisfy the design and Contract Document requirements. The Design-Builders' geotechnical engineer shall perform an inspection of all embankment and pavement subgrades and minor structure excavations immediately prior to placement of embankment fill, aggregate base, subbase or bedding materials to identify excessively soft, loose, dry or saturated soils that exhibit excessive pumping, weaving or rutting under the weight of the construction equipment. Materials unsuitable for use in the Work, as defined in the Technical Requirements, shall be disposed of at an approved Disposal Area or landfill licensed to receive such Material unless the materials can be adequately treated in place through chemical and/or mechanically stabilized method that shall be approved by the Department. Such method shall be approved prior to use in the Work. All Unsuitable Materials shall be disposed of off-site and/or treated in place at no cost to the Department. Design-Builder shall identify unsuitable Materials and methods of treatment on the plans and cross sections.
2. **Surplus Material** as shown in the Contract Documents that is not classified as unsuitable may be used to flatten slopes, to fill in ramp gores and medians provided the material is placed in accordance with the earthwork specifications. Surplus Material that is not needed shall be disposed of at an approved Disposal Area, a landfill licensed to receive such Material, or as directed by the Department in writing.

Surplus Material stockpile areas on the right-of-way shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and the haul Roads thereto. Placement of fill material shall not adversely affect existing drainage structures. If necessary, modified existing drainage structures, as approved by the Department, shall be paid for in accordance with Section 109.05. Within seven (7) days after the material has been deposited, the area shall be shaped and stabilized to minimize erosion and siltation.

3. **Organic materials** such as, but not limited to, tree stumps and limbs (not considered merchantable timber), roots, rootmat, leaves, grass cuttings, or other similar materials shall be chipped or shredded and used on the Project as mulch, given away, sold as firewood or mulch, burned at the Design-Builder's option if permitted by local ordinance, or disposed of at a facility licensed to receive such materials. Organic material shall not be buried in State Rights of Way or in an approved Disposal Area.
4. **Inorganic materials** such as brick, cinder block, broken concrete without exposed reinforcing steel, or other such material may be used in accordance with Section 303.04 or shall be disposed of at an approved Disposal Area or landfill licensed to receive such materials. If disposed of in an approved Disposal Area, the material shall have enough cover to promote soil stabilization in accordance with Section 303 and shall be restored in accordance with other provisions of this Section.

Concrete without exposed reinforcing steel, may be crushed and used as rock in accordance with Section 303. If approved by the Department, these materials may be blended with soils that meet AASHTO M57 requirements and deposited in fill areas within the right-of-way in accordance with the requirements of Section 303 as applicable.

5. **Excavated rock** in excess of that used within the Project site in accordance with Section 303 shall be treated as surplus material.



6. **Other materials** such as, but not limited to, antifreeze, asphalt (liquid), building forms, concrete with reinforcing steel exposed, curing compound, fuel, Hazardous Materials, lubricants, metal, metal pipe, oil, paint, wood or metal from building demolition, or similar materials shall not be disposed of at an approved Disposal Area but shall be disposed of at a landfill licensed to receive such material.
7. Coal or other valuable materials uncovered during prosecution of the Work that are not specifically addressed by the Contract shall be disposed of as the Department directs in writing.

If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Disposal Areas, the Department may withhold and use for the purpose of performing such work any moneys due the Design-Builder. The Design-Builder shall be held liable for all penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation.

#### **106.05—Rights For and Use of Materials Found on Project**

With the approval of the Department, the Design-Builder may use in the Project any materials found in the Excavation that comply with the requirements of the Contract Documents. The Design-Builder shall replace at his own expense with other acceptable material the Excavation material removed and used that is needed for use in Embankments, Backfills, approaches, or otherwise. The Design-Builder shall not excavate or remove any material from within the construction limits that is not within the grading limits, as indicated by the slope and grade lines. The Design-Builder shall not own and shall not have the right to sell, trade or exchange, any coal or other valuable materials uncovered during the prosecution of the work without the Department's specific written authorization.

#### **106.06—Samples, Tests, and Cited Specifications**

The Design-Builder shall inspect and test materials in accordance with the QA/QC Plan. Unless reference is made to a specific dated specification or special provision, references in the Contract Documents to AASHTO, ASTM, VTM, and other standard test methods and materials requirements shall refer to either the test specifications that have been formally adopted or the latest interim or tentative specifications that have been published by the appropriate committee of such organizations as of the date of the Notice of Advertisement.

Where permitted by the Special Provision for Use of Domestic Material, the inspection cost of structural steel items, precast concrete items, and prestressed concrete items fabricated in a country other than the continental United States shall be borne by the Design-Builder. Inspection of structural fabrication shall be performed in accordance with the requirements of the appropriate VTM by a commercial Laboratory approved by the Department. Additional cleaning or repair necessary because of environmental conditions in transit shall be at the Design-Builder's expense. Materials requiring an MSDS will not be accepted at the Project site for sampling without the document.

#### **106.07—Plant Inspection**

If the Department inspects materials at the source, the following conditions shall be met:

- (a) The Department shall have the cooperation and assistance of the Design-Builder and producer of the Materials.
- (b) The Department shall have full access to parts of the plant that concern the manufacture or production of the Materials being furnished.
- (c) For Materials accepted under a quality assurance plan, the Design-Builder or producer shall furnish equipment and maintain a plant laboratory at locations approved for plant processing of Materials. The Design-Builder or producer shall use the laboratory and equipment to perform quality control testing.

The laboratory shall be of weatherproof construction, tightly floored and roofed, and shall have adequate lighting, heating, running water, ventilation, and electrical service. The ambient temperature shall be maintained between 68 degrees F and 86 degrees F and thermostatically controlled. The laboratory shall be equipped with a telephone, intercom, or other electronic communication system connecting the laboratory and scale house if the facilities are not in close proximity to each other. The laboratory shall be constructed in accordance with the requirements of local building codes.

The Design-Builder or producer shall furnish, install, maintain, and replace, as conditions necessitate, testing equipment specified by the appropriate ASTM, AASHTO method, or VTM being used and provide necessary office equipment and supplies to facilitate keeping records and generating test reports. The Design-Builder or producer's technician shall maintain current copies of test procedures performed in the laboratory. The Design-Builder shall calibrate or verify all balances, scales, and weights associated with testing performed as specified in AASHTO R18. The Design-Builder or producer shall also provide and maintain an approved test stand for accessing truck beds for the purpose of sampling and inspection. Cast iron grinding pots and rubber mauls will be furnished by the Department where required. The Department may approve a single laboratory to service more than one plant belonging to the same Design-Builder or producer.

For crushed glass, the plant equipment requirements are waived in lieu of an independent third-party evaluation and certification of crushed glass properties by an AASHTO Materials Reference Laboratory (AMRL)-accredited commercial soil testing Laboratory demonstrating that the supplied Material conforms to Section 203 requirements. Random triplicate samples will be evaluated and analyzed for every 1,000 tons of Material supplied to the Project. The averaged results will be used for evaluation purposes. Suppliers of crushed glass shall maintain third party certification records for a period of three years.

- (d) Adequate safety measures shall be provided and maintained.
- (e) Design-Builder shall inspect all Materials upon delivery to the site for compliance with Contract requirements. All non-conforming Materials shall be rejected and removed from the site.

#### **106.08—Storing Materials**

Materials shall be stored in a manner so as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the Department, Materials shall be stored in weatherproof buildings on wooden platforms or other hard, clean surfaces that will keep the Material off the ground. Materials shall be covered when directed by the Department. Stored Material shall be located so as to facilitate their prompt inspection. Approved portions of the Right of Way may be used for storage of Material and Equipment and for plant operations. However, Equipment and Materials shall not be stored within the clear zone of the travel lanes open to traffic.

The Design-Builder shall provide additional required storage space at his expense. Private property shall not be used for storage purposes without the written permission of the owner or lessee. The Design-Builder shall furnish copies of the owner's written permission to the Department. Upon completion of the use of the property, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored.

Chemicals, fuels, lubricants, bitumens, paints, raw sewage, and other harmful materials as determined by the Department and the VPDES *General Permit for Discharge of Stormwater from Construction Activities* shall not be stored within any floodplain unless no other location is available and only then shall the material be stored in a secondary containment structure(s) with an impervious liner. Also, any storage of these materials in proximity to natural or man-made drainage conveyances or otherwise where the materials could potentially reach a waterway if released under adverse weather conditions, must be stored in a bermed or diked area or inside a

container capable of preventing a release. Double-walled storage tanks shall meet the berm/dike containment requirement except for storage within flood plains. Any spills, leaks, or releases of such materials shall be addressed in accordance with Section 107.16(b) and (e). Accumulated rain water may also be pumped out of the impoundment area into approved dewatering devices. All proposed pollution prevention measures and practices must be identified by the Design-Builder in his Pollution Prevention Plan as required by the Specifications, other Contract Documents and/or the VDPES *General Permit for Discharge of Stormwater from Construction Activities*.

#### **106.09—Handling Materials**

Materials shall be handled in a manner that will preserve their quality, integrity, and fitness for the Work. Aggregates shall be transported in vehicles constructed to prevent loss or segregation of materials.

#### **106.10—Unacceptable Materials**

Materials that do not conform to the requirements of the Contract Documents shall be considered unacceptable. Such Materials, whether in place or not, will be rejected and shall be removed from the site of the Work and replaced at no additional cost to the Department. If it is not practical for the Design-Builder to remove rejected Material immediately, the Department will mark the rejected Material for identification. Rejected Material whose defects have been corrected shall not be used until the Department gives written approval for its use. Upon the Design-Builder's failure to comply promptly with any order of the Department made under this Section, the Department may, in addition to other rights and remedies, have the unacceptable material removed and replaced, and deduct the cost of such removal and replacement from monies due or to become due the Design-Builder. The Department shall file documentation of the correction with resolution of the Non-conformance report (NCR).

#### **106.11—Material Furnished by the Department**

The Design-Builder shall furnish all Materials required to complete the Work except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Design-Builder at the points specified in the Contract. The cost of handling and placing Materials after delivery to the Design-Builder shall be included in the Contract Price

After receipt of the Materials, the Design-Builder shall be responsible for Material delivered to him, including shortages, deficiencies, and damages that occur after delivery, and any demurrage charges.

#### **106.12—Critical Materials (Not Used)**

### **SECTION 107—LEGAL RESPONSIBILITIES**

#### **107.01—Legal Requirements to Be Observed (Not Used)**

#### **107.02—Permits, Certificates, and Licenses. (Not Used)**

#### **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**

Easements for temporary uses and detours requested by the Design-Builder and approved by the Department in lieu of a detour within the Right of Way or Easement area shall be acquired by the Design-Builder without the Department being a party to the agreement, unless otherwise expressly stated in Part 2 of the Contract Documents.

**107.05—Patented Devices, Materials, and Processes (Not Used)**

**107.06—Personal Liability of Public Officials**

In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Board, Commissioner, Department, or their authorized representatives, either personally or as officials of the Commonwealth. In all such matters, they act solely as agents and representatives of the Commonwealth.

**107.07—No Waiver of Legal Rights**

The Department shall not be precluded or estopped by any measurement, estimate, approval, acceptance, or certificate made either before or after Final Completion, or payment therefore from showing (1) the true amount and character of the work performed and Materials furnished by the Design-Builder, (2) that any such measurement, estimate, acceptance, certificate, or payment is untrue or incorrectly made, or (3) that the work or Materials do not comply with the Contract requirements. The Department shall not be precluded or estopped, notwithstanding any such measurement, estimate, approval, acceptance, certificate, or payment in accordance therewith, from recovering from the Design-Builder or his Surety, or both, such cost or damage as the Department may sustain by reason of the Design-Builder's failure to comply with the Contract requirements. The Department's acceptance of the whole or any part of the Work, or the Department's payment for the whole or any part of the Work, or the Department's granting of any extension of time, or the Department's taking any possession of any part of the Work, shall not operate as a waiver of any portion of the Contract or of any right of power herein reserved or of any right to costs or damages. The Department's express written waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

**107.08—Protecting and Restoring Property and Landscape**

The Design-Builder shall preserve property and improvements along the boundary lines of and adjacent to the Work unless their removal or destruction is specified in the Contract Documents. The Design-Builder shall use suitable precautions to prevent damage to such property.

When the Design-Builder finds it necessary to enter on private property, beyond the limits of the construction Easement shown in the Contract Documents, he shall secure from the owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished to the Department.

The Design-Builder shall be responsible for any damage or injury to property during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or attributable to defective work or Materials. This responsibility shall not be released until Final Completion and a written release from the owner or lessee of the property is obtained.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or in consequence of the non-execution thereof on the part of the Design-Builder, the Design-Builder shall restore such property to a condition similar

or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the Department, or shall make a settlement with the property owner for such property damage. The Design-Builder shall secure from the owner a written release from any claim against the Department without additional compensation therefore. A copy of this release shall be furnished the Department.

#### **107.09—Design-Builder’s Responsibility for Utility Property and Services**

At points where the Design-Builder’s operations are on or adjacent to the properties of any utility, including railroads, and damage to which might result in expense, loss, or inconvenience, work shall not commence until arrangements necessary for the protection thereof have been completed.

The Design-Builder shall cooperate with owners of utilities so that removal and adjustment operations may progress in a timely, responsible, and reasonable manner, duplication of adjustment work may be reduced to a minimum, and services rendered by those parties will not be unnecessarily interrupted.

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Design-Builder shall promptly notify the proper authority and shall cooperate fully with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Design-Builder’s work operations require the disconnection of “in service” fire hydrants, the Design-Builder shall notify the locality’s fire department or communication center at least twenty four (24) hours prior to disconnection. In addition, the Design-Builder shall notify the locality’s fire department or communications center no later than twenty four (24) hours after reconnection of such hydrants. The Design-Builder shall be responsible for any damage to utilities that, in the investigation and determination of the Department, is found to be attributable to the Design-Builder’s neglect, means, or methods of performing the Work.

Nothing in this Section shall be construed to be in conflict with Section 107.08.

The Design-Builder shall comply with all requirements of the *Virginia Underground Utility Damage Prevention Act* (the Miss Utility law). The Design-Builder shall not make or begin any Excavation or demolition without first notifying the Miss Utility notification center for the area where the Project is located. The Design-Builder shall wait to begin its Excavation or demolition until 7:00 a.m. on the third working day following the Design-Builder’s notice to the notification center, unless the underground utilities cannot be marked within that time due to extraordinary circumstances. The Design-Builder may commence Excavation or demolition work only if confirmed through the Ticket Information Exchange (TIE) System, or the Design-Builder is notified directly, that all applicable utilities have either marked their underground line locations or reported that no lines are present in the Work vicinity.

#### **107.10—Restoration of Work Performed by Others**

The Department may construct or reconstruct any utility service within the construction limits or grant a permit for the same at any time. The Design-Builder shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time, unless the Design-Builder’s Work is damaged, altered or impeded by the condition.

When authorized by the Department, the Design-Builder shall allow any Person to make an opening in the Highway within the limits of the Project upon presentation of a duly executed permit from the Department or any municipality for sections within its corporate limits. When directed by the Department, the Design-Builder shall satisfactorily repair portions of the Work disturbed by the openings. The work for such repairs as authorized and directed by the Department will be paid for in accordance with Section 109.05 and shall be subject to the same conditions as the original work performed.

#### 107.11—Use of Explosives

The Design-Builder shall be responsible for damage resulting from the use of explosives. Explosives shall be stored in a safe and secure manner in compliance with federal, state, and local laws and ordinances.

The Design-Builder shall notify each property and utility owner having a building, structure, or other installation above or below ground in proximity to the site of the Work of his intention to use explosives. Notice shall be given sufficiently in advance to enable the owners to take steps to protect their property. The review of the Design-Builder's plan of operations, blasting plan and the notification of property owners shall in no way relieve the Design-Builder of his responsibility for damage resulting from his blasting operations.

#### 107.12—Responsibility for Damage Claims (Not Used)

#### 107.13—Labor and Wages

The Design-Builder shall comply with the provisions and requirements of the workers' compensation law and public statutes that regulate hours of employment on public work.

- (a) **Predetermined Minimum Wages:** The provisions of laws requiring the payment of a minimum wage of a predetermined minimum wage scale for the various classes of laborers and mechanics, when such a scale is incorporated in the Contract, shall be expressly made a part of any Contract hereunder. The Design-Builder and his agents shall promptly comply with all such applicable provisions.

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Design-Builder shall be responsible for determining local practices with regard to the application of the various labor classifications. For additional details of predetermined minimum wage rates, see Exhibit 26 to the Agreement.

- (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 Completion the period since the last labor report is 30 days or more, the Design-Builder shall furnish an additional labor report as outlined herein prior to payment of the final estimate.

- (c) **Job Service Offices:** In advance of the Contract starting date, the Design-Builder may contact the Job Service Office of the Virginia Employment Commission at the nearest location to secure referral of available qualified workers in all occupational categories. The closest office may be obtained by accessing the VEC website at <http://www.vec.virginia.gov> and "clicking" on "VEC Local Offices" to access "**VEC Workforce Centers**".

#### 107.14—Equal Employment Opportunity

- (a) The Design-Builder shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity.
- (b) The Design-Builder shall maintain the following records and reports as required by the contract EEO provisions:

1. Record of all applicants for employment
  2. New hires by race, work classification, hourly rate, and date employed
  3. Minority and non-minority Employees employed in each work classification
  4. Changes in work classifications
  5. Employees enrolled in approved training programs and the status of each
  6. Minority Subcontractor or Subcontractors with meaningful minority group representation
  7. Copies of Form C-57 submitted by Subcontractors
- (c) If the Contract has a stipulation or requirement for trainees, the Design-Builder shall submit semiannual training reports in accordance with the instructions shown on the forms furnished by the Department. If the Design-Builder fails to submit such reports in accordance with the instructions, his monthly progress estimate for payment may be delayed.
- (d) The Design-Builder shall cooperate with the Department in carrying out EEO obligations and in the Department's review of activities under the Contract. The Design-Builder shall comply with the specific EEO requirements specified herein and shall include these requirements in every subcontract of \$10,000 or more with such modification of language as may be necessary to make them binding on the Subcontractor.
- (e) **EEO Policy:** The Design-Builder shall accept as operating policy the following statement:
- It is the policy of this Company to assure that applicants are employed and that Employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.
- (f) **EEO Officer:** The Design-Builder shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active contractor EEO program and who shall be assigned adequate authority and responsibility to do so.
- (g) **Dissemination of Policy:**
1. Members of the Design-Builder's staff who are authorized to hire, supervise, promote, and discharge Employees or recommend such action or are substantially involved in such action shall be made fully aware of and shall implement the Design-Builder's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:
    - a. Periodic meetings of supervisory and personnel office Employees shall be conducted before the start of work and at least once every six (6) months thereafter, at which time the Design-Builder's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.
    - b. New supervisory or personnel office Employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within thirty (30) days following their reporting for duty with the Design-Builder.

- c. The EEO Officer or appropriate company official shall instruct Employees engaged in the direct recruitment of Employees for the Project relative to the methods followed by the Design-Builder in locating and hiring minority group Employees.
2. In order to make the Design-Builder's EEO policy known to all Employees, prospective Employees, and potential sources of Employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Design-Builder shall take the following actions:
  - a. Notices and posters setting forth the Design-Builder's EEO policy shall be placed in areas readily accessible to Employees, applicants for employment, and potential employees.

The Design-Builder shall furnish, erect, and maintain at least two (2) bulletin boards having dimensions of at least forty eight (48) inches in width and thirty six (36) inches in height at locations readily accessible to all personnel concerned with the Project. The boards shall be erected immediately upon initiation of the Work and shall be maintained until the completion of such Work, at which time they shall be removed from the Project. Each bulletin board shall be equipped with a removable glass or plastic cover that, when in place, will protect posters from weather or damage. The Design-Builder shall promptly post official notices on the bulletin boards.

- b. The Design-Builder's EEO policy and the procedures to implement such policy shall be brought to the attention of Employees by means of meetings, employee handbooks, or other appropriate means.

**(h) Recruitment:**

1. When advertising for employees, the Design-Builder shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the Project work force would normally be derived.
2. Unless precluded by a valid bargaining agreement, the Design-Builder shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges, and minority group organizations. The Design-Builder shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to him for employment consideration.
3. The Design-Builder shall encourage his Employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all Employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with Employees.

**(i) Personnel Actions:** Wages, working conditions, and Employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.

1. The Design-Builder shall conduct periodic inspections of the Project sites to ensure that working conditions and Employee facilities do not indicate discriminatory treatment of personnel.
2. The Design-Builder shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.



3. The Design-Builder shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Design-Builder shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected individuals.
4. The Design-Builder shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect Persons other than the complainant, corrective action shall include those individuals. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.

(j) **Training:**

1. The Design-Builder shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.
2. Consistent with work force requirements and as permissible under federal and State regulations, the Design-Builder shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, twenty five percent (25%) of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
3. The Design-Builder shall advise Employees and applicants for employment of available training programs and the entrance requirements for each.
4. The Design-Builder shall periodically review the training and promotion potential of minority group Employees and shall encourage eligible Employees to apply for such training and promotion.
5. If the Contract does not provide a separate Pay Item for trainees, the cost associated with the training specified herein shall be included in the contract price.
6. If the Contract requires trainees, training shall be in accordance with Section 518.

(k) **Unions:** If the Design-Builder relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Design-Builder, either directly or through his Design-Builder's Association acting as agent, shall include the following procedures:

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.
2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.
3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Design-Builder, the Design-Builder shall so certify to the Department and shall set forth what efforts he made to obtain the information.

4. If a union is unable to provide the Design-Builder with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Design-Builder shall, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group individuals and women. If union referral practice prevents the Design-Builder from complying with the EEO requirements, the Design-Builder shall immediately notify the Department.

- (l) **Subcontracting:** The Design-Builder shall use best efforts to use minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. Design-Builders shall obtain lists of SWaM and DBE construction firms from the Department. If SWaM and DBE goals are established in the RFP Documents, the Design-Builder shall comply with Section 107.15.

The Design-Builder shall use best efforts to ensure Subcontractor compliance with his EEO obligations.

- (m) **Records and Reports:** The Design-Builder shall keep such records as are necessary to determine compliance with his EEO obligations. The records shall be designed to indicate the following:

1. the number of minority and non-minority group members and females employed in each work classification on the Project.
2. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force.
3. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female Employees.
4. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their Employees.

Records shall be retained for a period of three (3) years following Final Completion and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

Each month for the first three (3) months after construction begins and every month of July thereafter for the duration of the Project, Form C-57 shall be completed to indicate the number of minority, non-minority, and female Employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within three (3) weeks after the reporting period. Failure to do so may result in delay of approval of the Design-Builder's monthly progress estimate for payment.

#### **107.15—Use of Small, Women-Owned, and Minority Business Enterprises (MBEs)**

Design-Builder shall comply with all requirements of Exhibit 107.15, attached hereto. This Exhibit is a Special Provision from the Department.

#### **107.16—Environmental Stipulations**

By signing the Proposal, the Offeror shall have stipulated (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended 42 U.S.C. 1857, et seq., as amended by P.L. 91-604, the Federal Water Pollution Control Act as amended 33 U.S.C. 1251 et seq. as amended by P.L. 92-500, and Executive Order 11738 and regulations in implementation thereof 40 C.F.R., Part 15) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. 15.20; and (2) that the Department will be promptly notified prior to the Award of the Contract if the Offeror receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the Work or precautions described herein.

Reference is made in various subsections of this section to Tidewater, Virginia. For the purposes of identifying the affected regions assigned to this designation and the requirements therein Tidewater, Virginia is defined as the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland and York and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

- (a) **Erosion and Siltation:** The Design-Builder shall exercise every reasonable precaution, including temporary and permanent soil stabilization measures, throughout the duration of the Project to control erosion and prevent siltation of adjacent lands, rivers, streams, wetlands, lakes, and impoundments. Soil stabilization or erosion control measures shall be applied to erodible soil or ground materials exposed by any activity associated with construction, including clearing, grubbing, and grading, but not limited to local or on-site sources of materials, stockpiles, Disposal Areas and haul roads.

The Design-Builder shall comply with Sections 301.02 and 303.03 of the Specifications. Should the Design-Builder as a result of negligence or noncompliance fail to provide soil stabilization in accordance with these specifications, the cost of temporary soil stabilization in accordance with the provisions of Section 303 shall be at the Design-Builder's expense.

Temporary measures shall be coordinated with the Work to ensure effective and continuous erosion and sediment control. Permanent erosion control measures and drainage facilities shall be installed as the Work progresses.

For projects that disturb 10,000 square feet or greater of land or 2,500 square feet or greater in Tidewater, Virginia, the Design-Builder shall have within the limits of the project during land disturbance activities, an employee certified by the Department in Erosion and Sediment control who shall inspect erosion and sediment control and pollution prevention practices, devices and measures for proper installation and operation and promptly report their findings to the Inspector. Failure on the part of the Design-Builder to maintain appropriate erosion and sediment control or pollution prevention devices in a functioning condition may result in the Department notifying the Design-Builder in writing of specific deficiencies. Deficiencies shall be corrected immediately or as otherwise directed by the Department. If the Design-Builder fails to correct or take appropriate actions to correct the specified deficiencies within twenty four (24) hours (or as otherwise directed) after receipt of such notification, the Department may do one or more of the following: require the Design-Builder to suspend work in other areas and concentrate efforts towards correcting the specified deficiencies, withhold payment of monthly progress estimates, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Design-Builder. Failure on the part of the Design-Builder to maintain a Department certified erosion and sediment control employee within the Project limits when land disturbance activities are being performed will result in the Department suspending work related to any land disturbance activity until such time as the Design-Builder is in compliance with this requirement.

- (b) **Pollution:**

1. **Water:** The Design-Builder shall exercise every reasonable precaution throughout the duration of the Project to prevent pollution of rivers, streams, and impoundments. Pollutants such as, but not limited to, chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into Channels leading to them. The Design-Builder shall provide the Department a contingency plan for reporting

and immediate actions to be taken in the event of a dump, discharge, or spill within eight hours after he has mobilized to the Project site.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into State waters. Filtering shall be accomplished by the use of a standard dewatering basin or a dewatering bag or other measures approved by the Department. Dewatering bags shall conform to Section 245. During specified spawning seasons, discharges and construction activities in spawning areas of State waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy Equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved non-erodible materials and shall be removed by the Design-Builder to natural ground when the Department so directs.

If the Design-Builder dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional Governmental Units in accordance with the requirements of the Contract and the VPDES *General Permit For Discharge of Stormwater From Construction Activities* and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

Solids, sludges, or other pollutants removed in the course of the treatment or management of pollutants shall be disposed of in a manner that prevents any pollutant from such materials from entering surface waters in compliance with all applicable state and federal laws and regulations.

Excavation material shall be disposed of in approved areas above the mean high water mark shown in the Contract Documents in a manner that will prevent the return of solid or suspended materials to State waters. If the mark is not shown on the Plans, the mean high water mark shall be considered the elevation of the top of stream banks.

Constructing new Bridge(s) and dismantling and removing existing Bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or Disposable Materials into rivers, streams, or impoundments.

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where identified on the Plans and to those that must be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of Falsework, piling, debris, or other obstructions placed therein or caused by construction operations. Stabilization of the streambed and banks shall occur immediately upon completion of work if work is suspended for more than fourteen (14) days.

The Design-Builder shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Design-Builder shall design and provide temporary Channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Design-Builder shall submit a temporary relocation design to the Department for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the Work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Contract. Stabilization of the streambed and banks shall occur immediately upon completion of, or during the Work, if the Work is suspended for more than fourteen (14) days.

Temporary Bridges or other minimally invasive structures shall be used wherever the Design-Builder finds it necessary to cross a stream more than twice in a six (6) month period unless otherwise

authorized by water quality permits issued by the U. S. Army Corps of Engineers, Virginia Marine Resources Commission, or the Virginia Department of Environmental Quality for the Contract.

Conduct all operations near rivers, streams, or impoundments in accordance with applicable water quality permits. Do not conduct clearing or grubbing within one hundred (100) feet of the limits of Ordinary High Water or a delineated wetland until authorized by the Department.

2. **Air:** The Design-Builder shall comply with the provisions of the Contract and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Design-Builder shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the rules of the State Air Pollution Control Board.

- a. **VOC Emission Control Areas** - The Design-Builder is advised that when the Project is located in a volatile organic compound (VOC) emissions control area identified in the State Air Control Board Regulations (9 VAC 5-20-206) and in the Table I-3 below the following limitations shall apply:

- (1) Open burning is prohibited during the months of May, June, July, August, and September in VOC Emissions Control areas
- (2) Cutback asphalt is prohibited April through October except when use or application as a penetrating prime coat or tack is necessary in Virginia Department of Environmental Quality Volatile Organic Compound (VOC) Emissions Control Areas.\* See the 9 VAC 5-40, Article 39 (Emission Standards for Asphalt Paving Operations) and 9 VAC 5-130 (Regulation for Open Burning) for further clarification.

<b>TABLE I-3</b>			
<b>VOC Emissions Control Area</b>	<b>VDOT District</b>	<b>Jurisdiction</b>	
Northern Virginia	NOVA	Alexandria City Arlington County Fairfax County Fairfax City Falls Church City Loudoun County Manassas City Manassas Park City Prince William County	
Northern Virginia	Fredericksburg	Stafford County	

Fredericksburg	Fredericksburg	Spotsylvania County Fredericksburg City	
Hampton Roads	Fredericksburg	Gloucester County	
Hampton Roads	Hampton Roads	Chesapeake City Hampton City Isle of Wight County James City County Newport News City Norfolk City Poquoson City Portsmouth City Suffolk City Virginia Beach City Williamsburg City York County	
Richmond	Richmond	Charles City County Chesterfield County Colonial Heights City Hanover County Henrico County Hopewell City Petersburg City Prince George County Richmond City	
Western Virginia	Staunton	Frederick County Winchester City	
Western Virginia	Salem	Roanoke County Botetourt County Roanoke City Salem City	

\* Regulations for the Control and Abatement of Air Pollution ([9 VAC 5-20-206](#))

- (3) Emission standards for asbestos incorporated in the EPA’s National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos or where the Design-Builder’s methods for such actions will produce friable asbestos.

The Design-Builder shall submit demolition notification the United States Environmental Protection Agency (USEPA) and the Virginia Department of Labor and Industry a minimum of 10 business days prior to starting work on the following bridge activities:

- a) Dismantling and removing existing structures
- b) Moving an entire structure
- c) Reconstruction and repairs involving the replacement of any load-bearing component of a structure

Address notifications to:

Virginia Department of Labor and Industry  
Asbestos Program  
Powers-Taylor Building  
13 South Thirteenth Street  
Richmond, VA 23219

Land and Chemical Division  
EPA Region III  
Mail Code LC62  
1650 Arch St.  
Philadelphia, PA 19103-2029

3. **Noise:** The Design-Builder's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall not exceed 80 decibels. Such noise level measurements shall be taken at a point on the perimeter of the construction limit that is closest to the adjoining property on which a noise sensitive activity is occurring. A *noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose and not present an unreasonable public nuisance. Such activities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

The Design-Builder shall monitor construction-related noise. If construction noise levels exceed 80 decibels during noise sensitive activities, the Design-Builder shall take corrective action before proceeding with operations. The Design-Builder shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

The Department may prohibit or restrict to certain portions of the Project any work that produces objectionable noise between 10 PM and 6 AM If other hours are established by local ordinance, the local ordinance shall govern.

Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

When feasible, the Design-Builder shall establish haul routes that direct his vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

These requirements shall not be applicable if the noise produced by sources other than the Design-Builder's operation at the point of reception is greater than the noise from the Design-Builder's operation at the same point.

- (c) **Forest Fires:** The Design-Builder shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Design-Builder shall cooperate with the proper authorities of Governmental Units in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Design-Builder upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Design-Builder shall negotiate with the proper forest official for compensation for such labor, tools, or equipment
- (d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of Work, the Design-Builder shall act immediately to suspend work at the site of the discovery and notify the Engineer. The

Engineer will immediately notify the proper State authority charged with the responsibility of investigating and evaluating such finds. The Design-Builder shall cooperate and, upon the request of the Engineer, assist in protecting, mapping, and removing the findings. Labor, tools, or Equipment furnished by the Design-Builder for such work will be paid for in accordance with the requirements of Section 104.03. Findings shall become the property of the Commonwealth unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such findings delay the progress or performance of the Work, the Design-Builder shall notify the Department in accordance with the General Conditions of Contract.

(e) **Storm Water Pollution Prevention Plan and VPDES General Permit for the Discharge of Stormwater from Construction Activities**

A Stormwater Pollution Prevention Plan (SWPPP) identifies potential sources of pollutants which may reasonably be expected to affect the stormwater discharges from the construction site and any off site support facilities located on VDOT rights of way and easements. The SWPPP also describes and ensures implementation of practices which will be used to minimize or prevent pollutants in such discharges.

The SWPPP shall include, but not be limited to, the approved Erosion and Sediment Control (ESC) Plan, the approved Stormwater Management (SWM) Plan (if applicable), the approved Pollution Prevention Plan, and all related Specifications, Standards, and requirements contained within the Contract Documents and shall be required for all land-disturbing activities that disturb 10,000 square feet or greater, or 2,500 square feet or greater in Tidewater, Virginia.”

Land-disturbing activities that disturb one (1) acre or greater require coverage under the Department of Environmental Quality’s VPDES General Permit for the Discharge of Stormwater from Construction Activities (hereafter referred to as the VPDES Construction Permit) In accordance with the IIM-LD-242, Department will apply for and secure VPDES Construction Permit coverage for all applicable land disturbing activities on VDOT rights of way or easements for which it has contractual control, including off-site (outside the Project limits) support facilities on VDOT rights of way or easements that directly relate to the construction activity.

The Design-Builder shall be responsible for securing VPDES Construction Permit coverage and complying with all permit conditions for all support facilities that are not located on VDOT rights of way or easements.

The required contents of a SWPPP for those land disturbance activities requiring coverage under the VPDES Construction Permit are found in Section II of the permit. While a SWPPP is an important component of the VPDES Construction Permit, it is only one of the many requirements for the land disturbing activity that must be addressed in order to be in full compliance with the conditions of this permit. The requirements of this permit will be satisfied by the Design-Builder’s compliance with the Project’s SWPPP terms and conditions.

The Design-Builder and all other persons that oversee or perform activities covered by the VPDES Construction Permit shall be responsible for reading, understanding, and complying with all of the terms, conditions and requirements of the permit and the Project’s SWPPP including, but not limited to, the following:

**1. Project Implementation Responsibilities**

The Design-Builder shall be responsible for the installation, maintenance, inspection, and, on a daily basis, ensuring the functionality of all erosion and sediment control measures on a daily basis and all other stormwater runoff control and pollution prevention measures identified within or referenced



within the SWPPP, the construction plans, the specifications, all applicable permits, and all other Contract Documents or applicable governmental approvals.

The Design-Builder shall be solely responsible for the temporary erosion and sediment control protection and permanent stabilization of all borrow areas and soil disposal areas located outside of VDOT right of way or easement.

The Design-Builder shall prevent or minimize any storm water or non-storm water discharge that will have a reasonable likelihood of adversely affecting human health or public and/or private properties.

## **2. Certification Requirements**

In addition to satisfying the Section 107.16(a) personnel certification requirements, the Design-Builder shall certify his activities by completing, signing, and submitting Form C-45 VDOT SWPPP Design-Builder Certification Statement to the Department at least seven (7) days prior to commencing any Project-related land-disturbing activities, both within the Project limits and any support facilities located on VDOT rights of way or easements outside the Project limits.

## **3. SWPPP Requirements for Support Facilities**

VDOT will secure VSMP Construction Permit coverage for support facilities located on VDOT rights of way or easements according to IIM-LD-242. VDOT shall also be responsible for securing separate VSMP Construction Permit coverage for support facilities that are not located on VDOT rights of way or easements.

Support facilities shall include, but not be limited to, off-site Borrow and Disposal Areas, construction and waste materials or Equipment storage areas, equipment and vehicle washing, maintenance, storage and fueling areas, storage areas for fertilizers, fuels, or chemicals, concrete wash out areas, sanitary waste facilities and any other areas that may generate a storm water or non-stormwater discharge directly related to the construction site.

Support Facilities located on VDOT rights of way or easements:

- a. For those support facilities located within the Project limits but not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan according to [IIM-LD-195](#), and a pollution prevention plan according to these Specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents. All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved, the Department will notify the Design-Builder in writing that the plans are accepted as a component of the Project's SWPPP and VPDES Construction Permit coverage (where applicable) and shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.
- b. For support facilities located outside the Project limits and not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan (where applicable) according to [IIM-LD-195](#), a pollution prevention plan according to these specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents and all necessary documents for

obtaining VPDES Construction Permit coverage according to [IIM-LD-242](#). All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved by the Department, VDOT will secure VPDES Construction Permit coverage according to [IIM-LD-242](#). After VDOT secures VPDES Construction Permit coverage for the support facility, the Department will notify the Design-Builder in writing. The support facility shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.

#### 4. Inspection Procedures

##### a. Inspection Requirements

The Design-Builder shall be responsible for conducting site inspections in accordance with the requirements herein. Site inspections shall include erosion and sediment control and pollution prevention practices and facilities. The Design-Builder shall document such inspections by completion of Form C-107, Construction Runoff Control Inspection Form, in strict accordance with the directions contained within the form. Inspections shall include all areas of the site disturbed by construction activity, all on-site support facilities and all off site support facilities within VDOT right of way or easement. Inspections shall be conducted at least once every 7 calendar days (equivalent to once every five (5) business days) and within forty eight (48) hours following any measureable storm event. In the event a measureable storm event occurs when there are more than forty eight (48) hours between business days, the inspection shall occur no later than the next business day. A business day is defined as Monday through Friday excluding State holidays. A measurable storm event is defined as one producing 0.25 inches of rainfall or greater over a twenty four (24) hour time period. The Design-Builder shall install a rain gage at a central location on the Project site for the purposes of determining the occurrence of a measureable storm event. Where the Project is of such a length that one rain gage may not provide an accurate representation of a the occurrence of a measurable storm event over the entire Project site, the Design-Builder shall install as many rain gages as necessary to accurately reflect the amount of rainfall received over all portions of the Project. The rain gage shall be observed no less than once each business day at the time prescribed in the SWPPP General Information Sheet notes in the construction plans or other contract documents to determine if a measureable storm event has occurred. The procedures for determining the occurrence of a measurable storm event are identified in the SWPPP General Information Sheet notes in the construction plans or other contract documents. For those areas of the site that have been temporarily stabilized or where land disturbing activities have been suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection schedule may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make stormwater discharges likely, the Design-Builder shall immediately resume the regular inspection schedule. Those definable areas where final stabilization has been achieved will not require further inspections provided such areas have been identified in the Project's Stormwater Pollution Prevention Plan.

##### b. Corrective Actions

If a site inspection identifies an existing control measure that is not being maintained properly or operating effectively; an existing control measure that needs to be modified; locations where an additional control measure is necessary; or any other deficiencies in the erosion and sediment control and pollution prevention plan, corrective action(s) shall be completed as soon as practical and prior to the next anticipated measurable storm event but no later than seven days after the date of the site inspection that identified the deficiency.

## **5. Unauthorized Discharges and Reporting Requirements**

The Design-Builder shall not discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances nor shall otherwise alter the physical, chemical, or biological properties of such waters that render such waters detrimental for or to domestic use, industrial consumption, recreational or other public uses.

### **a. Notification of non-compliant discharges**

The Design-Builder shall immediately notify the Department upon the discovery of or the potential of any unauthorized, unusual, extraordinary, or non-compliant discharge from the land construction activity or any of support facilities located on VDOT right of way or easement. Where immediate notification is not possible, such notification shall be not later than twenty four (24) hours after said discovery.

### **b. Detailed report requirements for non-compliant discharges**

The Design-Builder shall submit to the Department within five (5) days of the discovery of any actual or potential non-compliant discharge a written report describing details of the discharge to include a description of the nature and location of the discharge; the cause of the discharge; the date of occurrence; the length of time that the discharge occurred, the volume of the discharge; the expected duration and total volume if the discharge is continuing; a description of any apparent or potential effects on private and/or public properties and State waters or endangerment to public health; and any steps planned or taken to reduce, eliminate, and prevent a recurrence of the discharge. A completed Form C-107 shall be used for such reports.

## **6. Changes and Deficiencies**

The Design-Builder shall report to the Department when: (a) any planned physical alterations or additions are made to the land disturbing activity; or (b) deficiencies in the Project plans or Contract are discovered that could significantly change the nature of or increase potential for pollutants discharged from the land disturbing activity to surface waters and that have not previously been addressed in the SWPPP.

## **7. Amendments, Modifications, Revisions and Updates to the SWPPP**

- a. The Design-Builder shall amend the SWPPP whenever site conditions, construction sequencing or scheduling necessitates revisions or modifications to the erosion and sediment control plan, the pollution prevention plan, or any other component of the SWPPP for the land disturbing activity or onsite support facilities,
- b. The Design-Builder shall amend the SWPPP to identify any additional or modified erosion and sediment control and pollution prevention measures implemented to correct problems or deficiencies identified through any inspection or investigation process.
- c. The Design-Builder shall amend the SWPPP to identify any new or additional person(s) or contractor(s) not previously identified that will be responsible for implementing and maintaining erosion and sediment control and pollution prevention devices.
- d. The Design-Builder shall update the SWPPP to include:
  - (1) A record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the site, and stabilization measures are initiated.

- (2) Documentation of replaced or modified erosion and sediment control and pollution prevention controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly.
  - (3) Identification of areas where final stabilization has occurred and where no further SWPPP or inspection requirements apply.
  - (4) The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release.
  - (5) A description of any measures taken to prevent the reoccurrence of any prohibited discharge.
  - (6) A description of any measures taken to address any issues identified by the required erosion and sediment control and pollution prevention inspections.
- e. The Design-Builder shall update the SWPPP no later than seven (7) days after the implementation and/or the approval of any amendments, modifications, or revisions to the erosion and sediment control plan, the pollution prevention plan, or any other component of the SWPPP.
- f. Revisions or modifications to the SWPPP shall be approved by the Department and shall be documented by the Design-Builder on a designated plan set (Record Set) in accordance with Chapter 10 of the VDOT Drainage Manual. All updates to the SWPPP shall be signed by the delegated authority as identified on the SWPPP.
- g. The record set of plans shall be maintained with other SWPPP documents on the Project site or at a location convenient to the Project site where no on site facilities are available.

#### **107.17—Construction Safety and Health Standards**

- (a) In the performance of this Contract the Design-Builder shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The Design-Builder, Subcontractors at any tier, and their respective employees, agents and invitees, shall at all times while in or around the Project site comply with all applicable laws, regulations, provisions, and policies governing safety and health under the Virginia Occupational Safety and Health (VOSH) Standards adopted under the Code of Virginia, and any laws, regulations, provisions, and policies incorporated by reference including but not limited to the Federal Construction Safety Act (Public Law 91-54), 29 CFR Chapter XVII, Part 1926, Occupational Safety and Health Regulations for Construction, and the Occupation Safety and Health Act (Public Law 91-596), 29 CFR Chapter XVII, Part 1910 Occupational Safety and Health Standards for General Industry, and subsequent publications updating these regulations.
- (b) The Design-Builder shall provide all safeguards, safety devices and protective equipment, and take any other needed actions as it determines, or as the Engineer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the Work. The Design-Builder shall be responsible for maintaining and supervising all safety and health protections and programs to ensure compliance with this Section. The Design-Builder shall routinely inspect the Project site for safety and health violations. The Design-Builder shall immediately abate any violations of the safety and health requirements or duties at no cost to the Department.
- (c) It is a condition of this Contract, and shall be made a condition of each subcontract, which the Design-Builder enters into pursuant to this Contract, that the Design-Builder and any Subcontractor shall not permit any employees in performance of the Contract, to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to their health or safety as determined by the Virginia Work Area

Protection Manual or under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

- (d) VOSH personnel, on all Federal-aid construction contracts and related subcontracts, pursuant to 29 CFR 1926.3, the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out their duties.

#### **107.18—Sanitary Provisions**

The Design-Builder shall provide and maintain in a neat, sanitary condition such accommodations for the use of Employees as may be necessary to comply with the requirements of the State and local Board of Health or other bodies or tribunals having jurisdiction.

#### **107.19—Railway-Highway Provisions**

If the Design-Builder's work requires hauling materials across the tracks of a railway, he shall make arrangements with the railway for any new crossing(s) required. Access to existing rail crossings with off-road heavy Equipment shall also be arranged by the Design-Builder. Charges made by the railway company for the construction or use of new or existing crossings and their subsequent removal and for watchperson or flagger service at such crossings shall be reimbursed by the Design-Builder directly to the railway company under the terms of their separate individual arrangements before Final Completion.

Work to be performed by the Design-Builder in construction on or over the railway Right of Way shall be performed at times and in a manner that will not unnecessarily interfere with the movement of trains or traffic on the railway track. The Design-Builder shall use care to avoid accidents, damage, or unnecessary delay or interference with the railway company's trains or other property. If any interruption of railway traffic is required by the Design-Builder's actions, he shall obtain prior written approval from the railway company.

The Design-Builder shall conduct operations that occur on or over the Right of Way of any railway company fully within the rules, regulations, and requirements of the railway company and in accordance with the requirements of any agreements made between the Department and the railway company. The applicable portions of such agreements shall be provided by Department to Design-Builder upon Design-Builder's request, unless the Contract Documents require the Design-Builder to obtain such agreement.

- (a) **Flagger or Watchperson Services:** Flagger or watchperson services required by the railway company for the safety of railroad operations because of work being performed by the Design-Builder or incidental thereto will be provided by the railway company. The cost for such services as required for work shown in the Contract Documents will be borne by the Design-Builder. Any cost of such services resulting from work not shown in the Contract Documents or for the Design-Builder's convenience shall be borne by the Design-Builder and shall be paid directly to the railway company(s) under the terms of their separate individual agreement.

No work shall be undertaken on or over the railway Right of Way until the watchpersons or flaggers are present at the Project site. The Design-Builder shall continuously prosecute the affected work to completion to minimize the need for flagger or watchperson services. Costs for such services that the Department determines to be unnecessary because of the Design-Builder's failure to give notice as required herein before initially starting, intermittently continuing, or discontinuing work on or over the railway Right of Way shall be borne by the Design-Builder and will be deducted from monies due him.

(b) **Approval of Construction Methods on Railway Right of Way:** The Design-Builder shall submit to the Department a plan of operations showing the design and method of proposed structural operations and shall obtain its approval before performing any work on the railway company's Right of Way unless otherwise indicated in the railroad agreement. The plan shall be clear and legible and details shall be drawn to scale. The plan shall incorporate any stipulations or requirements the railroad may impose for the evaluation of the Design-Builder's contemplated operations. The plan shall show, but not be limited to, the following:

1. proximity of construction operations to tracks.
2. depth of Excavation with respect to tracks.
3. description of structural units.
4. vertical and horizontal clearances to be afforded the railroad during installation and upon completion of Excavation.
5. sheeting and bracing.
6. method and sequence of operations.

Approval shall not relieve the Design-Builder of any liability under the Contract. The Design-Builder shall arrange the Work so as not to interfere with the railway company's operation except by agreement with the railway company.

(c) **Insurance:** In addition to insurance or bonds required under the terms of the Contract, the Design-Builder shall carry insurance covering operations affecting the property of the railway company. The original railroad protective liability insurance policy and certificate of insurance showing insurance carried by the Design-Builder and any Subcontractors shall be submitted to the railway company for approval and retention.

Neither the Design-Builder nor any Subcontractor shall begin any work affecting the railway company until the railway company has received the insurance.

Notice of any material change in or cancellation of the required policies shall be furnished the Department and the railway company at least 30 days prior to the effective date of the change or cancellation. The insurance shall be of the following kinds and amounts:

1. Not Used.
2. **Railroad protective insurance and public liability and property damage:** The policy furnished the railway company shall include coverage for contamination, pollution, explosion, collapse, and underground damage. The policy shall be of the type specified hereinafter and shall be expressed in standard language that may not be amended. No part shall be omitted except as indicated hereinafter or by an endorsement that states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule. The form of the endorsement shall be approved as may be required by the supervising authority of the State in which the policy is issued. A facsimile of the Policy Declarations form as shown in the RFP Documents shall be made a part of the policy and shall be executed by an officer of the insurance company. The several parts of the requirements and stipulations specified or inferred herein may appear in the policy in such sequence as the company may elect.

a. **For a policy issued by one company:**

*(NAME AND LOCATION OF INDEMNITY COMPANY), a \_\_\_\_\_ (Type of Company) Insurance Company, herein called the Company, agrees with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declarations made by the named insured and subject to all of the terms of his policy.*

**For a policy issued by two companies:**

*(NAME AND LOCATION OF INDEMNITY COMPANY) and (NAME AND LOCATION OF INDEMNITY COMPANY), each a \_\_\_\_\_ Insurance Company (Type of Company), herein called the Company, severally agree with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declaration made by the named insured and subject to all of the terms of this policy, provided the named Indemnity Company shall be the insured with respect to Coverage \_\_\_\_\_ and no other and the named Insurance Company shall be the insurer with respect to Coverage \_\_\_\_\_ and no other.*

b. **Insuring agreements:**

(1) **Coverages: Coverage A—Bodily injury liability:** To pay on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease including death at any time resulting therefrom (hereinafter called bodily injury) either (1) sustained by any person arising out of acts or omissions at the designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations; or (2) sustained at the designated job site by the Design-Builder, any Employee of the Design-Builder, any employee of the governmental authority specified in Item 5 of the Policy Declarations, or any designated employee of the insured, whether or not arising out of such acts or omissions.

**Coverage B—Property damage liability:** To pay on behalf of the insured all sums the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property because of such injury or destruction (hereinafter called property damage) arising out of acts or omissions at the designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations.

**Coverage C—Physical damage to property:** To pay for direct and accidental loss of or damage to rolling stock and other contents, mechanical construction Equipment, or motive power Equipment (hereinafter called loss) arising out of acts or omissions at the designated job site that are related to or are in connection with the work described in Item 6 of the Policy Declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

(2) **Definitions:** *Insured* means and includes the named insured and any executive officer, director, or stockholder thereof while acting within the scope of his duties as such.

*Design-Builder* means the Design-Builder designated in Item 4 of the Policy Declarations and includes all Subcontractors of the Design-Builder but not the named insured.

*Designated employee of the insured* means (1) any supervisory employee of the insured at the job site; (2) any employee of the insured while operating, attached to, or engaged on work

trains or other railroad Equipment at the job site that is assigned exclusively to the Design-Builder; or (3) any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the Design-Builder for prevention of accidents or protection of property, the cost of whose services is borne specifically by the Design-Builder or governmental authority.

*Contract* means any contract or agreement to carry a Person or property for a consideration or any lease, trust, or interchange contract or agreement respecting motive power, rolling stock, or mechanical construction Equipment.

- (3) **Defense and settlement supplementary payments:** With respect to such insurance as is afforded by this policy under Coverages A and B, the Company shall defend any suit against the insured alleging such bodily injury or property damage and seeking damages that are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false, or fraudulent. However, the Company may make such investigation and settlement of any claim or suit as it deems expedient.

In addition to the applicable limits of liability, the Company shall pay (1) all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest on the entire amount of any judgment therein that accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment that does not exceed the limit of the Company's liability thereon; (2) premiums on appeal bonds required in any such suit and premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without obligation to apply for or furnish any such bonds; (3) expenses incurred by the insured for first aid to others that shall be imperative at the time of the occurrence; and (4) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

- (4) **Policy period and territory:** This policy applies only to occurrences and losses during the policy period and within the United States, its territories or possessions, or Canada.

c. **Exclusions:** This policy does not apply to the following:

- (1) liability assumed by the insured under any contract or agreement except a contract as defined herein.
- (2) bodily injury or property damage caused intentionally by or at the direction of the insured.
- (3) bodily injury, property damage, or loss that occurs after notification to the named insured of the acceptance of the Work by the governmental authority, other than bodily injury, property damage, or loss resulting from the existence or removal of tools, uninstalled Equipment, and abandoned or unused Materials.
- (4) under Coverage A(1), B, and C, to bodily injury, property damage, or loss, the sole proximate cause of which is an act or omission of any insured.
- (5) under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, employment compensation, or disability benefits law or under any similar law; provided that the Federal Employer's Liability Act, *U.S. Code* (1946) Title 45, Sections 51-60, as amended, shall for the purpose of this insurance be deemed not to be any similar law.



- (6) under Coverage B, to injury to or destruction of property owned by the named insured or leased or entrusted to the named insured under a lease or trust agreement.
- (7) under any liability coverage, to injury, sickness, disease, death, or destruction (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or (2) resulting from the hazardous properties of nuclear material and with respect to which any Person is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof or the insured is (or had this policy not been issued would be) entitled to indemnity from the United States or any agency thereof under any agreement entered into by the United States, or any agency thereof, with any Person.
- (8) under any Medical Payments Coverage or any Supplementary Payments provision relating to immediate medical or surgical relief or to expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any Person.
- (9) under any liability coverage, to injury, sickness, disease, death, or destruction resulting from the hazardous properties of nuclear material if (1) the nuclear material is at any nuclear facility owned or operated by or on behalf of an insured or has been discharged or dispersed therefrom; (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or (3) the injury, sickness, disease, death, or destruction arises out of the furnishing by an insured of services, Materials, or parts for Equipment in connection with the planning, construction, maintenance, operation, or use of any nuclear facility; if such facility is located in the United States, its territories or possessions, or Canada, this exclusion applies only to injury to or destruction of property at such nuclear facility.
- (10) under Coverage C, to loss attributable to nuclear reaction, nuclear radiation, or radioactive contamination or to any act or condition incident to any of the foregoing.
- (11) As used in exclusions (7), (8), and (9), the following definitions apply:

*Disposable material* means material containing by product material and resulting from the operation by any Person of any nuclear facility included in the definition of nuclear facility under (i) or (ii) below.

Hazardous properties include radioactive, toxic, or explosive properties.

Injury or destruction with respect to injury to or destruction of property, includes all forms of radioactive contamination of property.

Nuclear facility means:

- a) any nuclear reactor.
- b.) any equipment or device designed or used for separating the isotopes of uranium or plutonium; processing or utilizing spent fuel; or handling, processing, or packaging waste.

- c) any equipment or device designed or used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 (or any combination thereof) or more than 250 grams of uranium 235.
- d) any structure, basin, Excavation, premises, or place prepared or used for the storage or disposal of waste (includes the site on which any of the foregoing is located, all operation conducted on such site, and all premises used for such operations).

*Nuclear material* means source material, special nuclear material, or byproduct material.

*Nuclear reactor* means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

*Source material, special nuclear material, and byproduct material* have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

*Spent fuel* means any fuel element or fuel component (solid or liquid) that has been used or exposed to radiation in a nuclear reaction.

- d. **Conditions:** The following conditions, except conditions (3) through (12), apply to all coverages. Conditions (3) through (12) apply only to the coverage noted thereunder.
  - (1) **Premium:** The premium bases and rates for the hazards described in the Policy Declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the requirements of the manuals used by the company. The term “contract cost” means the total cost of all Work described in Item 6 of the Policy Declaration. The term “rental cost” means the total cost to the Design-Builder for rental or work trains or other railroad Equipment, including the remuneration of all employees of the insured while operating, attached to, or engaged thereon. The advance premium stated in the Policy Declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accordance with the Company’s rules, rates, rating plans, premiums, and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the Company shall look to the Design-Builder specified in the Policy Declarations for any such excess. If the earned premium is less than the estimated advance premium paid, the Company shall return to the Design-Builder the unearned portion paid. In no event shall payment or premium be an obligation of the named insured.
  - (2) **Inspection:** The named insured shall make available to the Company records of information relating to the subject matter of this insurance. The Company shall be permitted to inspect all operations in connection with the Work described in Item 6 of the Policy Declarations.
  - (3) **Limits of liability, Coverage A:** The limit of bodily injury liability stated in the Policy Declarations as applicable to “each person” is the limit of the Company’s liability for all damages (including damages for care and loss of services) arising out of bodily injury sustained by one Person as the result of any one occurrence. The limit of such liability stated in the Policy Declarations as applicable to “each occurrence” is (subject to the provision respecting each Person) the total limit of the Company’s liability for all such damage arising out of bodily injury sustained by two or more Persons as the result of any one occurrence.

- (4) **Limits of liability, Coverages B and C:** The limit of liability under Coverages B and C stated in the Policy Declarations as applicable to “each occurrence” is the total limit of the Company’s liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of all property of one or more Persons or organizations, including the loss or use of any property attributable to such injury or destruction under Coverage B, as the result of any one occurrence. Subject to the provision respecting “each occurrence”, the limit of liability under Coverages B and C stated in the Policy Declaration as “aggregate” is the total limit of the Company’s liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of property, including the loss or use of any property attributable to such injury or destruction under Coverage B.

Under Coverage C, the limit of the Company’s liability for loss shall not exceed the actual cash value of the property, or if the loss is a part thereof, the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property of such part thereof with other of like kind and quality.

- (5) **Severability of interests, Coverages A and B:** The term *the insured* is used severally and not collectively. However, inclusion herein of more than one insured shall not operate to increase the limits of the Company’s liability.
- (6) **Notice:** In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of able witnesses shall be given by or for the insured to the company or any of its authorized agents as soon as is practicable. If a claim is made or a suit is brought against the insured, he shall immediately forward to the Company every demand, notice, summons, or other process received by him or his representative.
- (7) **Assistance and cooperation of the insured, Coverages A and B:** The insured shall cooperate with the Company and upon the Company’s request attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits. Except at its own cost, the insured shall not voluntarily make any payment, assume any obligations, or incur any expense other than for first aid to others that shall be imperative at the time of an accident.
- (8) **Action against Company, Coverages A and B:** No action shall lie against the Company unless as a condition precedent thereto the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured’s obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the Company. Any Person who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No Person shall have any right under this policy to join the Company as a part to any action against the insured to determine the insured’s liability. Bankruptcy or insolvency of the insured or of the insured’s estate shall not relieve the Company of any of its obligations hereunder.
- (9) **Action against Company, Coverage C:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

- (10) **Insured's duties in event of loss, Coverage C:** In the event of loss, the insured shall protect the property, whether or not the loss is covered by this policy. Any further loss attributable to the insured's failure to protect shall not be recoverable under this policy. Reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request.

The insured shall also file with the Company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the Company may reasonably require and shall, upon the Company's request, exhibit the damaged property.

- (11) **Appraisal, Coverage C:** If the insured and the Company fail to agree as to the amount of loss, either may demand an appraisal of the loss within 60 days after the proof of loss is filed. In such event the insured and the Company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. An award in writing or any two shall determine the amount of loss. The insured and the Company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

- (12) **Payment of loss, Coverage C:** The Company may pay for the loss in money, but there shall be no abandonment of the damaged property to the Company.

- (13) **No benefit to bailee coverage:** The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or bailee (other than the named insured) liable for loss to the property.

- (14) **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefore against any Person. The insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

- (15) **Application of insurance:** The insurance afforded by this policy is primary insurance. If the insured has other primary insurance against a loss covered by this policy, the Company shall not be liable under the policy for a greater proportion of such loss than the applicable limit of liability stated in the Contract bears to the total applicable limit of all valid and equitable insurance against such loss.

- (16) **3-year policy:** A policy period of 3 years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.

- (17) **Changes:** Notice to any agent of knowledge possessed by any agent or by any other Person shall not affect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms except by endorsement issued to form a part of this policy signed by \* \_\_\_\_\_ provided, however, changes may be made in the written portion of the Policy Declaration by \* \_\_\_\_\_ when initialed by such \* \_\_\_\_\_ or by endorsement issued to form a part of this policy signed by such \* \_\_\_\_\_. [\*Insert titles of authorized company representatives.]

- (18) **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon.

(19) **Cancellation:** This policy may be cancelled by the named insured by mailing to the Company written notice stating when the cancellation shall become effective. This policy may be cancelled by the Company by mailing to the named insured, Design-Builder, and governmental authority at the respective addresses shown in this policy written notice stating when such cancellation shall be effective (not less than 30 days thereafter). The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or the Company shall be equivalent to mailing. If the named insured cancels, the earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, the earned premium shall be computed pro rata. The premium may be adjusted either at the time cancellation is effected or as soon as practicable after the cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

(20) **Policy Declarations:** By acceptance of this policy, the named insured agrees that such statements in the Policy Declarations as are made by him are his agreements and representations, that his policy is issued in reliance on the truth of such representations, and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

e. **For a policy issued by one company:**

*In witness whereof, the \_\_\_\_\_ Indemnity Company has caused this policy to be signed by its president and a secretary at \_\_\_\_\_ and countersigned on the Policy Declarations page by a duly authorized agent of the Company.*

*(Facsimile of Signature)*

*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 Department evidence of the railway company's approval and a copy of the required insurance policies. The State will not be responsible for any claims from the Design-Builder resulting from delay in the acceptance of any of these policies by the railway company other than consideration of an extension of time. If the delay is caused by the failure of the Design-Builder or his insurer to file the required insurance policies promptly, an extension of time will not be granted.

(e) **Beginning Construction:** Preliminary contingent work or other work by the railway company may delay the starting or continuous prosecution of the work by the Design-Builder. The Design-Builder shall be satisfied as to the probable extent of such work and its effect on the operations prior to submitting a bid for

the work. The State will not be responsible for any claims by the Design-Builder resulting from such delays except that an extension of time may be considered.

(f) **Arranging for Tests:**

1. **Railroad Specifications:** When ordering Materials that are to conform to railroad specifications, the Design-Builder shall notify the railway company, who will arrange for tests. The Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the railroad specifications and not those of the Department.
2. **Highway Specifications:** When ordering Materials that are to conform to highway specifications, the Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the Standard Specifications.

**107.20—Construction Over or Adjacent to Navigable Waters (Not Used)**

**107.21—Size and Weight Limitations**

- (a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Design-Builder shall comply with legal size and weight limitations in the hauling or moving of Material and Equipment on public Roads open to traffic unless the hauling or moving is covered by a hauling permit.
- (b) **Hauling or Moving Material and Equipment on Public Roads Not Open to Traffic:** The Design-Builder shall comply with legal weight limitations in the hauling or moving of Material and Equipment on public Roads that are not open to traffic unless the hauling or moving is permitted elsewhere herein or is otherwise covered by a hauling permit. The Design-Builder shall be liable for damage that results from the hauling or moving of Material and Equipment. The hauling or moving of Material and Equipment on the Pavement Structure or across any structure during various stages of construction shall be subject to additional restrictions as specified or directed by the Department.
- (c) **Furnishing Items in Component Parts of Sections:** If the size or weight of fabricated or manufactured items together with that of the hauling or moving vehicle exceeds the limitations covered by hauling permit policies and other means of transportation are not available, permission will be given to furnish the items in component parts of sections with adequately designed splices or connections at appropriate points. Permission for such adjustments shall be requested in writing, and approval in writing shall be secured from the Department prior to fabrication or manufacture of the items. The request shall state the reasons for adjustment and shall be accompanied by supporting data, including Working Drawings where necessary.
- (d) **Construction Loading of Structures:** In the construction, reconstruction, widening, or repair of bridge, culvert, retaining wall and other similar type structures including approaches, the Design-Builder shall consider construction loads during the planning and prosecution of the work. If the loading capacity of these type structure(s) is not shown in the Contract, the Design-Builder is responsible for contacting the office of the appropriate district bridge engineer to obtain the loading capacity information. Construction loads include but are not limited to the weight of cranes, trucks, other heavy construction or material delivery equipment, as well as the delivery or storage of materials placed on or adjacent to the structure or parts thereof during the various stages (phases) of the work in accordance with the Design-Builder's proposed work plan. The Design-Builder shall consider the effect(s) of construction loads on the loading capacity of these type structure(s) in his sequencing of the work and operations, including phase construction. At the Department's request the Design-Builder shall be prepared to discuss or review his proposed operations with the Department with regard to construction loads to demonstrate he has taken such into consideration in the planning and execution of the work.

## **SECTION 108—PROSECUTION AND PROGRESS OF WORK**

### **108.01—Prosecution of Work**

The Design-Builder shall provide sufficient labor, Materials, Equipment, and tools and shall prosecute the Work with such means and methods and with such diligence as is required to attain and maintain a rate of progress necessary to ensure completion of the Project within the Contract Time(s) in accordance with the Contract Documents.

Once the Design-Builder has begun work, the Design-Builder shall prosecute the Work continuously and to the fullest extent possible except for suspensions authorized or ordered by the Department according to Section 108.05. If approval is given to suspend the Work temporarily, the Design-Builder shall notify the Department at least twenty four (24) hours in advance of resuming operations.

The Design-Builder shall notify the Department at least twenty four (24) hours in advance of any changes in the Design-Builder's planned operations or work requiring inspection.

### **108.02—Limitation of Operations**

#### **(a) General.**

The Design-Builder shall conduct the Work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Design-Builder shall not open any work to the prejudice or detriment of work already started. The Department may require the Design-Builder to finish a section of work before work is started on any other section.

#### **(b) Holidays**

Except as is necessary to maintain traffic, work shall not be performed on the following holidays without the permission of the Department: (i) January 1; (ii) Easter; (iii) Memorial Day; (iv) July 4; (v) Labor Day; (vi) Thanksgiving Day; (vii) Christmas Day; and (viii) all other holidays set out in Section A13.1.1 of the Technical Requirements.

If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

In addition to the Sunday or Holiday work limitations, mobile, short duration, short-term stationary, or intermediate-term stationary temporary traffic control zone (as defined in the VWAPM) lane closures on mainline lanes, shoulders, or ramps shall not be performed during the following Holiday time periods without the written permission of the Department. Additionally, a long-term stationary temporary traffic control zone (as defined in the VWAPM) shall not be initially put in place, adjusted, or removed during the following Holiday time periods without the written permission of the Department:

- **January 1:** From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.
- **Easter:** As indicated below for Holidays occurring on a Sunday.
- **Memorial Day:** As indicated below for Holidays occurring on a Monday.
- **July 4:** From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.

- **Labor Day:** As indicated below for Holidays occurring on a Monday.
- **Thanksgiving Day:** From Noon on the Wednesday preceding Thanksgiving Day until Noon on the Monday following Thanksgiving Day.
- **Christmas Day:** From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.

**If the Holiday occurs on a Friday or Saturday:** From Noon on the preceding Thursday to Noon on the following Monday.

**If the Holiday occurs on a Sunday or Monday:** From Noon on the preceding Friday to Noon on the following Tuesday.

### **108.03—Progress Schedule**

The Design-Builder shall submit a Preliminary Schedule, Baseline Schedule and updates in accordance with the requirements of the Contract Documents. 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 (Not Used)**

### **108.05—Suspension of Work Ordered by the Department (Not Used)**

### **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 (Not Used)**

### **108.08—Termination of Contract (Not Used)**

### **108.09—Acceptance (Not Used)**

### **108.10—Termination of Design-Builder's Responsibilities (Not Used)**

## **SECTION 109—MEASUREMENT AND PAYMENT**

### **109.01—Measurement of Quantities**

- (a) **General:** Unless otherwise specifically stated to the contrary in Article 6 of the Agreement, this Section 109.01 will only be applicable to Contract Price adjustments made under Article 9 of the General Conditions. The methods of measurement and computations to be used to determine quantities of Material furnished and work performed will be those generally recognized as conforming to good engineering practice.

Longitudinal measurements for surface area computations will be made along the surface and transverse measurements will be the surface measure shown in the Contract Documents or ordered in writing by the Department. Individual areas of obstructions with a surface area of nine (9) square feet or less will not be deducted from surface areas measured for payment.



Structures will be measured in accordance with the neat lines shown in the Contract Documents

Items that are measured by the linear foot will be measured parallel to the base or foundation upon which they are placed.

Allowance will not be made for surfaces placed over an area greater than that shown in the Contract Documents or for any Material moved from outside the area of the cross-section and lines shown in the Contract Documents.

When standard manufactured items are specified and are identified by weights or dimensions, such identification will be considered nominal. Unless more stringently controlled by tolerances in the Contract Documents, manufacturing tolerances established by the industries involved will be accepted.

- (b) **Measurement by Weight:** Materials that are measured or proportioned by weight shall be weighted on accurate scales as specified in this Section. When material is paid for on a tonnage basis, personnel performing the weighing shall be certified by the Department and shall be bonded to the Commonwealth of Virginia in the amount of \$10,000 for the faithful observance and performance of the duties of the weighperson required herein. The bond shall be executed on a form having the exact wording as the Weighpersons Surety Bond Form furnished by the Department and shall be submitted to the Department prior to the furnishing of the tonnage material.

The Design-Builder shall have the weighperson perform the following:

1. Furnish a signed weigh ticket for each load that shows the date, load number, plant name, size and type of material, project number, schedule or purchase order number, and the weights specified herein.
2. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of material, by contract, can be readily identified.
3. Submit by the end of the next working day a summary of the number of loads and total weights for each type of material by contract.

Trucks used to haul Material being paid for by weight shall display the truck uniform identification number and legal gross and legal net weight limits. These markings shall be no less than two (2) inches high and permanently stenciled on each side of the truck with contrasting color and located as to be clearly visible when the vehicle is positioned on the scales and observed from normal position of the weigh Person at the scale house.

The truck to be used in the weighing operation shall be the weight of the empty truck determined with full tank(s) of fuel and the operator seated in the cab. The tare weight of trucks shall be recorded to the nearest twenty (20) pounds. At the option of the Design-Builder, a new tare may be determined for each load. When a new tare is obtained for each load, the requirement for full tank(s) of fuel will be waived.

Net rail shipment weights may be used for pay quantities when evidenced by railroad bills of lading. However, such weights will not be accepted for pay quantities of Materials that subsequently pass through a stationary mixing plant.

Scales shall conform to the requirements for accuracy and sensitivity as set forth in the *National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices*. Scales used in the weighing of Materials paid for on a tonnage basis shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at

least once every six (6) months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six (6) months. Hopper scales shall be checked with a minimum 500 pounds of test weights and truck scales shall be checked with a minimum 20,000 pounds of test weights.

Copies of scale test reports shall be maintained on file at the scale location for at least eighteen (18) months, and copies of all scale service representative test reports shall be forwarded to the Department.

The quantity of Materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall print the net weight of each load. The weigh ticket shall also show the legal gross weight for Material weighed on truck scales and the legal net weight for Material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for forty eight (48) hours provided satisfactory visual verification of weights can be made. The written permission of the District Materials Engineer shall be required for the operation of scales after 48 hours.

If significant discrepancies are discovered in the printed weight, the ultimate weight for payment will be calculated on volume measurements of the Materials in place and unit weights determined by the Department or by other methods deemed appropriate to protect the interests of the Commonwealth.

- (c) **Measurement by Cubic Yard:** Material that is measured by the cubic yard, loose measurement or vehicular measurement, shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except streambed gravel, silt cleanout, or other self-consolidating material will be allowed at the rate of 2/3 the volume of the vehicle. The full volume of the vehicle will be allowed for streambed gravel. Such vehicles may be of any size or type acceptable to the Department provided the body is of such shape that the actual contents can be readily and accurately determined. Unless all approved vehicles are of uniform capacity, each vehicle shall bear a plainly legible identification mark indicating the specific approved capacity. Each vehicle shall be loaded to at least its water level capacity.

When approved by the Department in writing, Material specified to be measured by the cubic yard may be weighed and such weights converted to cubic yards for payment purposes. Factors for conversion from weight to volume measurement will be determined by the Department and shall be agreed to by the Design-Builder before they are used.

- (c) **Measurement by Lump Sum:** When used as an item of payment, the term *lump sum* will mean full payment for completion of work described in the Contract. When a complete structure or structural unit is specified as a Contract Item, the unit of measurement will be lump sum, and shall include all necessary fittings and accessories. The quantities may be shown in the Contract Documents for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes only and no measurement of quantities will be made for payment. Items that are to be measured as complete units will be counted by the Department in the presence of a representative of the Design-Builder.

(d) **Measurement for Specific Materials:**

1. **Concrete (Measured by Volume Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.
2. **Concrete (Measured by Square or Lineal Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their areas or measuring linearly along the item's surface.

3. **Excavation, Embankment, and Borrow:** In computing volumes of Excavation, Embankment, and Borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.
4. **Asphalt:** Asphalt will be measured by the gallon, volumetric measurement, based on a temperature of 60 degrees F using the following correction factors:
  - a. 0.00035 per degree F for petroleum oils having a specific gravity 60/60 degrees F above 0.966
  - b. 0.00040 per degree F for petroleum oils having a specific gravity 60/60 degrees F between 0.850 and 0.966
  - c. 0.00025 per degree F for emulsified asphalt

Unless volume correction tables are available, the following formula shall be used in computing the volume of asphalt at temperatures other than 60 degrees F:

$$V^1 = V x [1 - K(T - 60)]$$

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 Final Completion.
- (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 (Not Used)**

**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 Article 9.5.1, or in the event of claims by Design-Builder under Article 10, then the rates for labor, Equipment, Materials and otherwise will be compensated in the following manner:

- (a) **Labor:** Unless otherwise approved, the Design-Builder will receive the rate of wage or scale as set forth in his most recent payroll for each classification of laborers, forepersons, and superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Design-Builder's most recent payroll. If workers performing the class of labor needed have not been employed on the Project, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the Project, if applicable. An amount equal to forty five percent (45%) of the approved payroll will be included in the payment for labor to cover administrative costs, profit, and benefits or deductions normally paid by the Design-Builder.
- (b) **Insurance and Tax:** The Design-Builder will receive an amount equal to twenty five percent (25%) of the approved payroll exclusive of additives of administrative cost as full compensation for property damage and liability, workers' compensation insurance premiums, unemployment insurance contributions, and social security taxes.
- (c) **Materials:** The Design-Builder will receive the actual cost of Materials accepted by the Department that are delivered and used for the work including taxes, transportation, and handling charges paid by the Design-Builder, not including labor and Equipment rentals as herein set forth, to which fifteen percent (15%) of the cost will be added for administration and profit. The Design-Builder shall make every reasonable effort to take advantage of trade discounts offered by Material suppliers. Any discount received shall pass through to the Department. Salvageable temporary construction Materials will be retained by the

Department, or their appropriate salvage value shall be credited to the Commonwealth, as agreed on by the Department.

- (d) **Equipment:** The Design-Builder shall provide the Department a list of all Equipment to be used in the work. For each piece of Equipment, the list shall include the serial number; date of manufacture; location from which Equipment will be transported; and for rental Equipment, the rental rate and name of the company from which it is rented. The Design-Builder will be paid rental rates for pieces of machinery, Equipment, and attachments necessary for prosecution of the work that are approved for use by the Department. Equipment rental will be measured by time in hours of actual time engaged in the performance of the work and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project. Hourly rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Rental Rate Blue Book* rate adjustment tables that are current at the time the extra work is performed. Equipment rental rates not modified by the adjustment factors or rate modifications indicated in the *Rental Rate Blue Book* will not be considered. Hourly rates for Equipment on standby will be at fifty percent (50%) of the rate paid for Equipment performing work. Operating costs shall not be included in the standby rate. For the purposes herein “standby time” is defined as the period of time Equipment ordered to the jobsite by the Department is available on-site for the work but is idle for reasons not the fault of the Design-Builder or normally associated with the efficient and necessary use of that Equipment in the overall operation of the work at hand.

Payment will be made for the total hours the Equipment is performing work. When Equipment is performing work less than forty (40) hours for any given week and is on standby, payment for standby time will be allowed for up to forty (40) hours, minus hours performing work. Payment will not be made for the time that Equipment is on the Project in excess of twenty four (24) hours prior to its actual performance in the work. An amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be paid for all hours the Equipment is performing work. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the Department.

The Design-Builder will be paid freight cost covering the moving of Equipment to and from the specific work operation provided such cost is supported by an invoice showing the actual cost to the Design-Builder. However, such payment will be limited to transportation from the nearest source of available equipment. If Equipment is not returned to the nearest equipment storage lot but is moved to another location, the freight cost paid will not exceed the cost of return to the nearest storage lot.

The rates for Equipment not listed in the *Rental Rate Blue Book* schedule shall not exceed the hourly rate being paid for such Equipment by the Design-Builder at the time of the performance of the extra work. In the absence of such rates, prevailing rates being paid in the area where the authorized work is to be performed shall be used.

If the Design-Builder does not possess or have readily available Equipment necessary for performing the extra work and such Equipment is rented from a source other than a company that is an Affiliate, payment will be based on actual invoice rates, to which fifteen percent (15%) of the invoice cost will be added for administrative cost and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, the invoice rate will be converted to an hourly rate, and an amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be added for each hour the Equipment is performing work.

- (e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for Equipment as defined in the *Rental Rate Blue Book*, general superintendents, timekeepers, secretaries, the use of small hand held tools or other costs for which no specific allowance is herein provided. The Design-Builder will receive compensation equal to the cost of the bond, special railroad insurance premiums, and

other additional costs necessary for the specific work as determined by the Department. The Design-Builder shall supply documented evidence of such costs.

- (f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Design-Builder as payment in full for work performed on the basis described in this Section 109.05. At the end of each day, the Design-Builder's Representative and the Inspector shall compare and reconcile records of the hours of work and Equipment, labor, and Materials used in such work. Such accounting may not include actual costs or labor rates where these are not available but shall be used to verify quantities, types of Materials or labor, and number and types of Equipment.

If all or a portion of the work is performed by approved Design Consultants, Subcontractors, or Sub-Subcontractors, Design-Builder will be paid ten percent (10%) of the subcontract net costs to cover the Design-Builder's profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required below shall be submitted on a form that separates the subcontracted portions of the labor, Materials, and Equipment from the other costs.

- (g) **Statements:** Payments will not be made for work performed on the basis described in this Section 109.05 until the Design-Builder has furnished the Department duplicate itemized statements of the cost of such work detailed as follows:

1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson, and Superintendent.
2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of Equipment.
3. quantities of Materials, prices, and extensions.
4. transportation of Materials.

Statements shall be accompanied and supported by invoices for all Materials used and transportation charges. However, if Materials used are not specifically purchased for such work but are taken from the Design-Builder's stock, then in lieu of the invoices, the Design-Builder shall furnish an affidavit certifying that such Materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

#### **109.06—Common Carrier Rates (Not Used)**

#### **109.07—Eliminated Items**

The Department shall have the right to delete any item of Work in the Contract. In such case, the Department shall notify Contractor of such deletion and the parties shall proceed in accordance with Article 9 of the General Conditions.

#### **109.08—Partial Payments**

Payment will be made 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 Work Orders, or otherwise authorized and

documented by the Department based on delivery tickets, bills of lading, or paid invoices. All such payments shall be in accordance with the following terms and conditions:

- (a) **Structural Steel or Reinforcing Steel:** An allowance of one hundred percent (100%) of the cost to the Design-Builder for structural steel or reinforcing steel materials secured for fabrication not to exceed sixty percent (60%) of the contract price may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. The provisions of this section for steel reinforcement will only apply where the quantity of steel reinforcement is identified as a separate and distinct bid item for payment. An allowance of one hundred percent (100%) of the cost to the Design-Builder for superstructure units and reinforcing steel, not to exceed ninety percent (90%) of the contract price, may be made when fabrication is complete. Prior to the granting of such allowances, the materials and fabricated units shall have been tested or certified and found acceptable to the Department and shall have been stored in accordance with the requirements specified herein. Allowances will be based on invoices, bills, or the estimated value as approved by the Department. For the purposes of this section fabrication is defined as any manufacturing process such as bending, forming, welding, cutting or coating with paint or anti-corrosive materials which alters, converts, or changes raw material for its use in the permanent finished work.
- (b) **Other Materials:** For aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of one hundred percent (100%) of the cost to the Design-Builder for materials, not to exceed ninety percent (90%) of the contract price, may be made when such material is delivered to the Project and stockpiled or stored in accordance with the requirements specified herein. Prior to the granting of such allowances, the material shall have been tested and found acceptable to the Department. Allowances will be based on invoices, bills, or the estimated value of the material as approved by the Department.
- (c) **Excluded Items:** No allowance will be made for fuels, form lumber, falsework, temporary structures, or other work that will not become an integral part of the finished construction. Additionally, no allowance will be made for perishable material such as cement, seed, plants, or fertilizer.
- (d) **Storage:** Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored materials are lost or become damaged, the Design-Builder shall repair or replace them at no additional cost to the Department. Repair or replacement of such material will not be considered the basis for any extension of contract time. If payment allowance has been made prior to such damage or loss, the amount so allowed or a proportionate part thereof will be deducted from the next progress estimate payment and withheld until satisfactory repairs or replacement has been made.

When it is determined to be impractical to store materials within the limits of the Project, the Department may approve storage on private property or, for structural units and reinforcing steel, on the manufacturer's or fabricator's yard. Requests for payment allowance for such stored material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the materials from the property without cost to the Commonwealth. The Department must be allowed access to the materials for inspection during normal business hours.

- (e) **Materials Inventory:** If the Design-Builder requests a payment allowance for properly stored Material, he shall submit a certified and itemized inventory statement to the Department no earlier than five days and no later than two days prior to the progress estimate date. The statement shall be submitted on forms furnished by the Department and shall be accompanied by invoices or other documents that will verify the Material's cost. Following the initial submission, the Design-Builder shall submit to the Department a monthly-certified update of the itemized inventory statement within the same time frame. The updated inventory statement shall show additional Materials received and stored with invoices or other documents and shall list Materials removed from storage since the last certified inventory statement, with appropriate cost data

reflecting the change in the inventory. If the Design-Builder fails to submit the monthly-certified update within the specified time frame, the Department will deduct the full amount of the previous statement from the progress estimate.

At the conclusion of the Project, the cost of Material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

**109.10—Final Payment**

Payment will be made in accordance with the Agreement and the General Conditions of Contract.

**109.11—Exhibits**

The following exhibit is incorporated into these Division I Amendments to the Standard Specifications:

EXHIBIT 107.15 -- SPECIAL PROVISION FOR SECTION 107.15 (Use of Disadvantaged Business Enterprises (DBEs) for Design-Build Projects)

END OF PART 5  
DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS



**EXHIBIT 107.15**

**VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR SECTION 107.15**

**USE OF DISADVANTAGED BUSINESS ENTERPRISES (DBEs)  
FOR  
DESIGN-BUILD PROJECTS**

July 28, 2016

**Section 107.15** of the Specifications is replaced by the following:

**Section 107.15—Use of Disadvantaged Business Enterprises (DBEs) for Design-Build Projects**

**A. Disadvantaged Business Enterprise (DBE) Program Requirements**

Any Design-Builder, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; and the Virginia Department of Transportation's (VDOT or the Department) Road and Bridge Specifications and DBE Program rules and regulations.

For the purposes of this provision, Offeror is defined as any individual, partnership, corporation, or Joint Venture that formally submits a Statement of Qualification or Proposal for the work contemplated there under; Design-Builder is defined as any individual, partnership, or Joint Venture that contracts with the Department to perform the Work; and subcontractor is defined as any supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Design-Builder shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Design-Builder, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and State DBE Program legal requirements. By submitting a Proposal on this contract, and by accepting and executing this contract, the Design-Builder agrees to assume these contractual obligations and to bind the Design-Builder's subcontractors contractually to the same at the Design-Builder's expense.

The Design-Builder and each subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Design-Builder to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Design-Builder exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Design-Builder of any changes to the appeal requirements, processes, and procedures after receiving notification of the Design-Builder's desire to appeal.

All time frames referenced in this provision are expressed in business days unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.

## **B. DBE Certification**

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Small Business and Supplier Diversity (SBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Small Business and Supplier Diversity's website: <http://www.sbsd.virginia.gov>.

## **C. DBE Program-Related Certifications Made by Offerors/Design-Builders**

By submitting a Proposal and by entering into any contract on the basis of that Proposal, the Offeror/Design-Builder certifies to each of the following DBE Program-related conditions and assurances:

1. That the Offeror/Design-Builder agrees to comply with the project construction and administration obligations of the USDOT DBE Program, 49 CFR Part 26 as amended, and the Standard Specifications setting forth the Department's DBE Program requirements.
2. Design-Builder shall comply fully with the DBE Program requirements in the execution and performance of the contract. Design-Builder acknowledges that failure to comply may result in enjoinderment from participation in future Department or State procurements and/or other legal sanctions.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The Design-Builder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The Design-Builder further certifies that the Design-Builder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a Design-Builder and a DBE whereby the DBE promises not to provide quotations for performance of work to other Design-Builders are prohibited.
4. Design-Builder shall make good faith efforts to obtain DBE participation in the proposed contract at or above the goal. The Offeror shall submit a written statement as a part of its Statement of Qualifications and/or Proposal indicating the Offeror's commitment to achieve the minimum requirement related to DBE goal indicated in Request for Qualification (RFQ) and/or Request for Proposal (RFP) for the entire value of the contract. The Offeror, by signing and submitting its Proposal, certifies the DBE participation information that will be submitted within the required time thereafter is true, correct, and complete, and that the information to be provided includes the names of all DBE firms that will participate in the contract, the specific item(s) that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE.
5. Offeror further certifies, by signing its Proposal, it has committed to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the Proposal, the Offeror certifies that good faith efforts will be made on work that it proposes to sublet; and that it will seek out and consider DBE firms as potential subcontractors and subconsultants. The Design-Builder shall, as a continuing obligation, contact DBE firms to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.

6. Design-Builder shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Design-Builder's own forces or those of an affiliate of the Design-Builder without the prior written consent of Department as set out within the requirements of this Special Provision.
7. Design-Builder shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBE firms. The designation and identity of this officer needs to be submitted only once by the Design-Builder.
8. Design-Builder shall comply fully with all contractual requirements and Legal Requirements of the USDOT DBE Program, and shall cause each DBE firm participating in the contract to fully perform the designated work items with the DBE firm's own forces and equipment under the DBE firm's direct supervision, control, and management. Where a contract exists and where the Design-Builder, DBE firm, or any other firm retained by the Design-Builder has failed to comply with federal or Department DBE Program requirements, Department has the authority and discretion to determine the extent to which the DBE contract regulations have not been met, and will assess against the Design-Builder any remedies available at law or provided in the contract.
9. If a bond surety assumes the completion of work, if for any reason VDOT has terminated the Design-Builder, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original Design-Builder in accordance with the requirements of this specification.

#### **D. DBE Program Compliance Procedures**

The following procedures shall apply to the contract for DBE Program compliance purposes:

1. **Prequalification of Subcontractors:** All prospective DBE subcontractors shall prequalify with the Department in accordance with the *Rules Governing Prequalification*.
2. **DBE Goal, Good Faith Efforts Specified:** Design-Builder shall evidence attainment of the DBE commitment equal to or greater than the required DBE Goal through submission, to Department, of completed Form C-111, Minimum DBE Requirements; Form C-112, Certification of Binding Agreement; and Form C-48, Subcontractor/Supplier Solicitation and Utilization, as a part of the good faith efforts documentation set forth below:

**Design Phase:** Thirty (30) days after the issuance of LNTP1, the Design-Builder shall submit to Department for review and approval Forms C-111 and C-112 for each DBE firm to be utilized during the design phase to meet the DBE minimum requirement and Form C-48. Failure to submit the required documentation within the specified timeframe shall be cause to deny credit for any work performed by a DBE firm and delay approval of the Design-Builder's monthly payment.

**Construction Phase:** No later than thirty (30) days prior to the DBE firm undertaking any work, Design-Builder shall submit to Department for review and approval Forms C-111, C-112, and C-48. Failure to submit the required documentation within the specified timeframe shall result in disallowed credit of any work performed prior to approval of Forms C-111 and C-112 and delay approval of monthly payment.

The District Civil Rights Office (DCRO) will monitor good faith effort documentation quarterly to determine progress being made toward meeting the DBE minimum requirement established for the contract.

Forms C-48, C-49, C-111, and C-112 can be obtained from the VDOT website at:  
<http://vdotforms.vdot.virginia.gov/>

- 3. Good Faith Efforts Described:** Department will determine if Design-Builder demonstrated adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE firm participation sufficient to meet the DBE Program requirements and DBE Goal.

Good faith efforts may be determined through use of the following list of the types of actions the Design-Builder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

- (a) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to DBE firms who have the capability to perform the work of the contract. Examples include: advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. DBE firms shall have no less than five (5) business days to reasonably respond to the solicitation. Design-Builder shall determine with certainty if the DBE firms are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49, DBE Good Faith Efforts Documentation.
- (b) Selecting portions of the work to be performed by DBE firms in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out work items into economically feasible units to facilitate DBE firm participation, even when the Design-Builder might otherwise prefer to completely perform all portions of this work in its entirety or use its own forces;
- (c) Providing interested DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBE firms in responding to a solicitation;
- (d) Negotiating for participation in good faith with interested DBE firms;
  - 1. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBE firms that were considered; dates DBE firms were contacted; a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBE firms to perform the work;
  - 2. Design-Builder should, using good business judgment, consider a number of factors in negotiating with subcontractors/subconsultants, and should take a DBE firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason for a Design-Builder's failure to meet the DBE goal as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a Design-Builder to perform the work with its own organization does not relieve the Design-Builder of the responsibility to make diligent good faith efforts. Design-Builders are not, however, required to accept higher quotes from DBE firms if the price difference can be shown by the Design-Builder to be excessive, unreasonable, or greater than would normally be expected by industry standards;
- (e) A Design-Builder cannot reject a DBE firm as being unqualified without sound reasons based on a thorough investigation of the DBE firm's capabilities. The DBE firm's standing within its industry, membership in specific groups, organizations, associations, and political or social

affiliations, and union vs. non-union employee status are not legitimate causes for the rejection or non-solicitation of bids in the Design-Builder's efforts to meet the contract goal for DBE participation;

- (f) Making efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by Department or by Design-Builder;
- (g) Making efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in this Special Provision;
- (h) Effectively using the services of appropriate personnel from VDOT and from SBSB; available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

#### **E. Documentation and Administrative Reconsideration of Good Faith Efforts**

Design-Builder must provide Form C-49, DBE Good Faith Efforts Documentation, of its efforts made to meet the DBE goal within the time frames specified in this provision. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the Design-Builder. Design-Builder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firm's participation in the proposed work.

However, Design-Builder shall timely submit its completed and executed forms C-111, C-112, C-48, and C-49, as aforementioned. Failure to submit the required documentation within the specified time frames shall be cause to disallow DBE goal credit and delay approval of the Design-Builder's monthly payment.

**During the Contract:** If a DBE, through no fault of the Design-Builder, is unable or unwilling to fulfill his agreement with the Design-Builder, the Design-Builder shall immediately notify the Department and provide all relevant facts. If a Design-Builder relieves a DBE subcontractor of the responsibility to perform work under their subcontract, the Design-Builder is encouraged to take the appropriate steps to obtain another DBE firm to perform the remaining subcontracted work for the amount that would have been paid to the original DBE firm. In such instances, Design-Builder is expected to seek DBE participation towards meeting the goal during the performance of the contract.

If at any point during the execution and performance of the contract it becomes evident that the remaining dollar value of allowable DBE goal credit for performing the subcontracted work is insufficient to obtain the DBE contract goal, and the Design-Builder has not taken the preceding actions, the Design-Builder and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as sufficient progress toward achievement of the DBE goal is achieved or evidenced.

**Project Completion:** If, at final completion, the Design-Builder fails to meet the DBE goal, and fails to adequately document that it made good faith efforts to achieve sufficient DBE goal, then Design-Builder and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding, responding, or participating on Department projects for a period of ninety (90) days and be removed from Department's prequalification list.

Prior to such enjoinder or removal, Design-Builder may submit documentation to the State Construction Engineer or other designee of Department to substantiate that failure was due solely to quantitative underrun(s), elimination of items subcontracted to DBEs, or to circumstances beyond Design-Builder's control and that all feasible means had been used to achieve the DBE goal. The State Construction Engineer, or such other designee, upon verification of such documentation shall determine whether Design-Builder has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Design-Builder may request an appearance before the Department's Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The Administrative Reconsideration Panel will be made up of Department Division Administrators or their designees, none of who took part in the initial determination that the Design-Builder failed to make the DBE goal or make adequate good faith efforts to do so. After reconsideration, Department shall notify the Design-Builder in writing of its decision and explain the basis for finding that the Design-Builder did or did not meet the DBE goal or make adequate good faith efforts to do so. The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to enjoin the Design-Builder from bidding or participating on other Department work as described herein, the enjoinderment period will begin upon Design-Builder's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

#### **F. DBE Participation for Contract Goal Credit**

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

1. The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE firm will be counted toward meeting the DBE goal in accordance with the **DBE Program-Related Certifications Made by Offerors/Design-Builder's** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself or subcontracted by the DBE to other DBE firms.
2. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Design-Builder may count toward the DBE goal only that portion of the total dollar value of the subcontract equal to the distinctly defined portion of the work that the DBE firm has performed with the DBE firm's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Design-Builder seeks to claim the goal credit.
3. When a DBE firm subcontracts part of the work to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE firm's subcontractor is a DBE firm. Work that a DBE firm subcontracts to a non-DBE firm, or to a firm that may be eligible to be a DBE firm, but has not yet been certified as a DBE firm, will not count toward the DBE. The cost of supplies and equipment a DBE subcontractor purchases or leases from the Design-Builder or prime contractual affiliates, as in the case of a joint venture, will not count toward the DBE goal.
4. The Design-Builder may count expenditures to a DBE subcontractor toward the DBE goal only if the DBE performs a Commercially Useful Function (CUF) on that subcontract, as such term is defined in subparagraph H below.
5. A Design-Builder may not count the participation of a DBE subcontractor toward the DBE goal until the amount being counted has actually been paid to the DBE firm. Design-Builder may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a regular dealer of the goods or a manufacturer DBE firm.
  - (a) For the purposes of this Special Provision, a "regular dealer" is defined as a firm or person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the DBE firm or person shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products or equipment in question.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

- (b) A DBE firm or person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the DBE firm both owns and operates distribution equipment for the products it sells and provides for the work, provided further that the DBE firm or person has been certified with an appropriate North American Industry Classification System (NAICS) code for supply of such bulk items. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis to be eligible for credit to meet the DBE goal credit.
- (c) If a DBE regular dealer is used for DBE goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the DBE regular dealer, which shall be responsible for distribution of the goods or materials.
- (d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.
- (e) A Design-Builder may count toward the DBE goal the following expenditures to DBE firms that are not regular dealers or manufacturers for DBE program purposes:
  - 1. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.
  - 2. The entire amount of that portion of the contract that is performed by the DBE firm's own forces and equipment under the DBE firm's supervision. This includes the cost of supplies and materials ordered and paid for by the DBE firm for work, including supplies purchased or equipment leased by the DBE firm, except Design-Builder supplies and equipment a DBE subcontractor purchases or leases from the Design-Builder or its affiliates.
- (f) Design-Builder may count toward the DBE goal one hundred (100) percent of the fees paid to a DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by Department to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. Design-Builder shall not count costs for the removal or relocation of excess material from or on the job site when the DBE trucking company is the manufacturer of or a regular dealer in those materials and supplies. The DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass through for the purposes of gaining DBE goal credit. Prior to entering into a trucking subcontract, Design-Builder shall determine, or contact the Department Civil Rights Division or its district offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project. See section on **Miscellaneous DBE Program Requirements; Factors used to Determine if a DBE Trucking Firm is Performing a CUF.**
- (g) Design-Builder will receive DBE goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases, or other work arrangements provided that those fees are determined by Department to be reasonable and not excessive as compared with

fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that regularly engages in arranging for delivery of material, supplies, and equipment, or regularly arranges for the providing of project services as a course of routine business, but does not own or operate the delivery equipment necessary to transport materials, supplies or equipment to or from a job site.

#### **G. Performing a Commercially Useful Function (CUF)**

No credit toward the DBE goal will be allowed for payments or reimbursement of expenditures to a DBE firm if that DBE firm does not perform a CUF on that contract. A DBE firm performs a CUF when the DBE is solely responsible for execution of a distinct element of the work and the DBE firm actually performs, manages, and supervises such work with the DBE firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the DBE firm alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the DBE firm's own forces and equipment, and paying for those materials and supplies. The amount the DBE firm is to be paid under the subcontract shall be commensurate with the work the DBE actually performs and the DBE goal credit claimed for the DBE firm's performance.

**Monitoring CUF Performance:** It shall be the Design-Builder's responsibility to confirm that all DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the DBE goal, perform a CUF. Further, the Design-Builder is responsible for and shall confirm that each DBE firm fully performs the DBE firm's designated tasks in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this Special Provision the DBE firm's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE firm, and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the Design-Builder or an affiliate of the Design-Builder.

Department will monitor Design-Builder's DBE involvement during the performance of the contract. However, Department is under no obligation to warn the Design-Builder that a DBE firm's participation will not count toward the goal.

**DBE Firms Must Perform a Useful and Necessary Role in Contract Completion:** A DBE firm does not perform a CUF if the DBE firm's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE firm participation.

**DBE Firms Must Perform The Contract Work With Their Own Workforces:** If a DBE firm does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE firm's contract with the DBE firm's own work force, or the DBE firm subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involve, Department will presume that the DBE firm is not performing a CUF and such participation will not be counted toward the DBE goal.

**Department Makes Final Determination On Whether a CUF Is Performed:** Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract. To determine whether a DBE is performing or has performed a CUF, Department will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Design-Builder or by employees or equipment of the Design-Builder shall be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated. When a DBE firm is presumed not to be performing a commercially useful function the DBE may present evidence to rebut the Department's finding. Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract.



## H. Verification of DBE Participation and Imposed Damages

Within fourteen (14) days after subcontract execution between Design-Builder and DBE subcontractors (or subcontract execution between DBE subcontractors and DBE subcontractors), Design-Builder shall submit to the DCRO, a copy of the fully executed subcontract agreement for each DBE firm used to claim credit in accordance with the requirements stated on Form C-111. The subcontract shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subcontractor. Because of the commercial damage that the Design-Builder and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff will treat subcontract agreements as proprietary Design-Builder trade secrets with regard to Freedom of Information Act requests. In lieu of subcontracts, purchase orders may be submitted for haulers, suppliers, and manufacturers. These too, will be treated confidentially and protected. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Design-Builder shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each quarter during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The Department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the DCRO within five (5) business days after the reporting period may result in delay of approval of the Design-Builder's monthly payment. The names and certification numbers of DBE firms provided by the Design-Builder on the various forms indicated in this Special Provision shall be exactly as shown on SBSB's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Design-Builder as shown on the Prequalification Application, Form C-32 or the Prequalification/Certification Renewal Application, Form C-32A, or authorized by letter from the Design-Builder. If DBE firms are used which have not been previously documented with the Design-Builder's minimum DBE requirements documentation and for which the Design-Builder now desires to claim credit toward the contract goal, the Design-Builder shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE firm beginning work. Form C-63 can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov/>

Design-Builder shall submit to the Department's Project Manager with a copy to the DCRO, a narrative with each project schedule submission, as required in the Technical Requirements. The project schedule narrative shall include a log of applicable DBE participation activities in the Design-Builder's project schedule for which the Design-Builder intends to claim credit for attaining the DBE goal required in the contract. The log shall include the proposed start/finish dates, durations, and dollar values of the DBE participation activities.

Narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component of the work to be performed by a DBE firm not previously submitted, Design-Builder shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any such DBEs for which Design-Builder seeks DBE goal credit. Design-Builder shall obtain the prior approval of the Department for any assistance it may provide to the DBE firm beyond its existing resources in executing its commitment to perform the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If Design-Builder is aware of any assistance beyond a DBE firm's existing resources that Design-Builder, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, Design-Builder shall submit a new or revised narrative statement for Department's approval prior to assistance being rendered.

If the Design-Builder fails to correctly complete and any of the required documentation requested by this Special Provision within the specified time frames, the Department will withhold payment until such time as the required submissions are received by Department. Where such failures to provide required submittals or documentation are repeated, Department will move to enjoin the Design-Builder and any prime contractual affiliates, as in the case of a joint venture, from bidding, responding or participating Department projects until such submissions are received.

**I. Documentation Required for Semi-final Payment**

Design-Builder must submit Form C-63 to the DCRO sixty (60) days prior to date of final completion, set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the accepted creditable work. The form shall be certified under penalty of perjury, or other applicable legal requirements, to be accurate and complete. Department will use this certification and other information available to determine applicable DBE credit allowed to date by Department and the extent to which the DBE firms were fully paid for that work. The Design-Builder acknowledges by the act of filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract. A letter of certification, signed by both the Design-Builder and appropriate DBE firms, will accompany the form, indicating the amount, including any retainage, if present, that remains to be paid to the DBE firm(s).

**J. Documentation Required for Final Payment**

In anticipation of final payment, Design-Builder shall submit a final Form C-63 marked "Final" to the DCRO, within thirty (30) days of the anticipated date of final completion, as set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the creditable work. Department will use this form and other information available to determine if Design-Builder and DBE firms have satisfied the DBE goal and the extent to which credit was allowed. Design-Builder acknowledges by the act of signing and filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract.

**K. Prompt Payment Requirements**

Design-Builder shall make prompt and full payment to the subcontractor(s) (including DBE subcontractors) of any retainage held by Design-Builder after the subcontractor's work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by Department. If Department has made partial acceptance of a portion of the contract, then Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

Upon Department's payment of the subcontractor's portion of the work as shown on the application for payment and the receipt of payment by Design-Builder for such work, the Design-Builder shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Design-Builder has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that Department paid to Design-Builder pursuant to the applicable application for payment.

Design-Builder shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from Department in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

If Design-Builder fails to make payment for the subcontractor's portion of the work within the time frame specified herein, the subcontractor shall notify the Department and the Design-Builder's bonding company in writing. Upon written notice from the subcontractor, the Design-Builder's bonding company and Department will investigate the cause for non-payment. Barring mitigating circumstances that would make the subcontractor ineligible for payment, the Design-Builder's bonding company shall be responsible for insuring payment to the subcontractor in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

By accepting and executing this contract, the Design-Builder agrees to assume these obligations, and to bind the Design-Builder's subcontractors contractually to these obligations.

Nothing contained herein shall preclude Design-Builder from withholding payment to the subcontractor in accordance with the terms of the subcontract in order to protect the Design-Builder from loss or cost of damage due to a breach of the subcontract by the subcontractor.

#### **L. Miscellaneous DBE Program Requirements**

**Loss of DBE Eligibility:** When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

1. When a Design-Builder has made a commitment to use a DBE firm that is not currently certified, thereby making the Design-Builder ineligible to receive DBE goal credit for work performed, the ineligible DBE firm's work does not count toward the DBE goal. Design-Builder shall meet the DBE goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the DCRO that it has made good faith efforts to do so.
2. When a Design-Builder has executed a subcontract with a DBE firm prior to official notification of the DBE firm's loss of eligibility, Design-Builder may continue to use the firm on the contract and shall continue to receive DBE credit toward DBE goal for the subcontractor's work.
3. When Department has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

**Termination of DBE:** If a DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, Design-Builder must promptly request approval to substitute or replace that DBE firm in accordance with this section of this Special Provision.

Design-Builder, shall notify DCRO in writing before terminating and/or replacing the DBE firm that is being used or represented to fulfill DBE-related contract obligations during the term of the contract. Written consent from the DCRO for terminating the performance of any DBE firm shall be granted only when the Design-Builder can demonstrate that the DBE firm is unable, unwilling, or ineligible to perform its obligations for which the Design-Builder sought credit toward the DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE firm shall not be based on the Design-Builder's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a DBE firm.

1. All Design-Builder requests to terminate, substitute, or replace a DBE firm shall be in writing, and shall include the following information:
  - (a) The date the Design-Builder determined the DBE to be unwilling, unable, or ineligible to perform.

- (b) The projected date that the Design-Builder shall require a substitution or replacement DBE to commence work if consent is granted to the request.
  - (c) A brief statement of facts describing and citing specific actions or inaction by the DBE firm giving rise to Design-Builder's assertion that the DBE firm is unwilling, unable, or ineligible to perform;
  - (d) A brief statement of the DBE firm's capacity and ability to perform the work as determined by the Design-Builder;
  - (e) A brief statement of facts regarding actions taken by the Design-Builder, that Design-Builder believes constitute good faith efforts toward enabling the DBE firm to perform;
  - (f) The current percentage of work completed by the DBE firm;
  - (g) The total dollar amount currently paid for work performed by the DBE firm;
  - (h) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and with which the Design-Builder has no dispute;
  - (i) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the Design-Builder and/or the DBE firm have a dispute.
2. Design-Builder's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

Design-Builder shall send a copy of the "request to terminate and substitute" letter to the affected DBE firm and make best efforts to ensure its receipt by the DBE firm, in conjunction with submitting the request to the DCRO. The DBE firm may submit a response letter to the DCRO and Department within two (2) business days of receiving the notice to terminate from the Design-Builder. If the DBE firm submits a response letter, then Design-Builder shall, as part of its subcontract, obligate the DBE firm to explain its position concerning performance on the committed work. The Department will consider both the Design-Builder's request and the DBE firm's response and explanation before approving the Design-Builder's termination and substitution request.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Design-Builder is unsuccessful in notifying the affected DBE firm, the Department will verify that the DBE firm is unable or unwilling to continue performing its subcontract let with respect to the contract. Department will timely approve the Design-Builder's request for a substitution.

3. Proposed Substitution of Another Certified DBE

Upon termination of a DBE firm, Design-Builder shall use reasonable good faith efforts to replace the terminated DBE firm. The termination of such DBE firm shall not relieve Design-Builder of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal.

When a DBE substitution is necessary, the Design-Builder shall submit an amended Form C-111 to the DCRO for approval with the name of another DBE firm, the proposed work to be performed by that DBE firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the original DBE firm.

Should Design-Builder be unable to commit the remaining required dollar value to the substitute DBE firm, the Design-Builder shall provide written evidence of good faith efforts made to obtain the substitute value requirement. Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are viewed by Department as merely superficial or pro-forma will not be considered good faith efforts to meet the DBE goal. Design-Builder must document the steps taken that demonstrated its good faith efforts to obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

**Factors Used to determine if a DBE Trucking Firm is performing a CUF:**

The following factors will be used to determine whether a DBE trucking company is performing a CUF:

1. To perform a CUF, the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE trucking firm is responsible by subcontract under the contract. There shall not be a contrived arrangement, including, but not limited to, any arrangement that would not customarily and legally exist under customary construction project subcontracting practices for the purpose of meeting the DBE goal;
2. The DBE firm must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the subject materials or supplies;
3. Design-Builder is eligible to receive full credit toward the DBE goal for the total reasonable amount the DBE firm is paid for the transportation services provided on the subcontract under the contract using acceptable trucks the DBE firm owns, insures, and operates using drivers that the DBE employs and manages;
4. The DBE trucking firm may lease trucks from another DBE firm, including from an owner-operator who is a DBE firm. Design-Builder is eligible to receive credit for the total fair market value actually paid for transportation services the lessee DBE firm provides to the DBE firm that leases trucks from such lessee DBE firm on the contract;
5. The DBE firm may also lease trucks from a non-DBE firm, including an owner-operator. Design-Builder may be eligible to receive DBE goal credit for the services of a DBE firm who leases trucks from a non-DBE firm up to the total value of the transportation services provided by non-DBE lessees, *not to exceed the value of transportation services provided by DBE-owned trucks on the contract*. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

**Truck Counting**

Design-Builders may count for credit against the DBE goal the dollar volume attributable to no more than twice the number of trucks owned by a DBE firm or leased from another DBE firm.

As an example, DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

Firm X

Truck 1

Truck 2

Owned by DBE

Owned by DBE

**Firm Y**

Truck 3	Leased from DBE
Truck 4	Leased from DBE

**Firm Z**

Truck 5	Leased from Non-DBE
Truck 6	Leased from Non-DBE
Truck 7	Leased from Non-DBE
Truck 8	Leased from Non-DBE
Truck 9	Leased from Non-DBE*
Truck 10	Leased from Non-DBE*

**Credit = 8 Trucks**

DBE credit would be awarded for the total transportation services provided by DBE firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

In all, full DBE credit would be allowed for the participation of eight (8) trucks (twice the number of DBE trucks owned and leased) and the dollar value attributable to the Value of Transportation Services provided by the 8 trucks.

\* With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

6. For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.

**M. Suspect Evidence of Criminal Behavior**

Failure of Design-Builder or any subcontractor to comply with the Standard Specifications, this Special Provision, or any other contract document wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.

**Suspected DBE Fraud**

In appropriate cases, Department will bring to the attention of the United States Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.