

PART 5

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

These Division I Amendments supersede Division I of the 2002 Standard Specifications

SECTION 101—DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.01—Abbreviations and Acronyms

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

101.02—Terms

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

-A-

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

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

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

Award. The decision of the Board to award a Contract to an Offeror based on the selection processes identified in the Request for Proposals. The award is subject to the execution and approval of a satisfactory Agreement therefor, and such conditions as may be specified or required by law.

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

-B-

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

Balance point. The approximate point, based on estimated shrinkage or swell, where the quantity of earthwork excavation and borrow, if required, is equal to the quantity of embankment material plus any surplus excavation material.

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

Base flood. The flood or tide having a one percent chance of being exceeded in any given year.

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

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

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

Board. Commonwealth Transportation Board of Virginia.

Borrow. Suitable material from sources outside the roadway that is used primarily for embankments.

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

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

-C-

Calendar day. Any day shown on the calendar.

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

Channel. A water course or drainage way.

Commissioner. Commonwealth Transportation Commissioner.

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

Construction area. The area where authorized construction occurs.

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

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

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

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

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

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

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

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

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

-D-

Day. Unless otherwise stated, a calendar day.

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

Department. Virginia Department of Transportation.

Design-Builder. Refer to the definition for the term “Contractor.”

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

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

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

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

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

-E-

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

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

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

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

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

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

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

-F-

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

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

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

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

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

Frontage street or road. A local street or road auxiliary to and located on the side of a highway for service to abutting property and adjacent areas and control of access.

-G-

Gage. U.S. Standard Gage.

Grade separation. Any structure that provides a traveled way over or under another traveled way or stream.

-H-

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

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

Holidays. The days specifically set forth in Section 105.09.

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

-I-

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

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

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

-J-K-

Joint venture. Two or more individuals, partnerships, corporations, or combinations thereof that join together for the purpose of bidding on and performing a contract.

-L-

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

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

-M-

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

Median. The portion of a divided highway that separates the traveled ways.

-N-

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

-O-

Offeror. See the definition for the term “Bidder.”

Ordinary high water. A water elevation based on analysis of all daily high waters that will be exceeded approximately 25 percent of the time during any 12 month period.

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

-P-Q-

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

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

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

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

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

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

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

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

Proposal. See definition for the term "Bid".

-R-

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

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

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

Request for Qualifications (RFQ). All documents, whether attached or incorporated by reference, utilized for soliciting interested persons to apply for prequalification. The RFQ is the first phase of a two-phase selection process for the purpose of inviting interested qualified firms to apply for prequalification.

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

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

Roadbed. The graded portion of a highway within the top and side slopes that is prepared as a foundation for the pavement structure and shoulders.

Roadbed material. The material below the subgrade in cuts, embankments, and embankment foundations that extends to a depth which affects the support of the pavement structure.

Roadside. A general term that denotes the area within the right of way that adjoins the outer edges of the roadway; extensive areas between the roadways of a divided highway.

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

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

-S-

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

Select borrow. Borrow material that has specified physical characteristics.

Select material. Material obtained from roadway cuts, borrow areas, or commercial sources that is designated or reserved for use as a foundation for the subbase, subbase material, shoulder surfacing, or other specified purposes.

Shoulder. The portion of the roadway contiguous with the traveled way that is for the accommodation of stopped vehicles, emergency use, and lateral support of the base and surface courses.

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

Skew. The acute angle formed by the intersection of a line normal to the center line of the roadway with a line parallel to the face of the abutments or, in the case of culverts, with the center line of the culverts.

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

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

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

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

State. Commonwealth of Virginia.

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

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

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

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

Subbase. A layer(s) of specified or selected material of designed thickness that is placed on a subgrade to support a base course.

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

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

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

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

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

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

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

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

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

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

-T-U-

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

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

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

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

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

-V-

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

-W-X-Y-Z-

Wearing course. See Surface course.

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

Working drawings. Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data the Design-Builder is required to submit to the Department ~~for review~~. (NOT USED)

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

SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS

102.01—Prequalification of Offerors

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

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

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

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

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

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

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

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

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

102.02—Contents of RFQ and RFP

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

The RFQ and/or RFP will specify the location and description of the contemplated construction, as well as other technical information that the Department believes may be appropriate. The RFQ and RFP will specify the time in which the work shall be completed and the date and time by which the responses from interested parties must be filed.

Papers bound with or attached to RFQs and RFPs will be considered a part of the SOQ and Proposal respectively. Unless otherwise permitted, such papers shall not be detached or altered when the SOQ or Proposal is submitted.

Design-Builder shall include the latest dated Acknowledgment of Revision Sheet (C-78) as part of the submission of its SOQ or Proposal when revisions are made to the RFQ or RFP prior to receipt of the SOQ or Proposal. Failure to submit such revision sheets in accordance with the terms of the SOQ or Proposal will render the SOQ or Proposal non-responsive and will be rejected.

102.03—Interpretation of Quantities in RFP (Not Used)

102.04—Examination of Site of Work and Contract Documents

Subsurface data may be available for review by the Offeror in the office of the District or State Materials Division Administrator. Such data are accurate with regard to test holes and are made available to the Offeror in good faith in order to apprise him of information in possession of the Department. Any conclusions drawn by the Department concerning subsurface conditions are based solely on the data and are merely indications of what appear to be existing subsurface conditions. The Department does not warrant these conclusions to be correct, either expressly or by implication. Nor does the Department warrant the condition, amount, or nature of the material that may be encountered or the sufficiency of the data, either expressly or by implication. The Offeror shall make his own interpretation of the subsurface data that may be available and satisfy himself with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. Unless specifically stated otherwise in the Contract Documents, the submission of a Proposal will be considered conclusive evidence that the Offeror is satisfied with regard to the subsurface conditions to be encountered in the work.

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

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

102.05—Preparation of Proposal

The Offeror shall prepare and submit his Proposal in accordance with the instructions in the RFP, and award of the Contract will be made on the basis of the RFP. Except as otherwise specified in the RFP, when regular and alternate designs are shown in the RFP, the Offeror shall submit a Proposal price for at least one design. The Department may award the Contract to the Offeror who submitted the best Proposal for the regular design or the best Proposal for the alternate design, whichever is deemed to be in the best interest of the State. Offeror shall also comply with the requirements as set forth in Exhibits 102.05(a) (*Use of Domestic Material*), 102.05(b) (*FHWA Required Contract Provisions Federal-Aid Construction Contracts*) and 102.05(c) (*Executive Order 11246*), attached herewith.

The Proposal shall be signed in ink by the individual, one or more members of a partnership, or one or more of the officers of a corporation, whichever is applicable. For a joint venture, the Proposal shall be signed in ink by each individual involved, each partnership through one or more of its members, or each corporation through one or more officers of the corporation, whichever is applicable.

If the Proposal is made by an individual, the name and address of the individual shall be shown; if by a partnership, its name and address and the name and title of the partner signing the Proposal shall be shown; if by a corporation, the name of the corporation, its address, and the name and title of the officer signing the Proposal shall be shown; if by a joint venture, the aforementioned information shall be shown for each party.

A sworn statement shall be executed by the Offeror or his agent on behalf of each person, firm, association, or corporation submitting a Proposal. The statement shall certify that the person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with the RFP. The sworn statement shall be in the form of an affidavit furnished by the Department and shall be sworn to before a person who is authorized by the laws of the State to administer oaths. The original of the sworn statement shall be filed with the Department when the Proposal is submitted.

102.06—Irregular Proposals

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

- (a) if the Offeror fails to comply with the requirements of Sections 102.05 and 102.07
- (b) if the Proposal is not written in ink or typed
- (c) if the Offeror adds any provisions reserving the right to accept or reject an award or enter into a contract pursuant to an award except as otherwise permitted in the Contract Documents
- (d) if the Price Proposal is not in compliance with the RFP
- (e) if the Proposal is not properly signed
- (f) if erasures or alterations in the Offeror's entries are not initialed by the Offeror
- (g) if there are unauthorized additions, conditional or alternate Proposals, or irregularities of any kind that may make the Proposal incomplete, indefinite, or ambiguous
- (h) if the unit prices in the Proposal are obviously unbalanced, either in excess or below the cost analysis values as determined by the Department
- (i) if any papers included in the Proposal are detached or altered when the Proposal is submitted except as otherwise provided for herein
- (j) if Proposals are submitted in envelopes showing a designation for a project other than the project for which the Proposal is made
- (k) if the Offeror fails to submit a statement concerning collusion
- (l) if the Proposal contains any other deviation from the RFP

102.07—Proposal Guaranty

A Proposal in excess of \$250,000.00 will not be accepted or considered unless accompanied by a guaranty in the form of a Proposal bond made payable to the Treasurer of Virginia. A Proposal bond will be accepted only if executed on a form which contains the exact wording as the form furnished by the Department. Any Proposal accompanied by a bond having wording that differs in any respect from that furnished by the Department may be rejected. The amount of the proposal guaranty shall be 5 percent of the total Proposal Price.

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

102.08—Disqualification of Offeror

Any of the following causes may be considered sufficient for the disqualification of an Offeror and rejection of his Proposal:

(a) more than one Proposal for the same work from an individual, partnership, corporation or joint venture under the same or different name. A Proposal submitted by an affiliate of an individual, partnership, corporation or any party of a joint venture will be considered as more than one Proposal submitted for the same work.

affiliate as used here is defined as: Any business entity which is closely associated to another business entity so that one has the power to control the other either directly or indirectly; or, when a third party has the power to control both; or, where one business entity has been so closely allied with another through an established course of dealings, including but not limited to the lending of financial wherewithal or engaging in joint ventures, so as to cause a public perception that the two firms are one entity.

(b) evidence of collusion among Offerors; participants in such collusion will not be considered for future Proposals until requalified by the Board

(c) incompetency or inadequate machinery, plants, or other equipment as revealed by the Offeror's financial and experience statements required by these specifications

(d) unsatisfactory workmanship or progress as demonstrated by performance records of current or past work for the Department, other agencies or departments of the State, or agencies or departments of other states in the United States or federal government

(e) uncompleted work with the Department that in the judgment of the Department might hinder or prevent prompt completion of additional work if awarded

(f) failure to pay or settle satisfactorily all bills for materials, labor, equipment, supplies, or other items specified in contracts in force at the time the new work comes before the Board for award

(g) failure to comply with any prequalification regulation of the Department

(h) failure to cooperate properly with representatives of the State supervising construction or disorderly conduct toward any such representative

(i) default under a previous contract

102.09—Delivery of Proposal

Proposals shall be delivered in accordance with the instruction in the RFP. Unless clearly stated otherwise, Proposals shall be submitted in two separate, sealed parcels containing the Technical Proposal in one and the Price Proposal in the other. Parcels shall be clearly marked to identify the Project and the Offeror, and to identify the contents as Technical Proposal or Price Proposal. Proposals shall be sealed in an envelope and addressed to the contact point identified in the RFP for receipt of Proposals, and shall be filed prior to the time and at the place specified in the RFP. Proposals received after that time will be returned to the Offeror unopened. The Department may defer the date for the opening of Proposals, in which case the Offerors will be notified.

102.10—Withdrawal of Proposal

An Offeror may withdraw a Proposal in accordance with the following.

(a) **Standard Withdrawal:** A Offeror may withdraw a Proposal provided the request for the withdrawal is written and signed by a person(s) who qualifies to execute the Proposal in accordance with the requirements of Section 102.05. The request must be received by the Contract Engineer at least 1 hour prior to the time specified for receiving Proposals.

(b) Conditional Withdrawal: (Not Used)

102.11—Combination or Conditional Proposals

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

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

102.12—Public Opening of Proposals

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

102.13—Material Guaranty

Before a contract is awarded, and if specified in the RFP, an Offeror may be required to furnish a complete statement concerning the origin, composition, and manufacture of the materials to be used in the work, together with samples. The Department may review and approve the origin, composition, and manufacture of the materials to be used in the work.

102.14—Use of Debarred Suppliers

In accordance with the requirements of Section 200.02, the Department will not approve for use any material furnished by a supplier debarred by the Department. The Offeror shall ascertain from the Department's listings which suppliers are debarred. Listings will be posted in the Contract Engineer's office, VDOT, 1401 E. Broad Street, Richmond, Virginia, and in each district office. The Design-Builder shall ensure compliance with this Section 102.14.

If a previously debarred supplier is reinstated to eligibility subsequent to the award of a contract, the Department may approve the use of the supplier when requested by the Design-Builder.

SECTION 103—AWARD AND EXECUTION OF DESIGN-BUILD CONTRACTS

103.01—Consideration of Proposals

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

The Department may correct arithmetical errors in the Proposal prior to such comparison. The results of the comparisons will be available to the public after the determination has been made by the Board to award the Contract.

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

103.02—Award of Contract

If the Contract is awarded, the award will be made in accordance with the RFP to the highest ranked responsive and responsible Offeror without discrimination on the grounds of race, color, sex, or national origin. In the event of tie Proposals, (1) in the case of federal-aid highway projects, preference shall be given to the responsive and responsible Offeror with the lowest price Proposal; and (2) in all other cases, preference shall be given in accordance with VA Code Section 2.2-4324. The award date will not be later than midnight on the 60th day after the opening of sealed Price Proposals. If the Board has not awarded the Contract within this period, the Offeror may withdraw his Proposal without penalty or prejudice unless the time limit is extended by mutual consent. Notice to Proceed is expected to be issued in accordance with the RFP.

103.03—Cancellation of Award

The Board may cancel the award of any contract at any time before the execution of the contract by all parties without liability to the State.

103.04—Return of Proposal Guaranty

Proposal guaranties, except those of the two highest ranked Offerors, will be returned immediately after the examination of Proposals. The Proposal guaranties of the two highest ranked Offerors will be returned within 5 days after a satisfactory bond has been furnished and the Contract has been duly executed. The Department will retain Proposal guaranties in the form of Proposal bonds if the Offeror does not request their return. When the Design-Builder withdraws his Proposal prior to award, after being the highest ranked Offeror, the Proposal bond will be forfeited in accordance with the requirements of Section 2.2-4336 of the *Code of Virginia*.

103.05—Requirements of Contract Bond

Within 15 calendar days after notification, the successful Offeror shall furnish the following bonds for contracts in excess of \$250,000.00:

- (a) a performance bond in the sum of one hundred percent (100%) of the Contract Price, conditioned upon the faithful performance of the Contract in strict conformity with the Contract Documents, and
- (b) a payment bond in the sum one hundred percent (100%) of the Contract Price, conditioned upon the prompt payment for all labor, materials, public utility services and rental of equipment used in the prosecution of the work for the Contract.

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

The bonds shall be made on official forms furnished by the Department and shall be executed by the Design-Builder and a surety company authorized to do business in Virginia in accordance with the laws of Virginia and the rules and regulations of the State Corporation Commission. In order to be considered properly executed, the bonds shall include authorized signatures and titles.

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

Upon written request from the Design-Builder, the contract bonds may be reduced on contracts having planting items with an establishment period after acceptance of all contract work and during the establishment period. The amount of contract bonds for the duration of the remaining establishment period shall be equal to 35 percent of the total contract price of the planting items.

103.06—Contract Documents

The portion of the executed Contract submitted by the Design-Builder shall include the following documents unless the filing of any of them at a later date is specifically permitted by other sections of these Specifications or by special provisions:

- (a) **Contract:** Refer to Article 2 of the Agreement.
- (b) **Contract Bonds:** Contract bonds shall conform to the requirements of Section 103.05.
- (c) **Affidavits and Documents:** Affidavits and documents shall include those required to be made a part of the Contract by any federal or state law in effect on the date of the Notice of Advertisement.
- (d) **Workers' Compensation Insurance Certificate:** The certificate shall be filed on forms furnished by the Department within 15 calendar days after notification of award of the Contract. The certificate shall be executed by an approved and authorized insurance company as required by state law and shall cover the Contract it accompanies.

The Design-Builder shall file notice with the Department at least 30 days prior to the cancellation of any required workers' compensation coverage. If any of his insurance of this class is cancelled, the Design-Builder shall cease operations on the date of the cancellation and shall not resume operations until new insurance is certified as being in force.

- (e) **Baseline Schedule:** Refer to Article 2, Section 2.1.3 of the General Conditions.

At least once a week, the Design-Builder shall advise the Department of the approximate timing for anticipated critical stages for the subsequent week. The Department shall be advised at least 24 hours in advance of any changes in planned operations or critical staging mentioned herein and in Section 105.12.

Delays in work resulting from the Design-Builder's failure to provide the Baseline Schedule or updates will not be considered just cause for extension of the contract time limit or for additional compensation.

- (f) **Design-Builder's Bodily Injury and Property Damage Liability Insurance:** The Design-Builder shall procure and maintain at his own expense, until final acceptance of the work covered by the Contract, insurance of the kinds and in the amounts specified herein. The minimum limits of liability for this insurance shall be as follows:

A Combined Single Limit for Bodily Injury Liability and Property Damage Liability	
\$1,000,000	Each Occurrence
\$2,000,000	Aggregate

Evidence of insurance in compliance with the above shall be filed on forms approved by the Department within 15 days after notification of award of the contract. The evidence shall be executed by an approved and authorized insurance company authorized to do business in Virginia and with a minimum "Best Rating" of "B", and shall cover the Contract it accompanies.

The Design-Builder shall file notice with the Department at least 30 days prior to the cancellation or reduction of the required insurance, and shall cease operations on the date of the cancellation or reduction until new insurance is in force and the same evidence of insurance is provided to the Department.

The Design-Builder's Bodily Injury and Property Damage Liability Insurance shall cover liability of the Design-Builder for damage because of bodily injury to, or death of persons and damage to, or destruction of property, which may be suffered by persons other than the Design-Builder's own employees as a result of the negligence of the Design-Builder in performing the work covered by the Contract.

Insurance provided in compliance with this section shall include liability of the Design-Builder for damage to or destruction of property, which may be suffered by persons other than the Design-Builder's own employees as a result of blasting operations of the Design-Builder in performing the work covered by the Contract.

If any part of the work is sublet, insurance meeting the same requirements shall be provided by or in behalf of the Subcontractors and evidence of such insurance shall be submitted with the sublet request.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Design-Builder or Subcontractor(s) for liability in excess of such coverage, nor shall it preclude the Commonwealth from taking such actions as is available to it under any other provision of this Contract or otherwise in law.

103.07—Execution and Approval of Contract

The Proposal as submitted by the Design-Builder, including the documents specified in Section 103.06(a), shall constitute the Contract upon submittal of the bonds required by the Contract Documents and workers' compensation insurance certificate and the final execution by the Department. If the Contract is not awarded within the time limit specified in Section 103.02, the Offeror may withdraw his Proposal without penalty or prejudice. No contract shall be considered effective until it has been fully executed by all parties.

103.08—Failure To Furnish Bonds or Certificate of Insurance

Failure by the successful Offeror to furnish the Department acceptable bonds, workers' compensation insurance or the Design-Builder's Bodily Injury and Property Damage Liability Insurance policy within 15 calendar days after being notified of the award of the Contract shall be considered just cause for cancellation of award and forfeiture of the Proposal guaranty. In such event, the Proposal guaranty shall become the property of the State, not as a penalty but in liquidation of damages sustained. The Contract may then be awarded to the next highest ranked responsible Offeror, or the work may be readvertised or constructed otherwise, as determined by the Board.

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

In the event the successful Offeror on a non-guaranteed contract is unwilling or unable to fulfill the contract and fails to notify the Department prior to execution of the contract by the Department the Offeror will be declared in default in accordance with the requirements of Section 108.13. In the event the Offeror notifies the Department prior to execution of the contract by the Department of such unwillingness or inability to fulfill the contract, the Offeror will be enjoined from bidding on contracts without furnishing guarantee for a period of no less than 90 days from the date of notice by the Department. An Offeror who has never been enjoined or defaulted on a non-guaranteed contract and who notifies the Department prior to contract execution of an unwillingness or inability to fulfill the contract will not be enjoined for the first occurrence; however, such Offeror will not be permitted to rebid or perform work on this Contract.

SECTION 104—SCOPE OF WORK

104.01—Intent of Contract

The intent of the Contract is to provide for completion of the work specified therein.

104.02—Alteration of Quantities or Character of Work

The Department reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Design-Builder agrees to perform the Work as altered.

If the alterations or changes in quantities significantly change the character of the work under the Contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Design-Builder in such amount as the Department may determine to be fair and equitable.

At the option of the Department, the Design-Builder may be directed to accomplish the work on a force account basis in accordance with the requirements of Section 109.05.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the Contract.

The term "significant change" shall be construed to apply only:

when the character of the work as altered differs materially in kind or nature from that involved or included in the RFP Documents.

Value Engineering Proposals (VEP): VEP applies to changes in scope proposed by the Design-Builder. The Design-Builder may submit to the Department written VEPs for modifying the plans, specifications, or other requirements of the RFP Documents for the purpose of reducing the total cost of construction without reducing the design capacity or quality of the finished product. If the VEP is accepted by the Department, the net savings will be equally divided by the Department and Design-Builder.

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

statement that the proposal is submitted as a VEP

statement concerning the basis for the VEP and benefits to the Department and an itemization of the items and requirements in the RFP Documents affected by the VEP

detailed estimate of the cost under the existing Contract and under the VEP

proposed specifications and recommendations as to the manner in which the VEP changes are to be accomplished

statement as to the time by which a contract work order adopting the VEP must be issued so as to obtain the maximum cost-effectiveness

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

The work order effecting the necessary modification of the Contract will establish the net savings agreed on, provide for adjustment of the contract prices, and indicate the net savings. The Design-Builder shall absorb all costs incurred in preparing a VEP. Reasonably incurred costs for reviewing and administering a VEP will be borne by the Department. The Department may include in the agreement any conditions it deems appropriate for consideration, approval, and implementation of the VEP. The Design-Builder's 50 percent share of the net savings shall constitute full compensation to him for effecting all changes pursuant to the agreement.

Unless specifically provided for in the work order authorizing the VEP, acceptance of the VEP and performance of the work thereunder will not change the contract time limit.

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

Proposed changes in the basic design of a bridge or pavement type or that require different right-of-way limits will not normally be considered an acceptable VEP. If a VEP is based on or is similar to a change in the plans, specifications, or special provisions adopted by the Department prior to submission of the VEP, the Department will not accept the VEP.

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

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

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

104.04—Maintenance During Construction

The Design-Builder shall maintain the work from the beginning of construction operations until final acceptance. Maintenance shall constitute continuous and effective work prosecuted day by day with adequate equipment and forces to such end that the roadway and structures, including barricades and warning signs as provided for in accordance with the requirements of Section 107.10, are maintained in a satisfactory condition at all times.

When a Contract specifies placing a course on another course or subgrade previously constructed, the Design-Builder shall maintain the previous course or subgrade during all construction operations.

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

The Design-Builder shall bear all costs of performing maintenance work before final acceptance and of constructing and maintaining necessary approaches, crossings, intersections, drainage, both existing and proposed, and that required during the construction operation and other features without direct compensation except as provided for herein. However, when the Design-Builder confines his operation to the surface of the roadway and reasonable width of the shoulder and the surface is not disturbed or damaged by his operations or equipment, he shall not be responsible for the maintenance of the surface that remains undisturbed or undamaged.

The Design-Builder shall keep the portions of the road being used by the public free from irregularities and obstructions that could present a hazard or annoyance to traffic. Design-Builder shall allay dust whenever required, or when directed by the Department, and the cost shall be included in the Contract Price. Holes in hard surface pavements shall be filled with approved asphalt patching material.

(a) **Detours:** Detours may be indicated on the plans or in the special provisions or may be used with the approval of the Engineer. Unless otherwise designated in the contract, the Design-Builder will furnish and erect all directional markings for through traffic on off-project detours authorized or requested by the Engineer. Detours over existing state roads will be designated, marked, and maintained by the Design-Builder. If any project is located wholly or in part within the corporate limits of a municipality and through traffic is to be detoured at the request of the municipality, the municipality will provide and maintain the detours within the corporate limits and will furnish and erect all directional markings. The provision of detours and marking of alternate routes will not relieve the Design-Builder of the responsibility for ensuring the safety of the public or from complying with any requirements of these Specifications affecting the rights of the public within his contract limits, including those concerning lights and barricades. Maintenance of all other detours shall be the responsibility of the Design-Builder.

Right of way for temporary highways, diversion channels, sediment and erosion control features or bridges required by these provisions will be furnished by the Design-Builder.

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

(c) **Flagging Traffic:** Certified flaggers shall be provided in sufficient number and locations as necessary for control and protection of vehicular and pedestrian traffic in accordance with the requirements of *MUTCD*. Flaggers shall use sign paddles to regulate traffic in accordance with the requirements of *MUTCD*.

Certification for flaggers will be awarded upon a candidate's satisfactory completion of an examination. Certification cards shall be carried by flaggers while performing flagging duties. Flaggers found not in possession of their certification card shall be removed from the flagging site and operations requiring flagging shall be suspended by the Design-Builder. Further, flaggers performing duties improperly will have their certifications revoked.

(d) **Delays:** Unless otherwise approved, two-way traffic shall be maintained at all times. The Design-Builder shall not stop traffic without permission of the Department.

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

(e) **Connections and Entrances:** Connections with other roads and public and private entrances shall be kept in a reasonably smooth condition at all times. Connections or entrances shall not be disturbed by the Design-Builder until necessary. Once connections or entrances have been disturbed, they shall be maintained and completed as follows:

1. **Connections:** Connections that had an original paved surface shall be brought to final grade through the intersection. At least 2 lanes shall be paved as soon as possible after connections are disturbed. Other connections shall be brought to final grade through the intersection, and the required material or a temporary aggregate stabilization course shall be placed as soon as possible after connections are disturbed.

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

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

The Design-Builder shall apply stabilization or surfacing material to connections and entrances whenever necessary, or when directed by the Department. The cost shall be included in the Contract Price.

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

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

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

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

(g) **Hydraulic Embankment:** Design-Builder shall bridge suction or discharge pipes across the surface of an existing traveled highway, as may be directed by the Department. Traffic shall be protected by the display of warning signals both day and night. If dredging operations damage an existing traveled highway, the Design-Builder shall cease operations and repair damages to the highway.

(h) **Patching Operations:** Where existing hydraulic cement concrete pavement is to be patched, the operation of breaking and excavating old pavement shall extend for a distance of not more than 2 miles. Patching shall be coordinated with excavating so that an area of not more than 1/2 mile in which excavated patches are located shall be left at the end of any day's work. Necessary precautions shall be taken to protect traffic during patching operations.

(i) **Temporary Structures:** The Design-Builder shall construct, maintain, and remove temporary structures and approaches necessary for use by traffic. Unless otherwise specified in the Contract, the cost of these operations shall be included in the Contract Price. After new structures have been opened to traffic, temporary structures and approaches shall be removed. The materials contained therein shall remain the property of the Design-Builder.

The proposed design of temporary structures shall be submitted to the Department prior to the beginning of construction in accordance with the requirements of Section 105.02.

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

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

104.05—Removing and Disposing of Structures and Obstructions

The Design-Builder shall remove and dispose of or store fences, buildings, structures, or encumbrances within the construction limits unless separate pay items for this work are included in the Contract. Payment for these operations shall be included in the Contract Price. Materials so removed, including existing drains or pipe culverts, shall become the property of the Design-Builder.

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

(b) **Mailboxes and Newspaper Boxes:** When removal of mailboxes and newspaper boxes is made necessary by construction operations, the Design-Builder shall place them in temporary locations so that access to them will not be impaired. Prior to final acceptance, boxes shall be placed in their permanent locations as designated by the Department and left in as good condition as when found. Boxes or their supports that are damaged through negligence on the part of the Design-Builder shall be replaced at his expense. The cost of removing and resetting boxes shall be included in the Contract Price.

104.06—Cleanup

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

Before final acceptance, the highway, borrow pits, quarries, disposal areas, storage areas, and all ground occupied by the Design-Builder in connection with the work shall be cleaned of rubbish, surplus materials, and temporary structures. All parts of the work shall be left in a neat and orderly condition.

Within 30 days after final acceptance, the Design-Builder shall remove his equipment from the right of way and property adjacent to the project that he does not own or control.

SECTION 105—CONTROL OF WORK

105.01—Authority of Department

The Department has the authority to suspend the work wholly or in part if the Design-Builder fails to correct conditions that are unsafe for workers or the general public or carry out the provisions of the Contract. The Department may also suspend work for such periods as he may deem necessary because of unsuitable weather in accordance with the requirements of Section 108.10, conditions considered unsuitable for prosecution of the work, or any other condition or reason deemed to be in the public interest.

The Design-Builder shall confirm conformance with the Contract Documents and shall note any deviations from the Contract Documents, and shall provide their professional recommendations as to the resolution of questions or issues of quantity, quality, acceptance, interpretation, or disputes that may be presented to the Department.

105.02—Plans and Working Drawings

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

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

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

A Professional Engineer, holding a valid license to practice engineering in the Commonwealth of Virginia, shall certify working drawings for falsework supporting a bridge superstructure.

The Design-Builder shall provide four sets of any submittal. ~~The Department will return reviewed working drawings to the Design-Builder within 15 days from the date of receipt.~~ (NOT USED) If a railroad, municipality, or other entity as specified in the Contract or on the plans is required to review the working drawings, the reviewed working drawings will be returned within 45 days from the date of receipt by the Department. If the working drawings are not returned by the time specified, no additional compensation will be allowed, but Design-Builder may submit, in accordance with the applicable requirements of the Contract Documents, a request for a time extension. Upon completion of the work, the original tracings, if required, shall be supplied to the Department.

Prior to fabrication or construction, the Design-Builder shall submit ~~for review by~~ (NOT USED) to the Department of each working drawing and design calculation and a Professional Engineer's certification of such design for lighting, signal and pedestal poles, overhead and bridge mounted sign structures, breakaway support systems, anchor bolts, framing units, panels, and foundations. All sheets of these submittals shall include the Professional Engineer's stamp or seal. Certification for foundations will be required only when the designs are furnished by the Design-Builder. The design shall be in accordance with *AASHTO'S Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals*. The certification shall be made by a Professional Engineer holding a valid license to practice engineering in Virginia.

Prior to manufacture of reinforced concrete pipe, the Design-Builder shall furnish to the Department a certification of the acceptability of the design of such pipe, as determined from a review which shall be made for the Design-Builder by a Professional Engineer holding a valid license in the Commonwealth of Virginia. Such certification shall

cover all design data, supporting calculations and materials. Pipe designs previously certified or approved by the Department will not require recertification.

~~The Department's review of the Design-Builder's working drawings will relate to conformance to the requirements of the Contract. The review shall not be considered as authorization for any deviation from the requirements of the Contract unless the deviation, including explicit supporting justification, is specifically described. The review will not relieve the Design-Builder from responsibility for errors in the working drawings. If working drawings detailing a change(s) initiated by the Design-Builder require more than two resubmissions or revisions, the cost of additional reviews by the Department or its designated representative(s) will be assessed to the Design-Builder. (NOT USED)~~

The cost of working drawings furnished by the Design-Builder shall be included in the Contract Price.

105.03—Conformity with Plans and Specifications

Values for materials to be used in the work shall be in close conformity with the specified values or range of values specified in the Contract. Less than complete conformity may be tolerated if obtaining exact or complete conformity would not be feasible and if authorized by the Department.

Permissible tolerances for the elevation of earthwork and thickness of the several courses of select material, subbases, and bases are specified in the Standard Specifications. If permissive tolerances are exceeded or if consistent deviations from the plans or abrupt changes in grade occur, even though within the tolerances, the affected areas shall be reconstructed to conform to the specified tolerance and provide a smooth riding surface.

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

105.04—Furnishing and Erecting Precast Structures

The Department will allow precast units for the construction of standard drainage units and minor structures. The use of precast box culverts, precast arch, and special design precast structures may only be used in accordance with the plans.

The Design-Builder shall ensure that the precast unit, as installed at each specific location, will possess the specified structural, functional, aesthetic, and serviceability characteristics of the cast-in-place design. If field conditions make the precast unit unsuitable, the Design-Builder may modify the unit in a manner that will not be detrimental to the structural design, as approved by the Department, or shall replace the unit with the originally designed cast-in-place unit at his own expense.

Submittal of designs for precast items included in the standard drawings will not be required provided fabrication is in accordance with the standard details. Submittal of designs for precast box culverts on the Department's approval list will not be required provided the Design-Builder submits a certification that it will be fabricated in accordance with the preapproved design drawings.

Requests for approval of a precast design shall include detailed plans and supporting computations that have been reviewed and approved by a registered Professional Engineer having at least 5 years experience in structural design of the type of precast structures or components proposed. Concrete shall have a design strength at 28 days of at least 4,000 pounds per square inch and an air content of 6 ± 2 percent. The design of the concrete mixture and the method of casting, curing, handling, and erecting shall be subject to review by the pertinent Design Consultant. Precast units may be shipped after reaching 85 percent of the design compressive strength as determined by control cylinders tested in accordance with the requirements of Section 404. Units shall retain their structural integrity during shipment and shall be subject to inspection at the job site. Approval to use precast units shall not be construed as waiving the size and weight hauling limitations of Section 105.14.

105.05—Coordination of Plans, Standard Drawings, Specifications, Supplemental Specifications, Special Provisions, and Special Provision Copied Notes

The Design-Builder shall be responsible for coordination of the Contract Documents, including but not limited to the RFP Documents, including Plans, Standard Drawings, Specifications, and these Specifications. The plans, standard drawings, these Specifications, and the Standard Specifications, and supplementary documents are parts of the Contract Documents. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of a discrepancy, the order of precedence is stated in the Agreement.

The Design-Builder shall not take advantage of any apparent error or omission in the Contract Documents. If the Design-Builder discovers an error or omission, he shall immediately notify the Design Consultant and inform the Department of the corrections. The Design-Builder will then make such corrections as necessary for fulfilling the intent of the Contract, as may be required by the Design Consultant.

105.06—Cooperation of Design-Builder

The Design-Builder will be supplied with at least two sets of the Contract Documents. Two copies of the Department's *Road and Bridge Specifications* and two copies of Department's *Road and Bridge Standards* will be furnished on request without charge.

The Design-Builder shall submit to the Department four sets of each plan revision issued while the project is under construction. Design-Builder shall keep one complete set of plans, standard drawings, contract assemblies, and Specifications available on the project at all times except for maintenance projects, certain sign projects, and other projects having no field office or on which the Design-Builder has no office.

The Design-Builder shall give the work the constant attention necessary to facilitate progress and shall cooperate with the Engineer, Inspector, and other contractors in every way possible. If any portion of a project is located within the limits of a municipality, military installation, or other federally owned property, the Design-Builder shall cooperate with the appropriate officials and agents in the prosecution of the work to the same extent as with the Department.

The Design-Builder shall have on the project at all times a competent superintendent capable of reading and understanding the Contract Documents and experienced in the type of work being performed who shall receive instructions from the Department. The superintendent shall have full authority to execute the orders and directions of the Department without delay and supply promptly such materials, equipment, tools, labor, and incidentals as may be required.

105.07—Cooperation With Regard to Utilities

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

The Design-Builder shall coordinate project construction with utility adjustments and take all necessary precautions to prevent disturbance of the utility facilities.

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

Existing, adjusted, or new utility facilities that are to remain within the right of way shall be properly protected by the Design-Builder to prevent disturbance or damage resulting from construction operations. If the Design-Builder encounters an existing utility that requires adjustment, he shall not interfere with the utility but shall take the proper precautions to protect the facility and shall take appropriate actions to adjust the utility.

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

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

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

105.08—Cooperation among Design-Builders

Section 3.6 of the General Conditions of Contract has precedence.

105.09—Holidays (Check with the pertinent district on holiday, weekend, and weekday restrictions for lane closures, maintenance, and construction work.)

~~Except as is necessary to maintain traffic, construction work shall not be performed on Sundays or the following holidays without the permission of the Department: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.~~

~~If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday. (NOT USED)~~

Section 2.11.1 of Part 2, Technical Information and Requirements, has precedence.

105.10—Construction Stakes, Lines, and Grades

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

105.11—Authority and Duties of Inspector

Inspectors employed by the Department are authorized to conduct independent inspection and oversight of all work performed and materials furnished. Inspection may extend to all or any part of the work and to the preparation, fabrication, and manufacture of the materials to be used. The Inspector is not authorized to alter or waive the provisions of the Contract Documents.

The Inspector is not authorized to accept any Work, make final acceptance of the project, approve any operation or item, or act as foreman for the Design-Builder. Inspection by the Department shall not relieve the Design-Builder of any obligation to furnish acceptable materials or provide completed construction that is in accordance with the Contract Documents.

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

105.12—Inspection of Work

The Design-Builder is responsible for continuous quality control and quality assurance in accordance with the QA/QC Plan. However, all stages, materials, and details of the work are subject to independent inspection by the Department. The Department shall be allowed access to all parts of the work and shall be furnished such

information and assistance by the Design-Builder as are required to make a complete and detailed inspection. The Department shall have ready access to machines and plant equipment used in processing or placing materials.

The Design-Builder shall keep the Department informed of planned operations in accordance with the requirements of Section 103.06(e).

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

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

If materials are used or work is performed without inspection by independent Quality Control staff and certified by the Quality Assurance Manager, the Department may order the Design-Builder to remove and replace the work or material at Design-Builder's own expense.

If an inspection reveals that work has not been properly performed, the Design-Builder will be so advised and shall immediately inform the Department, in writing, of his schedule for correcting such work and the time at which a reinspection can be made.

105.13—Removal of Unacceptable and Unauthorized Work

Work that does not conform to the requirements of the Contract will be considered unacceptable work.

Unacceptable work shall be remedied or removed immediately and replaced in an acceptable manner at the Design-Builder's expense.

No work shall be done until the Design-Builder establishes the lines and grades. Work that is done beyond the lines shown on the plans will be considered unauthorized and will not be paid for. Such work may be ordered removed or replaced at the Design-Builder's expense.

If the Design-Builder fails to comply immediately with any order of the Department or the Quality Assurance Manager made under the provisions of this section, the Department or the Quality Assurance Manager will have the authority to cause unacceptable work to be removed and replaced and unauthorized work to be removed.

105.14—Size and Weight Limitations

(a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Design-Builder shall comply with legal size and weight limitations in the hauling or moving of material and equipment on public roads open to traffic unless the hauling or moving is covered by a hauling permit.

(b) **Hauling or Moving Material and Equipment on Public Roads Not Open to Traffic:** The Design-Builder shall comply with legal weight limitations in the hauling or moving of material and equipment on public roads that are not open to traffic unless the hauling or moving is permitted elsewhere herein or is otherwise covered by a hauling permit. The Design-Builder shall be liable for damage that results from the hauling or moving of material and equipment. The hauling or moving of material and equipment on the pavement structure or across any structure during various stages of construction shall be subject to additional restrictions as specified or directed by the Department.

(c) **Furnishing Items in Component Parts of Sections:** If the size or weight of fabricated or manufactured items together with that of the hauling or moving vehicle exceeds the limitations covered by hauling permit policies and other means of transportation are not available, permission will be given to furnish the items in component parts of sections with adequately designed splices or connections at appropriate points. Permission for such adjustments shall be requested in writing, and approval in writing shall be secured from the pertinent Design Consultant prior to fabrication or manufacture of the items. The request shall state the reasons for adjustment and shall be accompanied by supporting data, including working drawings where necessary.

105.15—Acceptance

Partial Acceptance: (Not Used)

Final Acceptance: Upon receipt of a written notice from the Design-Builder of presumptive completion of the entire project, the Department will make an inspection. If all work specified in the Contract has been completed, the inspection will constitute the final inspection and the Department will make the final acceptance. The Design-Builder will be notified of final acceptance in writing within 5 days.

If the inspection discloses that any work, in whole or in part, is incomplete or unacceptable, the Design-Builder shall immediately correct the deficiency. Upon completion or correction of the work, another inspection will be made that will constitute the final inspection. In such event, the Department will make the final acceptance and the Design-Builder will be notified of final acceptance in writing within 5 days. In any event, the Design-Builder shall maintain the project until final acceptance except under conditions that may be specifically exempted.

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

SECTION 106—CONTROL OF MATERIAL

106.01—Source of Supply and Quality Requirements

The materials used throughout the work shall conform to the requirements of the Contract. The Design-Builder shall regulate his supplies so that there will be a sufficient quantity of tested material on hand at all times to prevent any delay of work. Except as otherwise specified, materials, equipment, and components shall be new.

At the option of the Department, materials may be approved at the source of supply. If it is found during the life of the Contract that previously approved sources of supply do not supply materials or equipment conforming to the requirements of the Contract, do not furnish the valid test data required to document the quality of the material or equipment, or do not furnish valid quantities to document payment, the Design-Builder shall change the source of supply and furnish material or equipment from other approved sources. The Design-Builder shall notify the Department of this change, and provide the same identifying information noted herein before, at least 60 days prior to their use on the project, but not less than two weeks prior to delivery.

Materials shall not be furnished from a source that has been identified by the Office of Federal Activities as being on the EPA's list of violating facilities.

When optional materials are included in the Contract, the Design-Builder shall advise the Department in writing of the specific materials selected. Thereafter, the Design-Builder shall use the selected materials throughout the project unless the Department authorizes a change in writing. However, when the Design-Builder has an option as to the type of pipe that may be used, he may use any one of the approved types for each size of pipe, but he shall use the same type for a particular line. The Department may authorize other types and sources in an emergency that will unreasonably delay delivery of the selected material.

Equipment and material guaranties or warranties that are normally given by a manufacturer or supplier, or are otherwise required in the Contract, shall be obtained by the Design-Builder and assigned to the State in writing.

106.02—Material Delivery

The Design-Builder shall advise the Quality Assurance Manager and the Department at least 2 weeks prior to the delivery of any material from the following list that is from a commercial source:

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

106.03—Local Material Sources (Pits and Quarries)

Local material sources shall be concealed from view from the completed roadway and any existing public roadway. Concealment shall be accomplished by selectively locating the pit or quarry and spoil pile, providing environmentally compatible screening between the pit or quarry site and the roadway, or using the site for another purpose after removal of the material. The foregoing requirements shall also apply to any pit or quarry opened or reopened by a Subcontractor. However, the requirements will not apply to commercial sand and gravel and quarry operations actively processing material at the site prior to the date of the execution of the Contract.

The Design-Builder shall obtain a statement signed by the property owner in which the property owner agrees to the use of his property as a source of material for the project. Upon completion of the use of the property as a material source, the Design-Builder shall obtain a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement does not apply to commercial sources or sources owned by the Design-Builder.

Local material pits and quarries shall not be opened or reopened without authorization by the Department. The Design-Builder shall obtain the approval of a site plan from the Department, including (1) the location and approximate boundaries of the excavation with a slope gradient of 3:1 or greater; (2) procedures to minimize erosion and siltation; (3) provision of environmentally compatible screening; (4) restoration; (5) cover vegetation; (6) other use of the pit or quarry after removal of material, including the spoil pile; (7) the drainage pattern on and away from the area of land affected, including the directional flow of water; (8) constructed or natural waterways used for discharge; and (9) a sequence and schedule to achieve the approved plan. The site plan shall also include sediment basins if required. Sediment basins are required if the runoff from a watershed area of 3 acres or more flows across a disturbed area of 10,000 square feet or greater. The Design-Builder shall design, construct, and maintain the basin to accommodate the anticipated sediment loading from the land disturbing activity. The Design-Builder shall certify to Department that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations.

The Design-Builder's design and restoration shall be in accordance with the Contract and in accordance with the requirements of the federal, state, and local laws and regulations.

If the approved plan provides for the continued use or other use of the pit or quarry beyond the date of Final Completion, the Design-Builder shall furnish the Department a bond made payable to the Commonwealth of Virginia in an amount equal to the Department's estimate of the cost of performing the restoration work. If the pit or quarry is not used in accordance with the approved plan within 8 months after Final Completion, the Design-Builder shall perform restoration work as directed by the Department, forfeit his bond, or furnish the Department with evidence that he has complied with the applicable requirements of the State Mining Law.

Topsoil on borrow sites shall be stripped and stockpiled for use as needed within the construction limits of the project or in the reclamation of borrow and disposal areas.

If the Design-Builder fails to provide necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, he shall take immediate action to abate erosion and siltation. The Department may cause the Design-Builder to cease all contributing operations and direct efforts toward corrective action or may perform the work with state forces or other means determined by the Department. If the Design-Builder does not perform the work, the cost of performing the work, plus 25 percent for supervisory and administrative personnel, will be deducted from moneys due the Design-Builder.

Costs for applying seed, fertilizer, lime, and mulch; restoration; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Contract Price for the type of excavation or other appropriate items.

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

After removing the material, the Design-Builder shall remove metal, lumber, and other debris resulting from his operations and shall shape and landscape the area in accordance with the approved plan for such work.

If payment is to be made for material measured in its original position, material shall not be removed until cross sections have been taken. The material shall be reserved exclusively for use on the project until completion of the project or until final cross-sections have been taken.

106.04—Disposal Areas

Unsuitable or surplus material whose presence is shown on the plans shall be deposited on approved areas located off the right of way. The Design-Builder shall obtain the necessary rights to such property provided at least one property owner having a suitable location is willing to enter a reasonable agreement.

The Design-Builder shall obtain a statement signed by the property owner in which the owner agrees to the use of his property for the deposit of material from the project. Upon completion of the use of the property as a disposal area, the Design-Builder shall obtain a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for property that is owned by the Design-Builder or the Department or for which rights have been procured by the Department.

Prior to opening a disposal area, the Design-Builder shall obtain the approval of a site plan from the Department. The plan shall show (1) the location and approximate boundaries of the disposal area; (2) all procedures to minimize erosion and siltation; (3) haul roads; (4) provision for environmentally compatible screening; (5) restoration of and cover vegetation for the area following the deposit of material; (6) the drainage pattern on and away from the area affected, including constructed or natural waterways used for drainage; (7) the streams or tributaries receiving the discharge; and (8) a sequence and schedule to complete the work, and (9) total drainage area for temporary sediment traps. The site plan shall also include sediment basins if required. Sediment basins are required if the runoff from a watershed area of 3 acres or more flows across a disturbed area of 10,000 square feet or greater. The Design-Builder shall design, construct, and maintain the basin to accommodate the anticipated sediment loading from the land disturbing activity. Costs for the work described herein shall be included in the Contract Price. The Design-Builder shall certify that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations, all local, state, and federal ordinances and Section 107.14.

Disposal areas shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and haul roads thereto. After the material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance with the approved plan for such work or shall be used as approved by the Department.

Excavated rock in excess of that used in embankments in accordance with the requirements of Section 303 shall be deposited off the right of way in an approved disposal area. Deposits whose surface is composed largely of rock shall be leveled by special arrangement of the material or reduction of the irregularity of the surface by crushing projections to create a reasonably uniform and neat appearance.

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

If the Design-Builder fails to provide the necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, he shall take immediate action to abate erosion and siltation. The Department shall have the right to direct the Design-Builder to cease all contributing operations and direct efforts toward corrective action. If the Design-Builder does not perform the work, the Department may, acting in accordance with the provisions of the Contract Documents, perform the work and in such event the Design-Builder shall reimburse the Department for the entire cost of performing the work, plus 25 percent for supervisory and administrative personnel.

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

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

106.05—Rights For And Use Of Materials Found On Project

With approval of the Department, the Design-Builder may use in the project any materials found in the excavation that comply with the Specifications. The Design-Builder shall replace at his own expense with other acceptable material the excavation material removed and used that is needed for use in embankments, backfills, approaches, or

otherwise. The Design-Builder shall not excavate or remove any material from within the construction limits that is not within the grading limits, as indicated by the slope and grade lines.

106.06—Samples, Tests, and Cited Specifications

The Design-Builder shall inspect and test materials in accordance with the QA/QC Plan.

Unless reference is made to a specific dated specification or special provision, references in these specifications to AASHTO, ASTM, VTM, and other standard test methods and materials requirements shall refer to either the test specifications that have been formally adopted or the latest interim or tentative specifications that have been published by the appropriate committee of such organizations as of the date of the Notice of Advertisement.

The inspection cost of structural steel items, precast concrete items, and prestressed concrete items fabricated in a country other than the continental United States shall be borne by the Design-Builder. Inspection of these items shall be performed in accordance with the requirements of the appropriate VTM by the Department or a commercial laboratory approved by the Department. Additional cleaning or repair necessary because of environmental conditions in transit shall be at the Design-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 shall furnish equipment and maintain a plant laboratory at locations approved for plant processing of materials. The Design-Builder shall use the laboratory and equipment to perform quality control testing.

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

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

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

106.08—Storing Materials

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

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

106.09—Handling Materials

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

106.10—Unacceptable Materials

Materials that do not conform to the Specifications shall be considered unacceptable. Such materials, whether in place or not, will be rejected and shall be removed from the site of the work. If it is not practical for the Design-Builder to remove rejected material immediately, the Design-Builder will mark the material for identification. Rejected material whose defects have been corrected shall not be used until approval has been given by the Department. The Department shall file documentation of the correction with resolution of the Non-conformance report (NCR).

106.11—Material Furnished by the Department

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

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

The Design-Builder shall be responsible for material delivered to him, including shortages, deficiencies, and damages that occur after delivery, and any demurrage charges.

SECTION 107—LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01—Laws To Be Observed

Design-Builder shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting his Proposal or Contract or prosecution of the work thereunder. The Design-Builder shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any state or federal agency charged with enforcement of such law.

In accordance with Title 2.2, Chapter 43, Article 4 of the *Code of Virginia* (Virginia Public Procurement Act), the Design-Builder shall make payment to all Subcontractors, as defined in the Code, within 7 days after receipt of payment from the Department; or, shall notify the Department and Subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Design-Builder shall pay interest at the rate of 1 percent per month, unless otherwise provided in the Contract, to the Subcontractor on all amounts that remain unpaid after 7 days except for the amounts withheld as provided hereinbefore.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier Subcontractor.

107.02—Permits, Certificates, and Licenses (Refer to Part 4 -General Conditions – Section 2.6 Governmental Approvals & Section 3.5 Governmental Approvals)

107.03—Patented Devices, Materials, and Processes (Refer to Part 4 -General Conditions – Article 7 Indemnification)

107.04—Restoration of Work Performed by Others

The Department may construct or reconstruct any utility service in the highway or street or grant a permit for the same at any time. The Design-Builder shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time.

When authorized by the Department, the Design-Builder shall allow any person, firm, or corporation to make an opening in the highway within the limits of the project upon presentation of a duly executed permit from the Department or any municipality for sections within its corporate limits. When directed by the Department, the Design-Builder shall satisfactorily repair portions of the work disturbed by the openings. The necessary work will be paid for as extra work in accordance with the requirements of the Standard Specifications and shall be subject to the same conditions as the original work performed.

107.05—Federal-Aid Provisions

When the U.S. government pays all or any portion of the cost of a project, the Design-Builder shall observe the federal laws and rules and regulations made pursuant to such laws. The work shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party.

107.06—Sanitary Provisions

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

107.07—Public Convenience and Safety

The Design-Builder shall conduct his work so as to ensure the least possible obstruction to traffic. The Design-Builder shall provide for the safety and convenience of the general public and residents along the highway and the protection of persons and property as specified in Section 104.04.

107.08—Railway-Highway Provisions

If the Design-Builder's work requires hauling materials across the tracks of a railway, he shall make arrangements with the railway for any new crossing(s) required or the use of any existing crossing. Charges made by the railway company for the construction or use of new or existing crossings and their subsequent removal and for watchperson or flagger service at such crossings shall be reimbursed by the Design-Builder directly to the railway company under the terms of their own arrangements before final acceptance.

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

The Design-Builder shall conduct operations that occur on or over the right of way of any railway company fully within the rules, regulations, and requirements of the railway company and in accordance with the requirements of any agreements made between the Department and railway company that are made a part of the Contract.

(a) **Flagger or Watchperson Services:** Flagger or watchperson services required by the railway company for the safety of railroad operations because of work being performed by the Design-Builder or incidental thereto will be provided by the railway company. The cost for such services will be borne by the Design-Builder.

No work shall be undertaken on or over the railway right of way until the watchpersons or flaggers are present at the project site. The Design-Builder shall continuously prosecute the affected work to completion to minimize the need for flagger or watchperson services.

(b) **Approval of Construction Methods on Railway Right of Way:** The Design-Builder shall submit to the Department a plan of operations showing the design and method of proposed structural operations and shall provide the Department a copy of railway company's approval before performing any work on the railway company's right of way unless otherwise indicated in the railroad agreement. The plan shall be clear and legible, and details shall be drawn to scale. The plan shall show, but not be limited to, the following:

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

Any review of or comment on the plan of operations by the Department shall not relieve the Design-Builder of any liability under the Contract. The Design-Builder shall arrange the work so as not to interfere with the railway company's operation except by agreement with the railway company.

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

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

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

1. **Design-Builder's public liability and property damage insurance:** The Design-Builder shall furnish evidence to the Department with respect to the operations to be performed that he carries regular Design-Builder's public liability insurance. The insurance shall provide for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or the death of one person, and subject to that limit for each person, a total limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence, and regular Design-Builder's property damage insurance providing for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injury to or destruction of property in any one occurrence, and subject to that limit per occurrence, a total or aggregate limit of at least the dollar value specified in the Contract for all damages arising out of injury to or destruction of property during the policy period. The Design-Builder's public liability and property damage insurance shall include explosion, collapse, and underground damage coverage. If the Design-Builder subcontracts any portion of the work, he shall secure insurance protection in his own behalf under the Contract's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of persons and injury to, or destruction of property as a result of work undertaken by the Subcontractor. In addition, the Design-Builder shall provide similar insurance protection for and on behalf of any Subcontractors to cover their operation by means of separate and individual Design-Builder's public liability and property damage policies. As an alternative, he shall require each Subcontractor to provide such insurance in his own behalf.

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

a. For a policy issued by one company:

(NAME AND LOCATION OF INDEMNITY COMPANY),

a _____ Insurance Company, herein called the
(Type of Company)

Company, agrees with the insured named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Declarations made by the named insured and subject to all of the terms of his policy.

For a policy issued by two companies:

(NAME AND LOCATION OF INDEMNITY COMPANY)

and

(NAME AND LOCATION OF INDEMNITY COMPANY),
each a _____ Insurance Company, herein called
(Type of Company)

the Company, severally agree with the insured named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Declaration made by the named insured and subject to all of the terms of this policy, provided the named Indemnity Company shall be the insured with respect to Coverage _____ and no other and the named Insurance Company shall be the insurer with respect to Coverage _____ and no other.

b. Insuring agreements:

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

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

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

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

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

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

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

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

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

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

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

(1) liability assumed by the insured under any contract or agreement except a contract as defined herein

(2) bodily injury or property damage caused intentionally by or at the direction of the insured

(3) bodily injury, property damage, or loss that occurs after notification to the named insured of the acceptance of the work by the governmental authority, other than bodily injury, property damage, or loss resulting from the existence or removal of tools, uninstalled equipment, and abandoned or unused materials

(4) under Coverage A(1), B, and C, to bodily injury, property damage, or loss, the sole proximate cause of which is an act or omission of any insured

(5) under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, employment compensation, or disability benefits law or under any similar law; provided that the Federal Employer's Liability Act, *U.S. Code* (1946) Title 45, Sections 51-60, as amended, shall for the purpose of this insurance be deemed not to be any similar law

(6) under Coverage B, to injury to or destruction of property owned by the named insured or leased or entrusted to the named insured under a lease or trust agreement

(7) under any liability coverage, to injury, sickness, disease, death, or destruction (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or (2) resulting from the hazardous properties of nuclear material and with respect to which any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof or the insured is (or had this policy not been issued would be) entitled to indemnity from the United States or any agency thereof under any agreement entered into by the United States, or any agency thereof, with any person or organization

(8) under any Medical Payments Coverage or any Supplementary Payments provision relating to immediate medical or surgical relief or to expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization

(9) under any liability coverage, to injury, sickness, disease, death, or destruction resulting from the hazardous properties of nuclear material if (1) the nuclear material is at any nuclear facility owned or operated by or on behalf of an insured or has been discharged or dispersed therefrom; (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or (3) the injury, sickness, disease, death, or destruction arises out of the furnishing by an insured of services, materials, or parts for equipment in connection with the planning, construction, maintenance, operation, or

use of any nuclear facility; if such facility is located in the United States, its territories or possessions, or Canada, this exclusion applies only to injury to or destruction of property at such nuclear facility

(10) under Coverage C, to loss attributable to nuclear reaction, nuclear radiation, or radioactive contamination or to any act or condition incident to any of the foregoing

As used in exclusions (7), (8), and (9), the following definitions apply: *Hazardous properties* include radioactive, toxic, or explosive properties. *Nuclear material* means source material, special nuclear material, or byproduct material. *Source material, special nuclear material, and byproduct material* have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof. *Spent fuel* means any fuel element or fuel component (solid or liquid) that has been used or exposed to radiation in a nuclear reaction. *Disposable material* means material containing byproduct material and resulting from the operation by any person or organization of any nuclear facility included in the definition of nuclear facility under 1 or 2 below. *Nuclear facility* means

(1) any nuclear reactor

(2) any equipment or device designed or used for separating the isotopes of uranium or plutonium; processing or utilizing spent fuel; or handling, processing, or packaging waste

(3) any equipment or device designed or used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 (or any combination thereof) or more than 250 grams of uranium 235

(4) any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of waste (includes the site on which any of the foregoing is located, all operation conducted on such site, and all premises used for such operations)

Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, *injury or destruction* includes all forms of radioactive contamination of property.

d. **Conditions:** The following conditions, except conditions (3) through (12), apply to all coverages. Conditions (3) through (12) apply only to the coverage noted thereunder.

(1) **Premium:** The premium bases and rates for the hazards described in the Declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the requirements of the manuals used by the company. The term *contract cost* means the total cost of all work described in Item 6 of the Declaration. The term *rental cost* means the total cost to the Design-Builder for rental or work trains or other railroad equipment, including the remuneration of all employees of the insured while operating, attached to, or engaged thereon. The advance premium stated in the Declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accordance with the Company's rules, rates, rating plans, premiums, and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the Company shall look to the Design-Builder specified in the Declarations for any such excess. If less, the Company shall return to the Design-Builder the unearned portion paid. In no event shall payment or premium be an obligation of the named insured.

(2) **Inspection:** The named insured shall make available to the Company records of information relating to the subject matter of this insurance. The Company shall be permitted to inspect all operations in connection with the work described in Item 6 of the Declarations.

(3) **Limits of liability, Coverage A:** The limit of bodily injury liability stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all damages (including damages for care and loss of services) arising out of bodily injury sustained by one person as the result of any one occurrence. The limit of such

liability stated in the Declarations as applicable to "each occurrence" is (subject to the provision respecting each person) the total limit of the Company's liability for all such damage arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

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

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

(5) **Severability of interests, Coverages A and B:** The term *the insured* is used severally and not collectively. However, inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability.

(6) **Notice:** In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of able witnesses shall be given by or for the insured to the company or any of its authorized agents as soon as is practicable. If a claim is made or a suit is brought against the insured, he shall immediately forward to the Company every demand, notice, summons, or other process received by him or his representative.

(7) **Assistance and cooperation of the insured, Coverages A and B:** The insured shall cooperate with the Company and upon the Company's request attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits. Except at his own cost, the insured shall not voluntarily make any payment, assume any obligations, or incur any expense other than for first aid to others that shall be imperative at the time of an accident.

(8) **Action against Company, Coverages A and B:** No action shall lie against the Company unless as a condition precedent thereto the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the Company. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a part to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

(9) **Action against Company, Coverage C:** No action shall lie against the Company unless as a condition precedent thereto there shall have been full compliance with all the terms of this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

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

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

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

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

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

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

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

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

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

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

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

(20) **Declarations:** By acceptance of this policy, the named insured agrees that such statements in the Declarations as are made by him are his agreements and representations, that his policy is issued in reliance on the

truth of such representations, and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

e. For a policy issued by one company:

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

(Facsimile of Signature)
Secretary

(Facsimile of Signature)
President

For a policy issued by two companies:

In witness whereof, the _____ Indemnity Company has caused this policy with respect to Coverages _____ and such other parts of the policy as are applicable thereto to be signed by its president and a secretary at _____ and countersigned on the Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)
Secretary

(Facsimile of Signature)
President

(d) **Submitting Copies of Insurance Policies:** Prior to beginning construction operations on or over the railway right of way, the Design-Builder shall submit to the Department evidence of the railway company's approval and a copy of the required insurance policies. The State will not be responsible for any claims from the Design-Builder resulting from delay in the acceptance of any of these policies by the railway company other than consideration of an extension of time. If the delay is caused by the failure of the Design-Builder or his insurer to file the required insurance policies promptly, an extension of time will not be granted.

(e) **Beginning Construction:** Preliminary contingent work or other work by the railway company may delay the starting or continuous prosecution of the work by the Design-Builder. The Design-Builder shall be satisfied as to the probable extent of such work and its effect on the operations prior to submitting a Proposal. The State will not be responsible for any claims by the Design-Builder resulting from such delays except that an extension of time may be considered.

(f) Arranging for Tests:

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

2. **Highway specifications:** When ordering materials that are to conform to Standard Specifications, the Design-Builder shall specify in each order that the materials are to be tested in accordance with the Standard Specifications.

107.09—Construction Over or Adjacent to Navigable Waters

The Design-Builder shall conduct the work on navigable waters so as to ensure the least possible obstruction to navigation and that the existing navigable depths will not be impaired except as may be allowed by a permit issued by the U.S. Coast Guard. The Design-Builder shall also provide and maintain temporary navigation lights and signals required by U.S. Coast Guard regulations for the protection of navigation. When the Design-Builder determines that the work has reached a point where such action may be taken, the Design-Builder shall promptly

clear the channel(s) through the structure of falsework, piling, or other obstructions placed therein or caused by the construction of the structure to the satisfaction of the Coast Guard.

107.10—Barricades and Warning Signs

The Design-Builder shall take all necessary precautions for the protection of the work and the safety of the public as described herein and in Sections 104.04, 107.07, and 512.

Highways closed to traffic shall be protected by barricades and other warning devices as required by the Department. Barricades and warning devices shall be illuminated where required during darkness and low visibility. The Design-Builder shall erect warning devices in advance of a location on the project where operations or obstructions may interfere with the use of the road by traffic and at all intermediate points where the new work crosses or coincides with an existing roadway. The Design-Builder shall maintain sign faces and reflective surfaces of warning devices in a clean and visible condition. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the requirements of Section 512.

107.11—Use of Explosives

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

The Design-Builder shall notify each property and utility owner having a building, structure, or other installation above or below ground in proximity to the site of the work of his intention to use explosives. Notice shall be given sufficiently in advance to enable the owners to take steps to protect their property. Notice shall not relieve the Design-Builder of responsibility for damage resulting from his blasting operations.

107.12—Protecting and Restoring Property and Landscape

The Design-Builder shall preserve property and improvements along the lines of and adjacent to the work unless their removal or destruction is called for by the plans. The Design-Builder shall use suitable precautions to prevent damage to such property.

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

The Design-Builder shall be responsible for damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the method of executing the work or attributable to defective work or materials. This responsibility shall not be released until final acceptance of the project.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the method of executing the work or in consequence of the nonexecution thereof on the part of the Design-Builder, the Design-Builder shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the Department, or making settlement with the property owner. The Design-Builder shall secure from the owner a release from any claim against the Department without additional compensation therefor. A copy of this release shall be furnished the Department.

107.13—Responsibility for Damage Claims

The Design-Builder shall indemnify and save harmless the State, the Board, and its officers, agents, and employees, as well as the city, town, county, or other municipality in which the work is performed and their officers, agents, and employees, from suits, actions, or claims brought for or on account of any injuries or damages received or sustained by any person, persons, or property resulting from or arising out of the work performed by the Design-Builder, or by or in consequence of any neglect in safeguarding the work, through the use of unacceptable materials in the construction or the improvement, or resulting from any act or omission, neglect, or misconduct of the Design-

Builder; or by or on account of any claims or amounts recovered by infringement of any patent, trademark, or copyright. The Commissioner may retain as much of the monies due the Design-Builder under and by virtue of his Contract as the State considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If no monies are due, the Design-Builder's surety will be held until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Board. Any extension of time granted the Design-Builder in which to complete the Contract shall not relieve him or his surety of this responsibility.

It is not intended by any of the provisions of any part of the Contract to create the public or any member thereof as a third party beneficiary hereunder or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

When any act, omission, or other action of the Design-Builder occurs that affects the health, safety, or welfare of the public, the Department will direct the Design-Builder to take prompt action to repair, replace, or restore the damage or injury within a time frame established by the Department. If the Design-Builder fails to make such repair, replacement, or restoration within the established time frame, the Department will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration from monies due the Design-Builder.

107.14—Environmental Stipulations

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

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

(a) **Erosion and Siltation:** The Design-Builder shall exercise every reasonable precaution, including temporary and permanent measures, throughout the duration of the project to control erosion and prevent or minimize siltation of rivers, streams, lakes, and impoundments. Siltation control measures shall be applied to erodible material exposed by any activity associated with construction, including local material sources, stockpiles, disposal areas, and haul roads.

Temporary measures shall be coordinated with Contract work to the extent practicable to ensure economical, effective, and continuous erosion and siltation control. Permanent erosion control measures and drainage facilities shall be installed as the work progresses.

The Design-Builder shall have, within the limits of the project, an employee certified by the Department of Conservation and Recreation in Erosion and Sediment Control who shall inspect erosion and siltation control devices and measures for proper installation and deficiencies immediately after each rainfall, at least daily during prolonged rainfall, and weekly when no rainfall event occurs. Deficiencies shall be corrected immediately. Failure on the part of the Design-Builder to maintain appropriate erosion and siltation control devices in a functioning condition may result in the Department notifying the Design-Builder in writing of specific deficiencies. If the Design-Builder fails to correct or take appropriate actions to correct the specified deficiencies within 24-hours after receipt of such notification, the Department may do one or more of the following, require the Design-Builder to suspend work in other areas and concentrate efforts toward correcting the specified deficiencies, hold progress payments, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Design-Builder. Failure of the Design-Builder to maintain a certified Erosion and Sediment Control employee

within the limits of the project will result in the Department suspending work related to any land disturbing activity until such time as a certified Erosion and Sediment Control employee is present on the project.

(b) Pollution:

1. **Water:** The Design-Builder shall exercise every reasonable precaution throughout the duration of the project to prevent pollution of rivers, streams, and impoundments. Pollutants such as chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into channels leading to them.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. During specified spawning seasons, discharges and construction activities in spawning areas of state waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved nonerodible materials and shall be removed by the Design-Builder to natural ground when the Department so directs.

If the Design-Builder dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional state and federal agencies in accordance with the requirements of the Contract and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

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

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

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where channel changes are shown on the plans and to those that must be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of falsework, piling, debris, or other obstructions placed therein or caused by construction operations.

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

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Design-Builder shall design and provide temporary channels or culverts of adequate size to carry the normal flow of the stream or drainage facility.

The Design-Builder shall submit a temporary relocation design to the Department for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in appropriate items of the Contract.

Temporary bridges or other structures shall be used wherever an appreciable number of stream crossings will be made.

Conduct all operations near rivers, streams, or impoundments in accordance with applicable water quality permits. Do not conduct clearing or grubbing within 100 feet of the limits of ordinary high water or a delineated wetland until authorized by the Department.

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

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

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

Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos.

3. **Noise:** The Design-Builder's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall be not more than 80 decibels. *Noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose. Such activities include those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

Design-Builder shall monitor construction-related noise if requested by local agencies, the Department or neighboring property owners. If construction noise levels exceed 80 decibels, the Design-Builder shall take corrective action before proceeding with operations. The Design-Builder shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

Design-Builder shall determine whether certain portions of the project that produce objectionable noise should be restricted or prohibited between 10 P.M. and 6 A.M. If other hours are established by local ordinance, the local ordinance shall govern.

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

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

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

(c) **Forests:** The Design-Builder shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Design-Builder shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Design-Builder upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Design-Builder shall negotiate with the proper forest official for compensation for such labor, tools, or equipment.

(d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of work, the Design-Builder shall act immediately to suspend work at the site of the discovery and notify the proper state authority charged with

the responsibility of investigating and evaluating such finds. The Design-Builder shall cooperate and, assist in protecting, mapping, and removing the findings. The Design-Builder's costs for such work shall be included in the Contract Price, provided, however, that Design-Builder shall have the ability to seek relief under the Differing Site Conditions clause of the General Conditions of Contract. Findings shall become the property of the State unless they are located on federal lands, in which event they shall become the property of the U.S. government.

107.15—Opening Sections Of Projects To Traffic

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

On any section of the work opened by order of the Department where the Contract does not provide for traffic to be carried through the work and the Design-Builder has not been dilatory in prosecuting the work, the Design-Builder will not be required to assume any expense entailed in maintaining the road for traffic. Such expense will be borne by the Department or will be compensated for in accordance with the requirements of the Contract. Repair of damage attributable to traffic will be compensated for in accordance with the requirements of the Contract. The cost of all other repairs shall be borne by the Design-Builder.

On any section of the work opened by order of the Department where the Contract does not provide for traffic to be carried through the work, any additional cost for the completion of other items of work that are occasioned because of the changed working conditions will be compensated in accordance with the requirements of the Contract.

If the Design-Builder is dilatory in completing the work, he shall not be relieved of the responsibility for maintenance during the period the section is opened to traffic prior to final acceptance. Any expense resulting from the opening of such portions under these circumstances, except slides, shall be borne by the Design-Builder. The Design-Builder shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

107.16—Design-Builder's Responsibility For Work

Until final acceptance of the work by the Department in accordance with the requirements of the Section 105.15, the Design-Builder shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other cause. The Design-Builder shall rebuild, repair, restore, and make good damage to any portion of the work occasioned by any of the foregoing causes before final acceptance and shall bear the expense thereof.

In case of suspension of work, as defined elsewhere in the Contract, the Design-Builder shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the work, provide for erosion control and drainage, and erect any necessary temporary structures, signs, or other facilities at his own expense. During the suspension of work, the Design-Builder shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect new tree growth and other important vegetation against damage.

107.17—Design-Builder's Responsibility For Utility Property And Services

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

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

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Design-Builder shall promptly notify the proper authority and shall cooperate with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service. When the Design-Builder's work operations require the disconnection of "in service" fire hydrants, the Design-Builder shall notify the locality's fire department or communication center at least 24 hours prior to disconnection. In addition, the Design-Builder shall notify the locality's fire department or communications center no later than 24 hours after reconnection of such hydrants. The Design-Builder shall be responsible for any damage to utilities that is attributable to his neglect or methods of performing the work.

Nothing in this section shall be construed to be in conflict with Section 107.12.

The Design-Builder shall comply with all requirements of the *Virginia Underground Utility Damage Prevention Act* § 56-265.14 (the Miss Utility law). The Design-Builder shall wait a minimum of 48 hours after notifying the Miss Utility notification center before commencing excavation work. The Design-Builder may commence excavation work after 48 hours only if confirmed through the Ticket Information Exchange (TIE) System that all applicable utilities have either marked their underground line locations or reported that no lines are present in the work vicinity. The Design-Builder shall wait an additional 24 hours before commencing excavation operations if any utility operators have failed to respond to the Ticket Information Exchange within the first 48 hours.

107.18—Furnishing Right of Way

The Design-Builder shall secure necessary rights of way and easements in advance of construction, in accordance with the provisions of the Contract. The Department will not be responsible for any delay in the acquisition of a right of way other than consideration of an extension of time. Easements for temporary uses and detours requested by the Design-Builder and approved by the Department in lieu of a detour within the right of way or easement area shall be acquired by the Design-Builder without the Department being a party to the agreement.

107.19—Personal Liability of Public Officials

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

107.20—No Waiver of Legal Rights

The State shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after final acceptance of the work and payment therefor from showing (1) the true amount and character of the work performed and materials furnished by the Design-Builder, (2) that any such measurement, estimate, or certificate is untrue or incorrectly made, or (3) that the work or materials do not conform with the provisions of the Contract. The State shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Design-Builder or his surety, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Department or any representative of the Department nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.01—Subcontracting

The Design-Builder shall perform with his own organization work amounting to not less than 30 percent of the original Contract Price, unless otherwise stated in the RFP.

The use of Subcontractors or other disposition of any portion of the Contract work shall not relieve the Design-Builder of any responsibility for the fulfillment of the entire Contract.

108.02—Notice to Proceed

The Department will issue a Notice to Proceed in accordance with the RFP. The Contract time will start at the commencement of work or on the date specified in the Notice to Proceed, whichever is earlier. In no case shall work begin before the Contract is executed by the Department. The Design-Builder shall notify the Department at least 3 days prior to the date on which work will begin.

108.03—Prosecution of Work

The Design-Builder shall begin work within 10 days of the date specified in the Notice to Proceed. Work shall be conducted in such a manner and with sufficient materials, equipment, tools, and labor as are necessary to ensure its completion in accordance with the Contract Documents within the Contract Time(s). Once the Design-Builder has begun work, it shall be prosecuted continuously and to the fullest extent possible except for interruptions caused by weather or delays authorized or ordered by the Department. If approval is given to discontinue the work temporarily, the Design-Builder shall notify the Department at least 24 hours in advance of resuming operations.

108.04—Critical Materials

When the supply of critical materials becomes scarce because of the needs of national defense or industrial conditions beyond the control of the Department or Design-Builder, the provisions of this Section will become applicable to the Contract.

When all items of work involving noncritical materials have been completed by the Design-Builder or have progressed to a point where no further work is practicable prior to receipt of critical materials, a complete suspension of work will be granted by the Department. Requests for partial suspension orders because of delays attributable to nonreceipt of critical materials will be considered on the basis of merit in each case.

108.05—Limitation of Operations

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

108.06—Gratuities

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

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

If the Department determines that the Design-Builder or the Design-Builder's employees, representatives, or agents of any person acting in his behalf have violated this provision, the Design-Builder may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department. Any implicated employees,

agents, or representatives of the Design-Builder may be prohibited from working on any contract awarded by the Department. The decision of the Department shall be binding on all parties. A Design-Builder so disqualified may be reinstated only by petition to and approval by the Board.

108.07—Character of Workers, Work Methods, and Equipment

Workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special or skilled work shall have sufficient experience in such work and in the operation of equipment required to perform it properly and satisfactorily.

Any person employed by the Design-Builder or any Subcontractor who, in the opinion of the Department, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Department, be removed forthwith by the Design-Builder or Subcontractor employing the person and shall not be employed again on any portion of the work without the approval of the Department. If the Design-Builder fails to remove the person or furnish suitable and sufficient personnel for proper prosecution of the work, the Department may withhold all monies that are or may become due the Design-Builder and may suspend the work until the Design-Builder has complied with the request or order.

Equipment shall be of sufficient size and in such mechanical condition as to meet the requirements of the work and produce a satisfactory quality of work. Equipment shall be such that no damage to the roadway, adjacent property, or other highways will result from its use. Design-Builder shall order the removal and require replacement of unsatisfactory equipment.

When methods and equipment to be used by the Design-Builder are not prescribed in the Contract, the Design-Builder is free to use methods or equipment that will accomplish the Contract work in conformity with the requirements of the Contract.

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

108.08—Baseline Schedule

The Design-Builder shall submit a Baseline Schedule and updates in accordance with the requirements of the General Conditions of Contract. Payment for material stockpiled or stored in accordance with the requirements of Section 109.08 will not be considered in determining the Design-Builder's rate of progress.

108.09—Determination and Extension of Contract Time Limit (Refer to Part 4 -General Conditions – Article 8 Time, Article 9 Changes to the Contract Price and Time, and Article 10 Contract Adjustments and Disputes)

108.10—Suspension of Work Ordered by the Engineer (Refer to Part 4 -General Conditions – Article 11 Stop Work and Termination for Cause)

108.11—Failure To Complete on Time

For each calendar day that any work remains incomplete after the Contract Time limit specified for the completion of the work, the Department will assess liquidated damages against the Design-Builder in accordance with the Contract.

108.13—Default of Contract (Refer to Part 4 -General Conditions – Article 11 Stop Work and Termination for Cause)

108.14—Termination of Contract (Refer to Part 4 -General Conditions – Article 11 Stop Work and Termination for Cause)

108.15—Termination of Design-Builder’s Responsibilities (Refer to Part 4 -General Conditions – Article 11 Stop Work and Termination for Cause)

SECTION 109—MEASUREMENT AND PAYMENT

109.01—Measurement of Quantities

This Section 109.01 will be applicable to adjustments in the Contract Price, and is not intended to supercede the work breakdown measurement process applicable to progress payments.

Work specified in the Contract will be measured by the Design-Builder according to U.S. Standard Measure. The methods of measurement and computations to be used to determine quantities of material furnished and work performed will be those generally recognized as conforming to good engineering practice.

Longitudinal measurements for surface computations will be made horizontally, and transverse measurements will be the surface measure shown on the plans or ordered in writing by the Department. Individual fixture areas of 9 square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured according to neat lines shown on the plans.

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

Allowance will not be made for surfaces placed over a greater area than shown on the plans or for any material moved from outside the area of the cross section and lines shown on the plans.

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

(a) **Measurement by Weight:** Materials that are measured or proportioned by weight shall be weighed on accurate scales. When material is paid for on a tonnage basis, personnel performing the weighing shall be certified by the Department and shall be bonded to the Commonwealth of Virginia in the amount of \$10,000 for the faithful observance and performance of the duties of the weighperson required herein. The bond shall be executed on a form having the exact wording as the Weighpersons Surety Bond Form furnished by the Department and shall be submitted to the Department prior to the furnishing of the tonnage material. No payment will be made for materials delivered in excess of the legal load limits established for each truck.

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

1. Post and furnish a weekly tare weight of each truck used and keep a record of them for 12 months.
2. Furnish a signed weigh ticket for each load that shows the date, truck number, load number, plant name, size and type of material, project, schedule or purchase order number, and the weights specified herein.
3. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of material, by contract, can be readily identified.
4. Submit by the end of the next working day a summary of the number of loads and total weights for each type of material by contract.

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

Trucks used to haul material shall be equipped with a cover suitable to protect the material and to protect the traveling public.

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

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

Scales shall conform to the requirements for accuracy and sensitivity as set forth by the National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices. Scales used in the weighing of materials paid for on a tonnage basis shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at least once every six months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six months. Hopper scales shall be checked with a minimum 500 pounds of test weights and truck scales shall be checked with a minimum 20,000 pounds of test weights.

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

The quantity of materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall conform to the requirements of Section 211.11 and shall print the net weight of each load. The weigh ticket shall also show the legal gross weight for material weighed on truck scales and the legal net weight for material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for 48 hours provided satisfactory visual verification of weights can be made. The written permission of the Department will be required for the operation of scales after 48 hours.

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

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

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

(c) **Measurement by Lump Sum:** When used as an item of payment, the term *lump sum* will mean full payment for completion of work described in the Contract. When a complete structure or structural unit (in effect, lump sum work) is specified as the unit of measurement, the unit will be construed to include necessary fittings and accessories. The quantities may be shown on the plans for items for which lump sum is the method of measurement.

If shown, the quantities are approximate and are shown for estimating purposes only. Items that are to be measured as complete units will be counted by the Inspector in the presence of a representative of the Design-Builder.

(d) Specific Items:

1. **Concrete:** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.
2. **Excavation, embankment, and borrow:** In computing volumes of excavation, embankment, and borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.
3. **Asphalt:** Asphalt will be measured by the gallon, volumetric measurement, based on a temperature of 60 degrees F using the following correction factors:
 - a. 0.00035 per degree F for petroleum oils having a specific gravity 60/60 degrees F above 0.966
 - b. 0.00040 per degree F for petroleum oils having a specific gravity 60/60 degrees F between 0.850 and 0.966
 - c. 0.00025 per degree F for emulsified asphalt

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

$$V^1 = V/K(T - 60) + 1$$

Where:

V = volume of asphalt to be corrected;

V^1 = volume of asphalt at 60 degrees F;

K = correction factor (coefficient of expansion); and

T = temperature in degrees F of asphalt to be corrected.

When asphalt is delivered by weight, the volume at 60 degrees F will be determined by dividing the net weight by the weight per gallon at 60 degrees F.

When specified in the Contract, asphalt will be measured by weight. Net certified scale weights, or weights based on certified volumes in the case of rail shipments, will be used as a basis of measurement, subject to correction when asphalt has been lost from the car or the distributor, disposed of, or otherwise not incorporated in the work.

When asphalt is shipped by truck or transport, net certified weights or volumes subjected to correction for loss or foaming may be used to compute quantities.

Only the quantity of asphalt actually placed in the work and accepted will be considered in determining the amount due the Design-Builder.

4. **Timber:** Timber will be measured in units of 1,000 foot-board-measure actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.
5. **Equipment rental:** Equipment rental will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the project or source of supply and the project except when another method of measurement is specified.

109.02—Plan Quantities (Not Used)

109.03—Scope of Payment

Payments to the Design-Builder will be made for Work in accordance with the Agreement.

The Design-Builder shall accept the compensation provided for in the Contract as full payment for the following:

- (a) furnishing all materials, labor, tools, equipment, and incidentals necessary to complete the work
- (b) performing all work contemplated under the Contract
- (c) all loss or damage arising from the nature of the work or from action of the elements or any other unforeseen difficulties that may be encountered during prosecution of the work and until its final acceptance
- (d) all risks of every description connected with the prosecution of the work
- (e) all expenses incurred in consequence of the suspension of the work as herein authorized
- (f) any infringement of patent, trademark, or copyright
- (g) the completion of the work in accordance with the requirements of the Contract

The payment of any partial estimate or any retained percentage prior to final acceptance of the project as provided for in Section 105.15 shall in no way affect the obligation of the Design-Builder to repair or renew any defective parts of the construction or to be responsible for all damages attributable to such defects.

109.04—Compensation for Altered Quantities (Refer to Part 3 – Lump Sum Agreement – Article 6 Contract Price and Part 4 – General Conditions – Article 9 Changes to Contract Price and Time)

109.05—Extra and Force Account Work

Extra work performed in accordance with the requirements of Section 9.4.1 of the General Conditions will be paid for at the unit prices or lump sum specified in the work order. In lieu of such agreement, the Department may require the Design-Builder to do such work on a force account basis to be compensated in the following manner:

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

(d) **Equipment:** The Design-Builder shall provide the Department a list of all equipment to be used in the work. For each piece of equipment, the list shall include the serial number; date of manufacture; location from which equipment will be transported; and, for rental equipment, the rental rate and name of the company from which it is rented. The Design-Builder will be paid hourly rental rates for pieces of machinery, equipment, and attachments necessary for prosecution of the work that are approved for use by the Department. Hourly rental rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Blue Book* rate adjustment tables that are current at the time the force account is authorized. Adjustment factors or rate modifications indicated on area maps in the *Blue Book* will not be considered when acceptable rates are determined. Hourly rental rates for equipment held in ready will be at 50 percent of the rate paid for equipment in use.

Payment will be made for the total hours the equipment is in use. When equipment is in use less than 40 hours for any given week and is held in ready, payment for held-in-ready time will be allowed for up to 40 hours, minus hours in use. Payment will not be made for the time that equipment is on the project in excess of 24 hours prior to its actual use in the force account work. An amount equal to the *Blue Book* estimated operating cost per hour will be paid for all hours the equipment is in use. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the Department.

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

The rates for equipment not listed in the *Blue Book* schedule shall not exceed the hourly rate being paid for such equipment by the Design-Builder at the time of the force account authorization. In the absence of such rates, prevailing rates being paid in the area where the work is contemplated shall be used.

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

(e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for equipment as defined in the *Blue Book*, general superintendents, timekeepers, secretaries, the use of small tools, or other costs for which no specific allowance is herein provided. The Design-Builder will receive compensation equal to the cost of the bond, special railroad insurance premiums, and other additional costs necessary for the specific force account work as determined by the Department. The Design-Builder shall supply documented evidence of such costs.

(f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Design-Builder as payment in full for work performed on a force account basis. At the end of each day, the Design-Builder's representative and the Inspector shall compare and reconcile records of the cost of work done as ordered on a force account basis.

If all or a portion of the force account work is performed by an approved Subcontractor, the Design-Builder will be paid 10 percent of the subcontract net force account costs before additives are applied to cover his profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required by (g) herein shall be submitted on a form that separates the subcontracted portions of the force account labor, materials, and equipment from the other force account costs.

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

1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreman, and superintendent
2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of equipment
3. quantities of materials, prices, and extensions
4. transportation of materials

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

109.06—Eliminated Items

If any item in the Contract is determined to be unnecessary for the proper completion of the work contracted, the Department may, upon written notice to the Design-Builder, eliminate such item from the Contract. Payment will not be made for such item except that the Design-Builder will be compensated for the actual cost of any work performed for the installation of such item and the net cost of materials purchased, including freight and tax costs, as evidenced by invoice. No additional compensation will be made for overhead or anticipated profit.

109.07—Partial Payments

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

109.08—Payment for Material on Hand

When requested in writing by the Design-Builder, payment allowances may be made for material secured for use on the project. Such material payments will be for only those actual quantities identified in the contract, approved work orders, or otherwise documented as required to complete the project and shall be in accordance with the following terms and conditions:

(a) **Structural Units:** An allowance of 100 percent of the cost to the Design-Builder for structural steel materials for fabrication not to exceed 60 percent of the contract price may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the project. An allowance of 100 percent of the cost to the Design-Builder for superstructure units, not to exceed 90 percent of the contract price, may be made when they have been fabricated. Prior to the granting of such allowances, the structural steel materials and fabricated units shall have been tested or certified and found acceptable to the Department and shall have been stored in accordance with the requirements specified herein. Allowances will be based on invoices, bills, or the estimated value as approved by the Department.

(b) **Other Materials:** For reinforcing steel, aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of 100 percent of the cost to the Design-Builder for materials, not to exceed 90 percent of the contract price, may be made when such material is delivered and stockpiled or stored in accordance with the requirements specified herein. However, no allowance will be made for cement, seed, plants, fertilizer, and other perishable material. Prior to the granting of such allowances, the material shall have been tested and found acceptable to the Department. Allowances will be based on invoices, bills, or the estimated value of the material as approved by the Department.

(c) **Excluded Items:** No allowance will be made for fuels, form lumber, falsework, temporary structures, or other work that will not become an integral part of the finished construction. No allowance will be made for electrical or computer equipment until it is completely installed, operational, and accepted in conformance with the contract requirements.

(d) **Storage:** Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored materials are lost or become damaged, the Design-Builder shall repair or replace them. If payment allowance has been made prior to such damage or loss, the amount so allowed or a proportionate part thereof will be deducted from the next progress estimate payment and withheld until satisfactory repairs or replacement has been made.

When it is determined to be impractical to store materials within the limits of the project, the Department may approve storage on private property or, for structural units, on the manufacturer's or fabricator's yard. Requests for payment allowance for such material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the materials from the property without cost to the State.

(e) **Materials Inventory:** If the Design-Builder requests a payment allowance for properly stored material, he shall submit a certified and itemized inventory statement to the Department no earlier than 5 days and no later than 2 days prior to the progress estimate date. The statement shall be submitted on forms furnished by the Department and shall be accompanied by invoices or other documents that will verify the material's cost. Following the initial submission, the Design-Builder shall submit to the Department a monthly-certified update of the itemized inventory statement within the same time frame. The updated inventory statement shall show additional materials received and stored with invoices or other documents and shall list materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If the Design-Builder fails to submit the monthly-certified update within the specified time frame, the Department will deduct the full amount of the previous statement from the progress estimate.

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

109.09—Final Payment

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

109.10—Payment

Upon Department payment of the Subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Design-Builder for such work, the Design-Builder shall make compensation in full to the Subcontractor. For the purposes of this provision, payment of the Subcontractor's portion of the work shall mean that payment has been issued for that portion of the work that was identified on the monthly progress estimate for which the Subcontractor has performed service.

The Design-Builder shall make payment in full for the portion of the work identified on the monthly progress estimate to the Subcontractor within 7 days of the receipt of payment from the Department in accordance with the requirements of Section 109.07. If the Design-Builder withholds any funds as part of his contract with the Subcontractor to ensure satisfactory compliance and completion and the Subcontractor achieves specified work as verified by payment from the Department to the Design-Builder, the Design-Builder shall make full payment to the Subcontractor within 7 days.

If the Design-Builder fails to make payment to the Subcontractor within the time frame specified herein, the Subcontractor shall contact the Department and the Design-Builder's bonding company in writing. The Bonding Company and the Department will insure payment in accordance with the requirements of Sections 107.01 and Section 109.

Request for Proposals

Part 5

Division I Amendments to the Standard Specifications

February 13, 2009

460 Connector – Phase I Project

Buchanan County, Virginia

Project No. 0460-013-773 R201, C501, B628, B629, B630

Contract ID #: C00085914DB9B

SECTION 110—MISCELLANEOUS PROVISIONS

110.01—Common Carrier Rates (Not Used)

110.02—Labor and Wages

The Design-Builder shall comply with the provisions and requirements of the State's workers' compensation law and public statutes that regulate hours of employment on public work. Job orders placed with a State Employment Service shall indicate that employment preference will be given to veterans referred for employment.

Advertisements in newspapers or other publications for project employees shall include the notation "Employment Preference to Veterans."

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

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Design-Builder shall be responsible for determining local practices with regard to the application of the various classifications. For additional details of predetermined minimum wage rates, see Exhibit 110.02 attached herewith.

(b) **Labor Rate Forms:** The Design-Builder shall complete Form C-28, indicating by classification the total number of employees, excluding executive and administrative employees, employed on the project. The Design-Builder shall also indicate on the form the rate per hour for each classification. The Design-Builder shall submit an original and two copies of the form prior to the due date of the second estimate for payment and for each 90-day period thereafter until the work specified in the Contract has been completed.

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

110.03—Equal Employment Opportunity

The Design-Builder shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity.

The Design-Builder shall maintain the following records and reports as required by the contract EEO provisions:

- record of all applicants for employment
- new hires by race, work classification, hourly rate, and date employed
- minority and nonminority employees employed in each work classification
- changes in work classifications
- employees enrolled in approved training programs and the status of each
- minority Subcontractors with meaningful minority group representation
- copies of Form C-57 submitted by Subcontractors

If the Contract has a pay item for trainees, the Design-Builder shall submit semiannual training reports in accordance with the instructions shown on the forms furnished by the Department. If the Design-Builder fails to submit such reports in accordance with the instructions, his monthly progress estimate for payment may be delayed.

The Design-Builder shall cooperate with the Department in carrying out EEO obligations and in the Department's review of activities under the Contract. The Design-Builder shall comply with the specific EEO requirements specified herein and shall include these requirements in every subcontract of \$10,000 or more with such modification of language as may be necessary to make them binding on the Subcontractor.

(a) **EEO Policy:** The Design-Builder shall accept as operating policy the following statement:

It is the policy of this Company to assure that applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.

(b) **EEO Officer:** The Design-Builder shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active Design-Builder EEO program and who shall be assigned adequate authority and responsibility to do so.

(c) **Dissemination of Policy:**

1. Members of the Design-Builder's staff who are authorized to hire, supervise, promote, and discharge employees or recommend such action or are substantially involved in such action shall be made fully cognizant of and shall implement the Design-Builder's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and at least once every 6 months thereafter, at which time the Design-Builder's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.

b. New supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within 30 days following their reporting for duty with the Design-Builder.

c. The EEO Officer or appropriate company official shall instruct employees engaged in the direct recruitment of employees for the project relative to the methods followed by the Design-Builder in locating and hiring minority group employees.

2. In order to make the Design-Builder's EEO policy known to all employees, prospective employees, and potential sources of employees such as schools, employment agencies, labor unions where appropriate, and college placement officers, the Design-Builder shall take the following actions:

a. Notices and posters setting forth the Design-Builder's EEO policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

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

(d) **Recruitment:**

1. When advertising for employees, the Design-Builder shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other

publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, the Design-Builder shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges, and minority group organizations. The Design-Builder shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to him for employment consideration.

3. The Design-Builder shall encourage his employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.

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

1. The Design-Builder shall conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of personnel.

2. The Design-Builder shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.

3. The Design-Builder shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Design-Builder shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected persons.

4. The Design-Builder shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include those persons. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.

(f) **Training:**

1. The Design-Builder shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.

2. Consistent with work force requirements and as permissible under federal and state regulations, the Design-Builder shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

3. The Design-Builder shall advise employees and applicants for employment of available training programs and the entrance requirements for each.

4. The Design-Builder shall periodically review the training and promotion potential of minority group employees and shall encourage eligible employees to apply for such training and promotion.

5. If the Contract does not provide a separate pay item for trainees, the cost associated with the training specified herein shall be included in the price Proposal for other items in the Contract.

6. If the Contract provides a pay item for trainees, training shall be in accordance with the requirements of Section 518.

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

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.

2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions will be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.

3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Design-Builder, the Design-Builder shall so certify to the Department and shall set forth what efforts he made to obtain the information.

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

(h) **Subcontracting:** The Design-Builder shall use best efforts to use minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. Design-Builders shall obtain lists of MBE, DBE, and WBE construction firms from the Department. If MBE, DBE, or WBE goals are established in the RFP, the Design-Builder shall comply with the requirements of Section 110.04.

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

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

1. the number of minority and nonminority group members and women employed in each work classification on the project

2. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women if unions are used as a source of the work force

3. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees

4. the progress and efforts being made in securing the services of minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees Records shall be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

Each month for the first 3 months after construction begins and every month of July thereafter for the duration of the project, Form C-57 shall be completed to indicate the number of minority, nonminority, and female employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted

within 3 weeks after the reporting period. Failure to do so may result in delay of approval of the Design-Builder's monthly progress estimate for payment.

110.04—Use of Minority Business Enterprises (MBEs)

Design-Builder shall comply with all of the requirements of Exhibit 110.04, attached herewith. This Exhibit is a November 4, 2004 Special Provision from the Department, and when the term "Contractor" is used, it is intended to refer to "Design-Builder."

110.05—Construction Safety and Health Standards

It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to the Contract, that the Design-Builder and any Subcontractor shall not require any worker employed in performance of the Contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with the requirements of Section 107 of the Contract Work Hours and Safety Standards Act.

The Design-Builder shall comply with the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the *Code of Virginia* and the duties imposed under Section 40.1-51.1 of the Code. Any violation of the requirements or duties that is brought to the attention of the Design-Builder by the Department or any other person shall be immediately abated.

110.06—Bulletin Boards and Posting Official Notices

Except for maintenance contracts, the Design-Builder shall furnish, erect, and maintain at least two bulletin boards having dimensions of at least 48 inches in width and 36 inches in height at locations readily accessible to all personnel concerned with the project. The boards shall be erected immediately upon initiation of the contract work and shall be maintained until the completion of such work, at which time they shall be removed from the project. Each bulletin board shall be equipped with a removable glass or plastic cover that when in place will protect posters from weather or damage. The Design-Builder shall promptly post-official notices on the bulletin boards. The costs for such work shall be included in the Contract Price.

110.07—Certification of Nonsegregated Facilities

The Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities for highway construction contracts exceeding \$10,000 that are not exempt from the provisions of the equal opportunity clause, requires that Offerors neither maintain nor provide facilities for employment that are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. If the Contract exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause, the Offeror by signing the Proposal will be deemed to have signed and agreed to the provisions of the certification. If the Contract exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause, the Design-Builder shall forward the following notice to prospective Subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the equal opportunity clause:

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

(a) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the Subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause. This certification provides that the Subcontractor or material

supplier does not maintain, or provide for his employees, facilities that are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the Subcontractor or material supplier will not maintain such segregated facilities.

(b) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000, which are not exempt from the provisions of the equal opportunity clause, will be required to provide for the forwarding of this notice to prospective Subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the equal opportunity clause.

110.08 Exhibits

The following exhibits are specifically made a part of, and incorporated by reference into, these Division I Amendments to the Standard Specifications (Attachments to Part 5 are included in the RFP Information Package):

- EXHIBIT 102.05(a) -- SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL
- EXHIBIT 102.05(b) -- FHWA -1273, REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS
- EXHIBIT 102.05(c) -- NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)
- EXHIBIT 110.02 -- PREDETERMINED MINIMUM WAGE RATES
- EXHIBIT 110.04 -- SPECIAL PROVISION FOR SECTION 110.04

END OF PART 5
DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS