

# Exhibit 1 to Parts 3, 4 and 5 Project-Specific Terms

(Date of Standard Parts 3, 4 and 5: November 2016)

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**Part 3 (2016 Lump Sum Agreement Between Department and Design-Builder), Part 4 (2016 General Conditions of Contract Between Department and Design Design-Builder), and Part 5 (2016 Division I Amendments to the Standard Specifications General Provisions for Design-Build Contracts Between Department and Design-Builder) of the RFP are incorporated into this contract by reference. A copy of these documents can be found here: <http://www.virginia.gov/business/design-build.asp>**

**This Exhibit 1 to Parts 3, 4 and 5 contains project-specific terms that are hereby incorporated, as identified below, into Parts 3, 4 and 5.**

**Department and Design-Builder hereby agree the provisions in this Exhibit 1 to Parts 3, 4 and 5 shall modify and supersede the specific clauses of Parts 3, 4 or 5.**

The Agreement Date is [\_\_\_\_\_].

**The Parties to the Agreement are:**

**VIRGINIA DEPARTMENT OF TRANSPORTATION (“Department”),  
An agency of the Commonwealth of Virginia:**

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

**DESIGN-BUILDER:**

**[INSERT DESIGN-BUILDER INFORMATION]**

Project No.: [0000-000-000]  
Project: [Project Name]  
[City/ County], Virginia

**PART 3**  
**2016 LUMP SUM DESIGN-BUILD AGREEMENT BETWEEN**  
**DEPARTMENT AND DESIGN-BUILDER**

This **AGREEMENT** is made as of the date by and between the parties, the **VIRGINIA DEPARTMENT OF TRANSPORTATION (“Department”)**, an agency of the Commonwealth of Virginia and **DESIGN-BUILDER** as listed in Exhibit 1 to Parts 3, 4 and 5, for services in connection with the Project identified in Exhibit 1 to Parts 3, 4 and 5.

**2.1.4** The Department’s Request for Proposals (RFP) is dated [Month Day, Year], latest addendum is dated [Month Day, Year] (RFP Addendum No. [#]).

**2.1.7** The list of all final modifications to the Proposal is as follows:

**[LIST PROPOSAL MODIFICATIONS, ATC’s OR UNIQUE MILESTONES  
INTRODUCED BY THE OFFEROR BY NUMBER AND DATE]**

**2.1.8** Design-Builder’s Statement of Qualifications (SOQ) submitted in response to RFQ.

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

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

.2 Those ATCs identified in Exhibit 1 to Parts 3, 4 and 5 have been approved, either fully or conditionally, by Department and supersede the requirements of the RFP Documents. Design-Builder has the right to perform the Work in accordance with such ATCs, subject to Section 2.1.10 of the General Conditions of Contract.

**5.2.1** The **Final Completion Date (date Final Acceptance must be achieved)** is [Month Day, Year] and shall be in accordance with Attachment to Part 3 Article 5.

**[5.2.2** The **Interim Milestone Final Completion Date** is [Month Day, Year] and shall be in accordance with Attachment to Part 3 Article 5.]

**5.5.1** Liquidated damages for failing to attain Final Acceptance of all Work in accordance with the Contract Documents for the Project by the Final Completion Date are [**written dollar value**] dollars (\$[**numerical**]) per day. [Note that these liquidated damages will be in addition to any Liquidated Damages in Section [5.5.2][5.5.3] if the Design-Builder fails to meet the requirements of [Interim Milestone][Unique Milestone] by the Contract Final Completion Date.]

**[5.5.2]** Liquidated Damages for failing to meet the terms for Interim Milestone Final Completion, as defined in Attachment to Part 3, Article 5, by the Interim Milestone Final Completion Date are **[written dollar value]** dollars (\$**[numerical]**) per day.]

**[5.5.3]** Liquidated Damages for failing to meet the terms for Unique Milestone Completion, as defined in Section 2.1.7, by the Unique Milestone Completion Date are **[written dollar value]** dollars (\$**[numerical]**) per day.]

**6.1** The **Contract Price** is **[written dollar value]** Dollars (\$**[numerical]**).

**6.3** **Adjustments to Asphalt, Fuel and Steel.** Department and Design-Builder agree to adjust prices for **THE ITEMS LISTED IN EXHIBIT 1 TO PARTS 3, 4 AND 5**, in accordance with Department's pertinent special provisions, attached hereto as Exhibits 6.3(a) and/or Exhibit 6.3(c) and/ or Exhibit 6.3(d) (provided Design-Builder declares its intent) in the Price Proposal, to use the provisions for price adjustments, and also submits the information required in the pertinent special provisions with its Proposal. Notwithstanding the special provisions, price adjustments for **THE ITEMS LISTED IN EXHIBIT 1 TO PARTS 3, 4 AND 5** will be based on the quantities identified in the Schedule of Items in Design-Builder's Proposal, which quantities shall be specifically summarized and provided in Design-Builder's Price Proposal. Actual quantities shall be monitored and documented by Design-Builder, and submitted to Department in the monthly report required by Section 11.1.8 below, on forms provided by Department.

The identification of eligible **Asphalt and/or Fuel** price adjustments for this contract is as follows:

- **Price Adjustment for Asphalt**
- **Price Adjustment for Fuel** – has elected to **[use/not use]** this provision
- **Price Adjustment for Steel** – has elected to **[use/not use]** this provision

**7.1.3** Pursuant to VA. CODE §2.2-4354 and §2.2-4355, Design-Builder agrees that, within seven (7) days following receipt of monies from Department for work performed by any Subcontractor, Design-Builder shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from Department attributable to the work performed by the Subcontractor; or (b) notify Department and Subcontractor, in writing, of Design-Builder's intention to withhold all or a part of the Subcontractor's payment, specifying the reason for the non-payment.

**7.1.4** In the event that the Design-Builder has not received payment from the Department for work performed by a subcontractor under the Contract, the Design-Builder is liable for the entire amount owed to such subcontractor and shall pay such subcontractor within 60 days of the receipt of an invoice following satisfactory completion of the work for which the subcontractor has invoiced. The Design-Builder shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of the Contract. However, in the event that the Design-Builder withholds all or part of the amount invoiced by the subcontractor under the terms of the Contract, the Design-Builder shall notify the subcontractor within 50 days of the receipt of such invoice, in writing, of his intention to withhold all or part of subcontractor's payment with the reason for

nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance. Payment by the party contracting with the Design-Builder shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of the Design-Builder receiving payment for amounts owed to them. Any contrary provisions shall be unenforceable.

**7.1.5** The Design-Builder also agrees that it shall include in all of its subcontracts a provision that: (a) obligates Design-Builder to pay interest to Subcontractors on all amounts owed by Design-Builder that remain unpaid after seven (7) days, except for amounts withheld as allowed in this Section; (b) states, “Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.”; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier Sub-subcontractor.

**7.1.6** If Design-Builder fails to make payment to the Subcontractor within the time frame and provisions specified herein, the Subcontractor shall notify Department and Design-Builder’s bonding company in writing. Design-Builder’s bonding company shall be responsible for insuring payment to the Subcontractor.

**7.1.7** Pursuant to VA. CODE § 2.2-4354, Design-Builder agrees to provide Department with one of the following within five (5) days of the Agreement Date: (a) their social security number if Design-Builder is doing business in his/her individual capacity; or (b) their employer identification number if Design-Builder is organized as a proprietorship, partnership, limited liability company or corporation.

**8.10 No Consequential Damages.** Under no circumstances shall Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Article 8. The payment to Design-Builder determined in accordance with this Article 8 constitutes Design-Builder’s exclusive remedy for a termination hereunder.

**9.1.1** The Department’s Senior Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.1.2** The Department’s Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.2.1** The Design-Builder's Senior Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.2.2** The Design-Builder's Representative is:

[Name]  
[Title]  
[Address]  
[Telephone Number]

**9.3** Department and Design-Builder shall, in the spirit of cooperation, exchange information in a timely manner. While the Contract Documents establish a timeline and process for making decisions and managing communications on the Project, the parties recognize it is not possible to specify processes for all activities that may occur.

**11.1.1 Preliminary Schedule.** Unless otherwise stated in Exhibit 1 to Parts 3, 4 and 5, within fifteen (15) days of Design-Builder's receipt of Department's Notice to Proceed, Design-Builder shall submit to Department, for its review and approval, a Preliminary Schedule in accordance with Exhibit 11.1 (Special Provision for Design-Build Schedules). The Preliminary Schedule shall be the basis for monitoring Design-Builder's performance of the Work until such time as a Baseline Schedule has been approved by Department in accordance with Section 11.1.2 below. Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Preliminary Schedule.

**11.1.2** The **Baseline Schedule** shall be submitted within **[days in words] ([days in numbers])** days of Design-Builder's receipt of the Department's Notice to Proceed.

**11.3 Exhibits**

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

- EXHIBIT 1 of PARTS 3, 4 and 5 -- PROJECT SPECIFIC TERMS
- EXHIBIT 6.3(a) -- ADJUSTMENT FOR ASPHALT
- EXHIBIT 6.3(c) -- ADJUSTMENT FOR FUEL
- EXHIBIT 6.3(d) -- ADJUSTMENT FOR STEEL
- EXHIBIT 11.1 -- SPECIAL PROVISION FOR DESIGN-BUILD SCHEDULES
- EXHIBIT 11.1.10 -- EXAMPLE CORRESPONDENCE TRACKING LOG

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**THE PARTIES TO THE AGREEMENT SHALL SIGN EXHIBIT 1 TO PARTS 3, 4 AND**

**5**

**PART 4  
2016 GENERAL CONDITIONS OF CONTRACT BETWEEN  
DEPARTMENT AND DESIGN-BUILDER**

**Section 1.2.1** has been revised as follows:

*ATC(s)* mean those Alternative Technical Concepts identified in Exhibit 1 to Part 3, 4 and 5 of the Contract Documents.

*State Highway* means any highway designated a Primary highway or Secondary highway pursuant to Title 33.2, Chapter 1, Code of Virginia

**2.1.4** Design-Builder shall, at its sole cost and expense, perform all services associated with the acquisition of any other properties that are necessary, or that Design-Builder deems necessary, to enable Design-Builder to perform the Work. Design-Builder will not be responsible for the right-of-way acquisition cost. The term “right-of-way acquisition cost” means the actual purchase price to a landowner for right of way, including fees, any and all easements, and miscellaneous fees associated with closing as part of the Project. Any and all proposed construction features offered in conjunction with the Design Builder obtaining an administrative settlement with a landowner must be presented and approved by VDOT as to concept and cost responsibility prior to settlement with the property owner.

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

**2.1.10** If the Contract Documents incorporate any approved ATCs and Design-Builder, for whatever reason: (a) does not comply with one or more Department conditions of pre-approval for the ATC; (b) fails or is unable to implement the approved ATC for any reason, including but not limited to the determination during the design approval process that the ATC fails to comply with the Contract Documents; (c) does not obtain required third-party approval for the ATC; or (d) elects, for any reason, not to implement the approved ATC, then Design-Builder shall: (1) provide written notice thereof to Department; and (2) comply with the requirements in the Contract Documents that would have applied in the absence of such ATC. Such compliance shall be without any increase in the Contract Price or extension to the Contract Time(s) except to the extent the condition under (a), (b) or (c) qualifies as a Scope Validation item under Section 2.2 hereof, in which case the provisions of such Section 2.2 shall be applicable. For the avoidance of doubt, Design-Builder shall not be entitled to any increase in the Contract Price or extension of the Contract Time(s) as a result of any delay, inability or cost associated with the acquisition of any property that may be required to implement any ATC.

**2.2.1** The duration of the **Scope Validation Period** is [days in words] ([days in numbers]) days.

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

## **6.6 Final Acceptance**

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

.1 a general release executed by Design-Builder, in the form set forth in Exhibit 6.6.3.2, certifying, among other things, that: (a) upon receipt of final payment by Design-Builder, that Design-Builder waives all claims arising out of or related to the Project, except those claims previously made in writing to Department and remaining unsettled at the time of final payment, which claims shall be specifically listed in the release; (b) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Department's interests; (c) all Subcontractors and Design Consultants have been, or will be, paid in proper course the monies due and payable for Work performed and/or furnished in connection with the Project;

and (d) all applicable taxes, fees, and benefits relating directly or indirectly to the Work on the Project have been, or will be, paid in full in proper course.

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

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

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

## **6.7 Release for No Excuses Incentive Payment for Early Project Final Acceptance**

**6.7.1** If Part 3 of the Contract Documents contains a Provision for a No Excuses Incentive Payment for Early Project Final Acceptance, then in lieu of the general release required by Section 6.6.3.2 above, Design-Builder shall furnish Department with the general release required by Attachment to Part 3 Article 5, whereby Design-Builder shall waive, upon receipt of final payment all claims, with no exceptions, arising out of or related to the Project.

**10.2.2** Design-Builder and Department will first attempt to resolve all disputes or disagreements at the field level through best efforts and good faith negotiations between Design-Builder's Representative and Department's Representative. If the dispute or disagreement cannot be resolved through Design-Builder's Representative and Department's Representative, Design-Builder's Senior Representative and Department's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than forty-five (45) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute or disagreement. If the Senior Representatives determine that the dispute or disagreement cannot be resolved to the mutual satisfaction of both parties, despite their best efforts, then Design-Builder's sole remedy shall be to pursue the processes set forth in VA. CODE §33.2-1101 through §33.2-1103.

## **12.10 —Exhibits**

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

EXHIBIT 1 to PARTS 3, 4 and 5	--	PROJECT SPECIFIC TERMS
EXHIBIT 3.5.1	--	GOVERNMENTAL APPROVALS LIST
EXHIBIT 6.6.3.2	--	GENERAL RELEASE



**PART 5**  
**2016 DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS GENERAL**  
**PROVISIONS FOR DESIGN-BUILD CONTRACTS BETWEEN DEPARTMENT AND**  
**DESIGN-BUILDER**

**Tidewater, Virginia.** As defined in the Code of Virginia, § 62.1-44.15:68.

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

**(b) Subsurface Data**

Subsurface data may be included in the RFP Documents or may be made available for review by the Offeror in the office of the District Materials Engineer or State Materials Engineer or as stated elsewhere in the RFP Documents. Data not included in the RFP Documents are not part of the Contract, but are made available to the Offeror in good faith to notify the Offeror of information in possession of the Department. Consequently, the Department does not warrant the accuracy of any such data, and the Offeror is at sole risk for any conclusions drawn from such data, either expressly or by implication. Prior to submitting a Proposal, the Offeror shall make his own interpretation of the subsurface data that may be available with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. The Offeror is prohibited to access the Project for any activities other than to observe the conditions of the site in accordance with Part 1, Section 3.2 of the RFP and Section 9.0 of the RFQ. After the Date of Commencement, the Successful Offeror shall comply with Section 4.2.2 of the General Conditions.

**102.05—Preparation of Proposal**

**(g) Additional Proposal Requirements**

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

- .1 Exhibit 102.05 (g.1) *Special Provisions for Use of Domestic Material*
- .2 Exhibit 102.05(g.2) *FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts*
- .3 Exhibit 102.05(g.3) *Notice of Requirement For Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)*
- .4 Exhibit 102.05(g.4) *USDOT 1050.2*
- .5 Exhibit 102.05(g.5) *USDOT 1050.2A*

### **103.06—Documents Required as a Condition to Award**

#### **(e) Insurance Coverages and Certificates of Insurance:**

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

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

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

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

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

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

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

Prior to preparing a Proposal, the Design-Builder shall contact known utility owners to determine

the nature, extent, and location of existing, adjusted, or new utility facilities. Any additional cost resulting therefrom shall be reflected in the Proposal.

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

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

The Design-Builder may be entitled to non-compensable contract time extension when an adverse impact on the project schedule results in a delay to a contract completion date (e.g. Final Completion Date, Early Project Final Acceptance, Interim Milestone Final Completion Date) due to one of the following delays:

- (a) A utility owner is unable or unwilling to provide sufficient resources to complete its utility work by the scheduled dates furnished by the utility owner on the utility owner's Plan & Estimate (P&E) and approved by the Department, as outlined in the Department's Utility Manual of Instructions – Utilities Relocation Policies and Procedures.
- (b) A utility owner fails to provide sufficient resources to complete its utility work by the scheduled dates on the utility owner's Plan & Estimate (P&E) in relation to the Project because it is responding to natural disasters within the Commonwealth of Virginia or other regions, such as floods, tidal waves, tornadoes, hurricanes, lightning strikes, earthquakes, fires, epidemics, or similar natural phenomena.
- (c) Utility industry-wide labor strikes affecting the utility owner's workforce.
- (d) Utility material shortages that are beyond the Design-Builder's control.

Any such request shall be made in accordance with Article 8 of the General Conditions of Contract and shall be deemed non-compensable.

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

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

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

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

- (c) Local Material pits and quarries that are not operated under a local or State permit shall not be opened or reopened without authorization by the Department.

- (f) If the Design-Builder fails to provide necessary controls to prevent erosion and siltation the Department may direct the Design-Builder to cease all other operations and direct his efforts toward corrective action in accordance with section 105.03(a), or may perform the Work with State forces or other means as determined by the Department using the same procedure as Section 105.14(e).

#### **106.04—Disposal Areas**

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

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

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

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

Disposal Areas shall be cleared without damaging grass, shrubs, or vegetation outside the limits of the approved area and haul roads thereto, but not need to be grubbed. After the Material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance Contractor's agreement with the property owner.

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

The Design-Builder's design and restoration shall be in accordance with the requirements of

the Contract Documents and Legal Requirements.

If the Design-Builder fails to provide and maintain necessary controls to prevent erosion and siltation, the Department may direct the Design-Builder to cease all other operations and direct his efforts toward corrective action in accordance with section 105.03(a), or may perform the Work with State forces or other means determined by the Department, using the same procedure as Section 105.14(e).

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.

### **107.03—Federal-Aid Provisions**

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

Exhibit 107.03 *Special Provision for Build America, Buy America Act Requirements for Construction Materials*

### **107.14—Equal Employment Opportunity**

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

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.

Further, if the Company employs more than five employees, the Company shall (i) provide annual training on the Company's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Company's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.

### **(g) Dissemination of Policy**

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

- a. Periodic meetings of supervisory and personnel office Employees shall be conducted before the start of work and at least once every six (6) months thereafter, at which time the Design-Builder's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.
  - b. New supervisory or personnel office Employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within thirty (30) days following their reporting for duty with the Design-Builder.
  - c. The EEO Officer or appropriate company official shall instruct Employees engaged in the direct recruitment of Employees for the Project relative to the methods followed by the Design-Builder in locating and hiring minority group Employees.
2. In order to make the Design-Builder's EEO policy known to all Employees, prospective Employees, and potential sources of Employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Design-Builder shall take the following actions:
- a. Notices and posters setting forth the Design-Builder's EEO policy shall be placed in areas readily accessible to Employees, applicants for employment, and potential employees. Additionally, the Design-Builder shall post the names of all contracting agencies with which the contractor has contracts of over \$10,000.

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

- b. The Design-Builder's EEO policy and the procedures to implement such policy shall be brought to the attention of Employees by means of meetings, employee handbooks, or other appropriate means.
- (i) Personnel Actions:** Wages, working conditions, and Employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.
1. The Design-Builder shall conduct periodic inspections of the Project sites to ensure that working conditions and Employee facilities do not indicate discriminatory treatment of personnel.

2. The Design-Builder shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
3. The Design-Builder shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Design-Builder shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected individuals.
4. The Design-Builder shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect Persons other than the complainant, corrective action shall include those individuals. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.
5. The Design-Builder shall be in compliance with Commonwealth of Virginia Executive Order 61 Ensuring Equal Opportunity and Access for all Virginians in state contracting and public services. The Design-Builder shall maintain a non-discrimination policy, which prohibits discrimination by the Design-Builder on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. This policy shall be followed in all employment practices, subcontracting practices, and delivery of goods or services. The Design-Builder shall also include this requirement in all subcontracts valued over \$10,000.

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

By signing the Proposal, the Offeror certifies (unless the Contract is exempt under 42 USC 7606. 33 USC 1368. Executive Order 11738, and 2 CFR 1532.1140) that any facility to be used in the performance of the Contract is not listed on the Federal System for Award Management (SAM) Exclusions Public Extract according to 2 CFR 1532.1125; and that the Department will be promptly notified prior to the Award of the Contract if the Offeror receives any communication from the EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the Federal SAM Exclusion Public Extract.

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

#### **107.16(b) Pollution**

1. **Water** is amended by inserting the following sentence:

The Design-Builder shall cover all dumpsters at the end of each work shift and when not in use during a rain event.

## **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. Precautions shall be taken at all times to prevent particulate matter from becoming airborne according to the State Air Pollution Control Board regulation 9 VAC 5 Chapter 50, Article 1, Standards of Performance for Visible Emissions and Fugitive Dust/Emissions.

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

### **2.a.(3) Air**

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

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

- a) Structure demolition
- b) Dismantling and removing existing structures
- c) Movement of an entire structure
- d) Replacement of any load-bearing component of a structure

The term structure used herein refers to all bridges and buildings owned and/or to be acquired by/for the Department.



Demolition notification shall be addressed to:

Virginia Department of Labor and Industry  
Main Street Centre  
600 E. Main Street, Suite 207  
Richmond, VA 23219

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

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

**3. SWPPP Requirements for Support Facilities**

The Design-Builder shall develop and enforce a Spill Prevention Control and Countermeasure (SPCC) Plan conforming to 40 CFR 112 if the aggregated volume of Oil stored within the project limits at any one time is greater than 1320 gallons. Oil, in this context, shall be defined according to 40 CFR 112. The aggregated volume includes that of both stationary and portable storage facilities but does not include individual storage containers with less than a 55 gallon capacity. The Design-Builder shall include the SPCC Plan as a part of his Pollution Prevention Plan for the project.

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

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

Support Facilities located on VDOT rights of way or easements:

- a. For those support facilities located within the Project limits but not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan

- according to [IIM-LD-195](#), and a pollution prevention plan according to these Specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents. All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved, the Department will notify the Design-Builder in writing that the plans are accepted as a component of the Project's SWPPP and VPDES Construction Permit coverage (where applicable) and shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.
- b. For support facilities located outside the Project limits and not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan (where applicable) according to [IIM-LD-195](#), a pollution prevention plan according to these specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents and all necessary documents for obtaining VPDES Construction Permit coverage according to [IIM-LD-242](#). All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved by the Department, VDOT will secure VPDES Construction Permit coverage according to [IIM-LD-242](#). After VDOT secures VPDES Construction Permit coverage for the support facility, the Department will notify the Design-Builder in writing. The support facility shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.

#### **4. Inspection Procedures**

##### **a. Inspection Requirements**

The Design-Builder shall be responsible for conducting site inspections in accordance with the requirements herein. Site inspections shall include erosion and sediment control, and pollution prevention practices and facilities; all areas of the site disturbed by construction activity; all on-site support facilities; and all off site support facilities within VDOT right of way or easement. The Design-Builder shall document such inspections by completion of Form C-107, Construction Runoff Control Inspection Form, according to the directions contained within the form. This inspection shall be incorporated into the SWPPP no later than 4 days after the inspection. Inspections shall be conducted using one of the following schedules:

- Schedule 1 - At least once every 7 calendar days (equivalent to the once every five business days schedule in the VPDES *General Permit for Discharge of Stormwater from Construction Activities*) and within 24 hours following any measurable storm event. If a measurable storm event occurs when there are more than 24 hours between business days, the Design-Builder shall perform his inspection no later than the next business day. The Design-Builder shall install a rain gauge at a central location on the project site for the purposes of determining the occurrence of a measurable storm event. Where the project is of such a length that one rain gauge may not provide an accurate representation of the occurrence of a measurable storm event over the entire project site, the Design-Builder shall install as many rain gauges as necessary to accurately reflect the amount of rainfall received over all portions of the project. The Design-Builder shall observe all rain gauges no less than once each business day at the time prescribed in the SWPPP General Information Sheet notes in the construction plans or other contract documents to determine if a measurable storm event has occurred. The procedures for determining the occurrence of a measurable storm event are identified in the SWPPP General Information Sheet notes in the construction plans or other contract documents.

- Schedule 2 - At least each Monday and Thursday (equivalent to the once every four business days schedule in the VPDES *General Permit for Discharge of Stormwater from Construction Activities*). Where Monday or Thursday is a non-business day, the inspection may be performed on the next business day afterward. In no case shall the inspections be performed less than once every four business days. A rain gauge will not be required when using Schedule 2.

The inspection schedule (1 or 2) is to be selected prior to the beginning of land disturbance. Once an inspection schedule is selected, it shall be defined in the appropriate note in the SWPPP General Information Sheets contained in the construction plan set and shall be used for the duration of the project. A business day is defined as Monday through Friday excluding State holidays. A measurable storm event is defined as one producing 0.25 inches of rainfall or greater over a 24 hour time period.

For those areas of the site that have been temporarily stabilized or where land disturbing activities have been suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection schedule may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make stormwater discharges likely, the Design-Builder shall immediately resume the regular inspection schedule. Those definable areas where final stabilization has been achieved will not require further inspections provided such areas have been identified in the Project's Stormwater Pollution Prevention Plan.

b. Corrective Actions

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

### 109.11—Exhibits

The following exhibits, as well as any other exhibits specifically set forth in Exhibit 1 to Parts 3, 4 and 5 (Project Specific Terms), are made part of, and incorporated into these Division I Amendments to the Standard Specifications. (Exhibits to Part 5 are included in the RFP):

- EXHIBIT 1 to PARTS 3, 4 and 5 -- PROJECT SPECIFIC TERMS
- EXHIBIT 102.05(g.1) -- SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL
- EXHIBIT 102.05(g.2) -- FHWA-1273, REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS
- EXHIBIT 102.05(g.3) -- NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)
- EXHIBIT 102.05(g.4) -- USDOT 1050.2
- EXHIBIT 102.05(g.5) -- USDOT 1050.2A
- EXHIBIT 105.06 -- SPECIAL PROVISION FOR SUBCONTRACTING (FEDERAL FUNDED PROJECTS)
- EXHIBIT 107.03 -- SPECIAL PROVISION FOR BUILD AMERICA, BUY AMERICA ACT REQUIREMENTS FOR CONSTRUCTION MATERIALS
- EXHIBIT 107.13 -- PREDETERMINED MINIMUM WAGE RATES
- EXHIBIT 107.14 -- COMMONWEALTH OF VIRGINIA EXECUTIVE ORDER 61 ENSURING EQUAL OPPORTUNITY AND ACCESS FOR ALL VIRGINIANS IN STATE CONTRACTING AND PUBLIC SERVICES
- EXHIBIT 107.15 -- SPECIAL PROVISION FOR SECTION 107.15

**DEPARTMENT:**

**DESIGN-BUILDER:**

Virginia Department of Transportation  
*(Name of Department)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

Chief Engineer  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**END OF EXHIBIT 1 to PARTS 3, 4 and 5  
PROJECT-SPECIFIC TERMS**