

PICKETT ROAD TRAIL UNDERPASS
City of Fairfax, Virginia
City Public Improvement Plan #15060100
State Project Number EN13-151-183, UPC 105299
Federal Project Number TAP-5A01 (734)

PROJECT MANUAL/BID DOCUMENTS

March 28, 2016



NOVA Parks
5400 Ox Road
Fairfax Station, Virginia 22039

CONTENTS

<u>SECTION #</u>		<u>NUMBER OF PAGES</u>
1.	Invitation to Bid	1
2.	Form of Proposal and VDOT Forms	9
3.	NVRPA Supplemental General Conditions	3
4.	NVRPA General Conditions.....	26
5.	VDOT Supplemental Specifications, Special Provisions, and Special Provision Copied Notes	68
6.	Virginia Stormwater Management Permit (VSMP) General Permit and Conditions	24
7.	Form of Construction Contract	2

SECTION #1

Invitation to Bid

INVITATION TO BID
PICKETT ROAD TRAIL UNDERPASS
City of Fairfax, Virginia
City Public Improvement Plan #15060100
State Project Number EN13-151-183, UPC 105299
Federal Project Number TAP-5A01 (734)

Sealed bids will be received by mail or in person at the Northern Virginia Regional Park Authority Headquarters, 5400 Ox Road, Fairfax Station, Virginia 22039, until **August 17, 2016, at 2 pm EST**. Bids will be opened in public at that time.

The project includes the installation asphalt and concrete paved surface trail, BMP structure and drainage culverts along with miscellaneous associated work as noted on the plans. The Contractor shall furnish all equipment, material and labor in accordance with the project plans and project manual.

Five percent bid bond or certified check must be submitted with the sealed bid for all total bids over \$500,000. The total bid shall be determined by the sum of the base bid and all alternates. All bids and bid bonds shall remain valid for ninety days. Performance and Labor and Material Payment bonds shall be required of the successful bidder for all contracts awarded over \$500,000.

The Project Manual and the Project Drawings can be downloaded from the NOVA Parks website (www.novaparks.com) at <https://www.novaparks.com/about/bids-proposals>. The Contractor shall be responsible to verify and obtain any addendum prior to the bid date. The Project documents include the following:

Project Manual dated March 28, 2016
Project Plans by Pennoni Associates Inc. Sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 10A, 11, 12 & 13
Tree Management Plans by TNT Environmental Inc. Sheets 1 & 2

Questions concerning this project shall be directed to Tim Geisler, Project Manager. All questions regarding the project or bid shall be in writing and can be sent via fax to 703-273-0905, email tgeisler@nvrpa.org or mailed to the Park Authority Headquarters.

All interested Bidders shall formally register with the Northern Virginia Regional Park Authority by contacting Diane Creasey, via email dcreasey@nvrpa.org, by mail to NOVA Parks HQ or by fax. Bidders shall provide Mrs. Creasey with the following information:

Company Name
Contact Person
Address
Phone and Fax Numbers
Email Address

SECTION #2

**Form of Proposal, Form C-48
DBE Good Faith Efforts
Documentation, Form C-104
Bidder Statement, Form C-
105 Bidder Affidavit, Form C-
111 Minimum DBE
Requirements, & Form C-112
Certification of Binding
Agreement with
Disadvantaged Business
Enterprise Firms**

FORM OF PROPOSAL - PAGE 1 OF 2
PICKETT ROAD TRAIL UNDERPASS
City of Fairfax, Virginia
City Public Improvement Plan #15060100
State Project Number EN13-151-183, UPC 105299
Federal Project Number TAP-5A01 (734)

PROPOSAL

To furnish all material, labor, tools, equipment and supplies to perform all work specified herein and shown in the contract documents.

Name of Bidder: _____

Address of Bidder: _____

Signature & Title: _____

Print Name: _____

Date: _____

Contact Phone
Number: _____

Bidder's Virginia
Contractor's License # _____

To: Todd Hafner, Director of Planning and Development
Northern Virginia Regional Park Authority
5400 Ox Road
Fairfax Station, Virginia 22039 (703) 352-5900

Bidders shall fill in all blank spaces on the Form of Proposal.

Pursuant to and in compliance with the bid documents, the undersigned proposes and agrees, if this proposal is accepted, to furnish all labor, materials, supplies, equipment and other facilities, and to perform all work described for consideration of the following amounts:

FORM OF PROPOSAL - PAGE 2 OF 2
PICKETT ROAD TRAIL UNDERPASS
City of Fairfax, Virginia
City Public Improvement Plan #15060100
State Project Number EN13-151-183, UPC 105299
Federal Project Number TAP-5A01 (734)

BASE BID: All work as shown in the project plans and stated in the project manual. <div style="text-align: right; margin-bottom: 10px;">Dollars / \$ _____</div>
UNIT PRICE #1: Additional Cubic Yard Unit Price for Replacement of Unsuitable Soils <div style="text-align: right; margin-bottom: 10px;">Dollars (\$ _____) per Cubic</div> Yard

Acknowledges Receipt of Addendum # _____ dated _____.

Acknowledges Receipt of Addendum # _____ dated _____.

Acknowledges Receipt of Addendum # _____ dated _____.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION FORM
(ALL BIDDERS)**

PROJECT NO. _____ **CONTRACT I.D. NO.** _____

FHWA NO. _____ **DATE SUBMITTED** _____

All bidders, including DBEs bidding as Prime Contractors, shall complete and submit the following information as requested in this form within ten (10) **business** days after the opening of bids.

The bidder certifies this form accurately represents its solicitation and utilization or non-utilization, as indicated, of the firms listed below for performance of work on this contract. The bidder also certifies he/she has had direct contact with the named firms regarding participation on this project.

BIDDER _____ **SIGNATURE** _____

TITLE _____

SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION (ALL)

VENDOR NUMBER	NAME OF SUBCONTRACTOR/SUPPLIER	TELEPHONE NUMBER	DBE OR NON-DBE	UTILIZED (Y/N)

NOTE: ATTACH ADDITIONAL PAGES, IF NECESSARY.

BIDDER MUST SIGN EACH ADDITIONAL SHEET TO CERTIFY ITS CONTENT AND COMPLETION OF FORM.

ORDER NO.:
CONTRACT ID. NO.:

Form C-104
Rev. 7-13-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

PROJECT:

FHWA:

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

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

AFFIDAVIT

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

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

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

STATE of _____ COUNTY (CITY) of _____

To-wit: _____

I _____, a Notary Public in and for the State and County(City) aforesaid, hereby certify that this day _____

personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

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

My Commission expires _____

Notary Public

OR
UNSWORN DECLARATION

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

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

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

ORDER NO.:
CONTRACT ID. NO.:

Form C-105
Rev. 7-13-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
AFFIDAVIT

PROJECT:

FHWA:

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

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

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

NAME	Location of Principal Office
_____	_____
_____	_____
_____	_____

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

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

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

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

(Continued)

ORDER NO.:
CONTRACT ID. NO.:

Form C-105
page 2

3. The bidder certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above; and
 - (d) Where the bidders is unable to certify to any of the statements in this certification, the bidder shall show an explanation below.

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

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

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

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

STATE of _____ COUNTY (CITY) of _____

To-wit:

I _____, a Notary Public in and for the State and
County(City) aforesaid, hereby certify that this day _____

personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____, 20 ____
My Commission expires _____

Notary Public

**ORDER NO.:
CONTRACT ID. NO.:**

Form C-111
Rev. 7-1-98

**VIRGINIA DEPARTMENT OF TRANSPORTATION
MINIMUM DBE REQUIREMENTS**

PROJECT NO:

FHWA NO:

*****INSTRUCTIONS*****

SECTION II OF THIS FORM IS TO BE USED BY THE CONTRACTOR TO SUBMIT THE NAMES OF DBE FIRMS TO BE UTILIZED. ADDITIONAL SHEETS TO SHOW THE ALLOWABLE CREDIT PER ITEM MAY BE ATTACHED IF NECESSARY. FORM C-112 MUST BE ATTACHED FOR EACH DBE TO BE UTILIZED. A NARRATIVE STATEMENT MUST BE ATTACHED IF THE CONTRACTOR IS AWARE OF TRAINING AND ASSISTANCE TO BE PROVIDED DBES.

SECTION I:

DBE REQUIREMENT 10 %

SECTION II:

PERCENT ATTAINED BY BIDDER _____ %

<u>NAME(S) AND CERTIFICATION NO.(S) OF DBE(S) TO BE USED</u>	<u>TYPE OF WORK & ITEM NO.(S)</u>	<u>AMT. OF ALLOWABLE CREDIT PER ITEM</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL: \$ _____

Total Contract Value \$ _____ X Required DBE **10** % =\$ _____

I/WE CERTIFY THAT THE PROPOSED DBE(S) SUBMITTED WILL BE USED ON THIS CONTRACT AS STATED HEREON AND ASSURE THAT DURING THE LIFE OF THE CONTRACT, I/WE WILL MEET OR EXCEED THE PARTICIPATION ESTABLISHED HEREON BY THE DEPARTMENT.

_____ By _____
BIDDER SIGNATURE

_____ By _____
TITLE DATE

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CERTIFICATION OF BINDING AGREEMENT
WITH
DISADVANTAGED BUSINESS ENTERPRISE FIRMS**

Project No.:

Federal Project No.:

This form is to be submitted in accordance with the Department's Special Provision for Section 107.15.

It is hereby certified by the below signed Contractors that there exists a written quote, acceptable to the parties involved preliminary to a binding subcontract agreement stating the details concerning the work to be performed and the price which will be paid for the aforementioned work. This document is not intended to, nor should it be construed to, contain the entire text of the agreement between the contracting parties. This document does not take the place of, nor may it be substituted for, an official subcontracting agreement in those situations that may require such an agreement. A copy of the fully executed *subcontract agreement* shall be submitted to the Engineer within fourteen (14) business days after contract execution.

It is further certified that the aforementioned mutually acceptable quote and fully executed subcontract agreement represent the entire agreement between the parties involved and that no conversations, verbal agreements, or other forms of non-written representations shall serve to add to, delete, or modify the terms as stated.

The prime Contractor further represents that the aforementioned mutually acceptable quote and fully executed subcontract agreement shall remain on file for a period of not less than one year following completion of the prime's contract with the Department or for such longer period as provisions of governing Federal or State law or regulations may require. For purposes of this form, the term Prime Contractor shall refer to any Contractor utilizing a DBE subcontractor, regardless of tier, in which they are claiming DBE credit toward the contract goal.

Contractors further jointly and severally represent that said binding agreement is for the performance of a "commercially useful function" as that term is employed in 49 C.F.R. Part 26.55 (c), (d).

**TO BE SIGNED BY THE SUBCONTRACTOR TO THE PRIME CONTRACTOR, AND ANY LOWER TIER
SUBCONTRACTORS HAVING A CONTRACT WITH THE BELOW NAMED DBE FIRM**

Prime Contractor _____

By: _____
Signature Title

Date: _____

First Tier
Subcontractor if
Applicable

By: _____
Signature Title

Date: _____

Second Tier
Subcontractor if
Applicable

By: _____
Signature Title
Date: _____

Third Tier
Subcontractor if
Applicable

By: _____
Signature Title
Date: _____

DBE Contractor

By: _____
Signature Title
Date: _____

SECTION #3

NVRPA Supplemental General Conditions

SUPPLEMENTAL GENERAL CONDITIONS

PART I. – GENERAL

All bidders shall submit with their bids the attached Form of Proposal, Form C-104 Bidder Statement and Form C-105 Bidder Affidavit. A DBE goal of **Ten Percent (10%)** has been set for this project.

In the event of a discrepancy between the NVRPA General or Supplemental Conditions and the VDOT Supplemental Specifications, Special Provisions, and Special Provision Copied Notes, the VDOT requirements shall take precedence.

Contractors will be responsible to comply with all conditions as set forth in Virginia Stormwater Management Permit (VSMP) as well as all City of Fairfax permits and regulations.

The Contractor must provide with its bid three client references for similar projects completed within the last three years. The references shall include a description of the work including total cost, the date completed and a contact name and phone number of the project owner. The Park Authority reserves the right to disqualify any bidders who are determined not to have adequate experience or favorable client references. Any disqualifications shall be at the sole discretion of the Park Authority.

The Contractor shall contact Miss Utility. The Contractor shall be responsible for any damages to marked underground utilities and shall repair all miscellaneous damages caused during the course of this project.

The Contractor must supply the appropriate bonds and certificate of insurance within 10 days of notification of the Park Authority's intent to award a contract.

All work shall be completed within 90 days from the start of on-site activities. In addition, work must begin within 30 days after all applicable permits are acquired. If the work is not completed within the time required, as that time may be adjusted by change orders, there shall be imposed on the Contractor liquidated damages of \$350.00 per calendar day for each day beyond the contract time it takes to complete the work.

When submittals are required or requested, three copies shall be submitted to the Park Authority at least seven days prior to delivery and use of the material or product at the site. The Park Authority shall review submittals within four days. If the submittal is rejected, the Contractor shall resubmit as required and delay delivery and use of the material or product until the submittal is approved. This delay shall not be cause for an extension of the contract completion date.

Contractor shall provide at least 48 hours notice prior to beginning of work.

All work will be completed during normal weekday business hours of 7:00 a.m. to 6:00 p.m.

In all contract documents, references to the Park Authority's architect or engineer shall be interpreted as referring to the Owner.

Any excess excavated material shall be disposed of off-site by the Contractor. In addition, any extra material necessary to install the improvements as shown shall be provided by the Contractor at his expense. This does not apply to existing subgrade soils deemed unsuitable for use. Unsuitable soils will be handled on a unit cost basis per the Contractor's bid proposal. The unit price in the Form of Proposal is to include all cost to (1) excavate and remove from site any subgrade materials deemed unsuitable, and (2) import and compact VDOT 21-A stone.

The Owner will obtain the Site Plan and Grading Permits along with the VDOT Entrance Permit. The Contractor shall obtain all other permits necessary and arrange for all governmental inspections as required to include local, state, regional and national inspections as specified in the contract documents.

Soils and compaction testing, if determined to be necessary by the Park Authority, shall be provided by the Park Authority. The contractor shall reimburse the Park Authority for the costs of compaction re-testing in failed areas in addition to being responsible for repairing or reconstructing the failed areas.

All work must be ready for inspection when the testing agent arrives. The contractor may perform their own preliminary testing at their option. The contractor shall schedule all inspections with the designated Park Authority's representative at least 24 hours in advance.

All survey and stake out service shall be provided by the Contractor. The Contractor shall also complete a certified as-built survey at the completion of the project.

All improvements will be constructed in accordance with all applicable design standards and criteria. The Contractor shall be familiar with these design standards and criteria and shall conform to those standards whether or not they are specifically shown on the plans.

PART II. - WARRANTY AND AS-BUILTS

The Contractor shall provide a written warranty to the Park Authority covering all defects in materials and workmanship for a period of one year from the date of project completion. All warranties provided by the equipment and materials manufacturers shall also be provided to the Park Authority.

The Contractor shall maintain during the progress of the work, a complete and up-to-date set of as-built drawings and specifications, which shall be available for inspection by the Owner and Engineer at any time. These documents shall be marked up to record all changes in the work as they occur. As-built documents shall be neatly marked with red colored pencil or ink and three copies shall be delivered to the Owner in a condition satisfactory to him as a condition precedent to final acceptance of the work.

PART III - PROTECTION OF ARCHAEOLOGICAL RESOURCES AND ARTIFACTS

1. PROTECTION OF ARCHAEOLOGICAL RESOURCES

A. The Contractor shall notify the Owner at least 48 hours prior to any ground disturbing activities.

B. In the event that archaeological resources are identified during construction, all work shall be temporarily suspended in those areas. Work shall not resume in those areas until notified by the Owner.

C. The Contractor shall provide access to the site for any archaeological staff, as directed by the Owner.

D. The Contractor shall keep accurate records of any delays associated with suspended work related to archaeological resources, and shall submit any claims for extension of time to the Owner in accordance with the general conditions. Monetary claims for such delays shall be approved at the sole discretion of the Owner.

2. ARTIFACTS

A. All artifacts found on the site shall remain the property of the Owner.

B. All artifacts discovered on the site shall be left in place and intact, until removed by the Owner, or by his archaeological staff, or as otherwise directed by the Owner.

*******END OF SUPPLEMENTAL GENERAL CONDITIONS*******

SECTION #4

NVRPA General Conditions

NVRPA DOCUMENT GC 101
INSTRUCTIONS TO BIDDERS AND
GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES;
CONSULTATION WITH AN ATTORNEY IS ENCOURAGED

2013 EDITION

ARTICLE NUMBER	TITLE
1.	Definitions
2.	Contract Documents
3.	Laws and Regulations
4.	Conditions at Site or Structure
5.	Explanation to Bidders
6.	Preparation and Submission of Bids
7.	Bid Guarantee
8.	Withdrawal or Modification of Bids
9.	Receipt and Opening of Bids
10.	Errors in Bids
11.	Rejection of Bids
12.	Standard Forms
13.	Award of Contract
14.	Contract Security
15.	Progress Schedules
16.	Shop Drawings, Product Data, Samples
17.	Materials, Services and Facilities
18.	Inspection and Testing
19.	Substitutions
20.	Patents
21.	Surveys, Permits, Regulations
22.	Protection of Work, Property and Persons
23.	Supervision by Contractor
24.	Changes in the Work
25.	Changes in the Contract Sum or Other Relief
26.	Time for Completion and Liquidated Damages
27.	Correction of Work
28.	Suspension of Work, Authority's Right to Stop and Carry Out the Work
29.	Termination
30.	Uses of the Premises
31.	Payment to the Contractor
32.	Substantial Completion of the Work
33.	Final Completion and Final Payment
34.	Insurance
35.	Assignments
36.	Indemnification
37.	Contractor Liability
38.	Separate Contracts
39.	Subcontracting
40.	Engineer
41.	Warranty
42.	Contractual Disputes

**GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT WITH
THE NORTHERN VIRGINIA REGIONAL PARK AUTHORITY**

Article 1: DEFINITIONS

- (a) **Addenda** – Written or graphic instruments issued prior to the Award of the Contract which modify or interpret the Contract Documents, Drawings, and Specifications by additions, deletions, clarifications, or corrections
- (b) **Engineer** – The design professional, including an architect, that has contracted with the Authority to design the Project and administer the Contract on behalf of the Authority. If no Project Engineer is designated all duties and responsibilities which the Engineer would otherwise have shall be the duties and responsibilities of the Authority.
- (c) **Authority** – The Northern Virginia Regional Park Authority.
- (d) **Change Order** – A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents or authorizing an adjustment in the Contract Price or Contract Time. A Change Order, which adjusts the Contract Price or Contract Time, must be signed by the Authority, Contractor and Engineer. A Change Order includes a Field Order, as hereafter defined.
- (e) **Construction Change Directive** - A written order to the Contractor signed by the Authority directing an addition, deletion or revision in the Work within the general scope of the Contract Documents prior to an agreement between the Authority and the Contractor as to an adjustment in the Contract Price or Contract Time. Upon receipt of a Construction Changes Directive, the Contractor shall promptly proceed with the change in the Work described therein.
- (f) **Contract Sum** – The total monies payable to the Contractor under the terms and Conditions of the Contract Documents.
- (g) **Contract Time** – The specific date or the number of days stated in the Contract Documents or the Notice to Proceed for Substantial Completion of the Work.
- (h) **Contractor** – Any person or entity who has a contract directly with the Authority for the performance of the Work or a part thereof.
- (i) **Day** – A calendar day of 24 hours lasting from midnight one day to midnight the next day.
- (j) **Drawings** – The graphic and pictorial part of the Contract Documents that show the characteristics and scope of the Work to be performed and that has been prepared by or for the Authority. The term is used interchangeably with the word “Plans” and includes Standard Details.
- (k) **Field Order** – A written order issued by the Engineer or the Authority to the Contractor during construction effecting a change in the Work, but not involving an adjustment in the Contract Price or an extension of the Contract Time.
- (l) **Inspector** – The authorized representative of the Authority assigned to make detailed inspection of any or all portions of the Work. The Inspector is authorized to stop the Work in accordance with Article 29.
- (m) **Notice of Award** – The written notice of the acceptance of the Bid from the Authority to the successful Bidder.
- (n) **Special Conditions** – General requirements that are unique to a particular Contract.
- (o) **Standard Details** – Details showing standard products, methods, and materials contained within the Plans or other agency standards such as the current versions of the Fairfax County Public Facilities Manual or the Virginia Department of Highways and Transportation Road and Bridge standards and specifications.

- (p) **Specifications – Special Conditions, Standard Specifications and Standard Details.**
- (q) **Subcontractor – An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the Work at the site.**

Substantial Completion – That date as certified by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed in accordance with the Contract Documents so that the Project or specified part can be utilized for the purposes for which it is intended and when the Contractor has received all final inspections and occupancy permits from the appropriate jurisdictions.
- (r) **Supplementary General Conditions – Modifications to General Conditions required for the Project.**
- (s) **Supplier – Any person or organization who supplies materials or equipment for the Work (including that fabricated to a special design) but who does not perform labor at the site.**
- (t) **Work – Any and all labor, materials, equipment, and all obligations, duties, and responsibilities expressly stated or reasonably implied for the successful completion of the construction required by the Contract Documents. The Contractor’s Work includes payment of all sales, consumer, use, and other similar taxes required by law.**
- (u) **Written Notice – Any notice to any party of the Contract relative to any part of the Contract in writing and considered delivered and the service thereof completed when posted by mail to the party at its last given address, or delivered in person to the party or its authorized representative at the Project.**

Article 2: CONTRACT DOCUMENTS

- (a) **The agreement entered into by the parties shall consist of the Form of Construction Contract, the Form of Proposal submitted by the Contractor, the Supplemental General Conditions, these General Conditions, the specifications and drawings, including all modifications thereof, all of which shall be referred to collectively as the “Contract Documents.” The Form of Construction Contract shall be signed by the Authority and Contractor in as many original counterparts as may be mutually agreed upon. The Contract may be amended only by a written amendment to the Contract or a Change Order signed by both parties.**
- (b) **The Contract Documents are complimentary and what is required by one shall be binding on the Contractor as if required by all. In the event of any inconsistency between the Contract Documents, Contractor shall provide the greater quality or quantity of Work with no increase in the Contract Sum. The intent of the Contract Documents is that the Contractor shall furnish all labor, materials, tools, equipment, utilities, transportation and incidental work necessary for the proper execution of the Work in accordance with, or reasonably inferable from, the Contract Documents. In the event of conflicts among the Contract Documents, the Authority may designate the written or drawn provision or feature which shall be used and no additions to or deductions from the Contract Sum, or modification to the Contract Time, shall result from the choice. In case of conflicts, the Contract Documents shall take precedence in the following order: the Construction Contract; The Supplemental General Conditions; the General Conditions; the Special Conditions; the specifications; and the drawings.**
- (c) **This Contract is an entire and integrated agreement and is not severable.**
- (d) **Contractor shall identify in writing to the Authority and the Engineer, as soon as possible, any discrepancies, errors, omissions and/or inconsistencies or ambiguities, discovered by the Contractor in the Contract Documents. Work done by the Contractor after its discovery of such discrepancies, errors, omissions and/or inconsistencies or ambiguities and prior to response from the Engineer shall be done at the Contractor’s sole risk and cost.**

Article 3: LAWS AND REGULATIONS

- (a) In the performance of the Work, the Contractor shall comply with the requirements of all local, state and federal laws, codes, statutes, ordinances, rules, regulations and lawful orders of any public authority relating to the performance of the Work (the “Legal Requirements”).
- (b) All Contractors and Subcontractors for the Project must be properly licensed under the laws of the Commonwealth of Virginia and in good standing before submitting any bid and before commencing any Work. Upon the request of the Authority, any Contractor or Subcontractor for the Project shall promptly provide proof of its licensure.
- (c) The Contract and all other contracts and subcontracts are subject to the provisions of Article 3 and 5, Chapter 4, Title 40.1, Code of Virginia, 1950, as amended, relating to labor unions and the “right to work,” and all Contractors or Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the provisions of these code sections.
- (d) The Contractor shall furnish the Authority copies of affidavits upon request giving the original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the project site under this Contract.
- (e) Contractor shall comply with all local, state and federal safety codes, statutes, rules, practices and regulations.
- (f) **EQUAL OPPORTUNITY EMPLOYMENT**

(1) During the performance of the Agreement, the Contractor agrees as follows:

- (i) The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by federal or state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (ii) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that Contractor is an equal opportunity employer.
- (iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the notice, advertisement, and solicitation requirements of this paragraph.

(2) The Contractor shall cause to be included the provisions of the foregoing paragraphs a.(i), a.(ii) and a.(iii) (substituting the subcontractor or vendor for Contractor as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(g) **DRUG-FREE WORKPLACE**

(1) During the performance of the Agreement, the Contractor agrees to (i) provide a drug-free workplace for the Contractor’s employees, (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition, (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace, and (iv) cause to be included the provisions of the foregoing clause (substituting the subcontractor or vendor for the Contractor as the

obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- (2) For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with the Agreement by Contractor where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

(h) NO EMPLOYMENT OF UNAUTHORIZED ALIENS

Contractor represents and warrants that Contractor does not, and shall not during the performance of this Agreement, knowingly employ any unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

(i) STATEMENT OF NONDISCRIMINATION AGAINST FAITH-BASED ORGANIZATIONS

The Authority does not discriminate against faith-based organizations. (See Va. Code § 2.2-4343.1).

(j) PROMPT PAYMENT REQUIREMENTS

Within seven days after Contractor receives amounts paid for work subject to the Agreement performed by any “subcontractor,” as defined in Code of Virginia § 2.2-4347, Contractor shall take one of the two following actions:

- (1) Pay the subcontractor for the proportionate share of the total payment received from Owner attributable to the work performed by the subcontractor; or
- (2) Notify Owner and the subcontractor in writing of Contractor’s intent to withhold all or part of the subcontractor’s payment and the reason for nonpayment.

- (k) Contractor shall provide its Federal employer identification number with each application to Owner for payment.**

- (l) Contractor shall pay interest to any “subcontractor” on all amounts owed by Contractor that remain unpaid after seven days following receipt by Contractor of payment from Owner for work performed by such subcontractor relating to the Agreement except as to amounts withheld as retainage.**

- (m) Contractor shall include in its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.**

- (n) No obligation imposed by this section shall be construed to create any obligation of Owner under Code of Virginia § 2.2-4354, no modification to the Agreement may be made for the purpose of providing reimbursement for the interest charge, and Contractor shall not invoice Owner for any such charge.**

(o) LIMITATION ON OWNER’S LIABILITY FOR INTEREST

Owner shall not be liable to pay any interest to Contractor under any circumstance except in the case of amounts that Owner does not dispute to be due and payable to Contractor; interest shall accrue beginning on the 60th day after payment is due at a rate of 3% per annum.

(p) AUTHORIZATION TO CONDUCT BUSINESS IN VIRGINIA

The provisions of Va. Code § 2.2-4311.2 are incorporated by reference. If Contractor is a business entity described in Va. Code § 2.2-4311.2.A, Contractor must be authorized to transact business in Virginia if required by law to be so authorized and shall not allow its existence or certificate authority or registration to transact business to lapse or be revoked or cancelled during the term of the contract.

Article 4: CONDITIONS AT SITE OR STRUCTURE

- (a) All Bidders and Contractors shall visit the site and shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site or building, and the character and extent of existing work within or adjacent to the site and to compare those conditions with the Contract Documents and the Legal Requirements. Claims, as a result of the Bidder's and/or Contractor's failure to comply with the foregoing, will not be considered by the Authority and are waived by the Contractor.

If in the performance of the Contract the Contractor discovers subsurface or latent conditions at the site that are materially different from those typical for the locality or indicated in the Contract Documents, the Contractor shall report the conditions to the Engineer and the Authority in writing before the conditions are disturbed. Upon such notice, or upon its own observation of such conditions, the Engineer shall promptly make such recommendations as it finds necessary to address the different conditions. Any change in the cost of the work or time needed for completion must be processed pursuant to the requirements of the Contract Documents.

Article 5: EXPLANATION TO BIDDERS

No oral explanation in regard to the meaning of drawings and specifications will be made and no oral instructions will be given before the award of the contract. Bidders shall identify in writing to the Authority and the Engineer any believed discrepancies, omissions, ambiguities or errors in the Contract Documents. Bidders must submit such a writing at least six (6) days prior to the time set for the receipt of bids to allow a sufficient time for a reply to reach them before the submission of their bids, but if there are two (2) weeks or less between the first bid advertisement and the time set for receipt of bids, then bidders may act up to three (3) days prior to the time set for receipt of bids. Any interpretation made will be in the form of an addendum to the specifications, which will be forwarded to all bidders, and its receipt by the bidder shall be acknowledged on the Bid Form.

Article 6: PREPARATION AND SUBMISSION OF BIDS

- (a) Bids shall be submitted in duplicate on the forms furnished, or true copies thereof, and shall be signed in ink. Erasures or other changes in a bid shall be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures, alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the Authority as being incomplete.
- (b) Each bid must give the full business address and contact information for the bidder and must be signed by a person with authority to bind the bidder. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the state in which they are incorporated and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to its signature the word "President," "Secretary," "Agent," or other designation without disclosing its principal, may be held to be the bid of the individual signing. When requested by the Authority, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.
- (c) Bids with the bid guarantee shall be enclosed in a sealed envelope, which shall be marked and addressed as indicated by the advertisement or invitation to bid. Prior to submitting a bid, the

bidder must be in compliance with and have the licenses required under Virginia Code Section 54.1-1100, et seq. The bidder shall place on the outside of the envelope containing the bid and shall place in the bid over its signature whichever of the following notations is appropriate, inserting its Contractor license number.

If the bidder shall fail to provide this information on its bid or on the envelope containing the bid and shall fail to promptly provide the Contractor license number to the Authority in writing when requested to do so before the opening of bids, its bid will not be considered.

- (d) The owner reserves the right to disqualify any Contractor and refuse to accept the bid of any bidder which has been convicted, or entered a plea of guilty or nolo contendere in any federal or state court to any charge involving any unlawful, corrupt or collusive practice involving a public contract either federal, state, or local or which has been determined in any judicial proceeding to have violated any antitrust, bid-rigging or collusive practice statute in connection with any public contract, or against whom such formal criminal prosecution or other judicial proceeding has been initiated.

Article 7: BID GUARANTEE

- (a) Any bid exceeding Five Hundred Thousand Dollars (\$500,000) shall be accompanied by a bid guarantee of not less than five percent (5%) of the amount of the bid, which may be certified check or cashier's check, or a Bid Bond made payable to the Authority. Bid Bonds shall be submitted on AIA Document A310. Such Bid Bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw its bid during the period up to and including ninety (90) days following the opening of bids; that if its bid is accepted, it will enter into a formal contract with the Authority in accordance with the Form of Construction Contract included as a part of the Contract Documents, and that the referenced Performance Bond and Labor and material Payment Bond will be given; and that in the event of the withdrawal of the bid within the period, or failure to enter into the contract and give the bonds within ten (10) days after it has received notice of acceptance of its bid, the bidder shall be liable to the Authority for the difference between the amount of the bidder's bid and the amount of the bid for the next higher bidder to perform the Work but such amount shall not exceed the amount of the bid guarantee.
- (b) The Bid Bonds and checks will be returned to all except the three lowest bidders after the formal opening of the bids. The remaining Bid Bonds and checks will be returned to the lowest bidders after the Authority and the accepted bidder have executed the Contract and the Performance Bond and the Payment Bond have been approved by the Authority.
- (c) If the required Contract and bonds have not been executed within ninety (90) days after the date of the opening of the bids, then the bond or check of any bidder will be returned upon its request, provided it has not been notified of the acceptance of the bid prior to the date of such request.

Article 8: WITHDRAWAL OR MODIFICATION OF BIDS

A bidder may withdraw or modify its bid only by written notice delivered to the Authority prior to the time fixed for receipt of bids.

Article 9: RECEIPT AND OPENING BIDS

- (a) It is the responsibility of the bidder to assure that its bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. The Authority will not consider bids received after the time set for receipt of bids.
- (b) Bids will be opened at the time and place stated in the advertisement and the lowest bidder will be announced. The officer or agent of the Authority, whose duty it is to open the bids, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.

Article 10: ERRORS IN BIDS

A bidder may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. Under this provision a bidder requesting to withdraw its bid shall follow the procedures set forth in Section 2.2-4330 of the Code of Virginia. The bidder must give notice in writing of its claim of right to withdraw its bid within the time frame required by Section 2.2-4330 of the Code of Virginia and shall submit its original work papers to the Authority in compliance with the requirements of Section 2.2-4330 of the Code of Virginia. Failure to strictly comply with the requirements of Section 2.2-4330 of the Code of Virginia shall constitute a waiver of the right to withdraw the bid.

No bid may be withdrawn when the result would be the awarding of the Contract on another bid of the same bidder. No bidder who is permitted to withdraw a bid shall for compensation supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted, without the approval of the Authority. The person or firm to whom the Contract was awarded and the withdrawing bidder are jointly liable to the Authority in an amount equal to any compensation paid to or for the benefit of the withdrawing bidder without such approval.

If a bid is withdrawn under authority of this section, the next higher bidder shall be deemed to be the low bidder on the project.

Article 11: REJECTION OF BIDS

The Authority reserves the right to reject any and all bids when such rejection is in the interest of the Authority, and will reject the bid of a bidder who is not a responsible bidder. (See § 2.2-4319, Code of Virginia, 1950, as amended.)

Article 12: STANDARD FORMS

The copies of the Form of Construction Contract, and AIA Document A312, Performance Bond and the Labor and Material Payment Bond are incorporated into the General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein.

Article 13: AWARD OF CONTRACT

- (a) The Contract will be awarded as soon as possible to the lowest responsive and responsible bidder, provided its bid is reasonable and it is in the interest of the Authority to accept it. The Authority reserves the right to waive any informality in bids received when such waiver is in the interest of the Authority; also to accept any item in the bid unless otherwise specified by the Authority. Each bidder shall be prepared, if so requested by the Authority, to present evidence of its experience, qualifications and financial ability to carry out the terms of the Contract.
- (b) If the bid forms contain alternate prices, the Authority may in its sole discretion, unless otherwise specified in the invitation for bid, select whatever alternates it chooses to accept subsequent to the bid opening but prior to the determination of the low bidder. The low bidder shall be determined by comparing each bidder's bid total based on the sum of the base bid and the alternates selected by the Authority.
- (c) Pursuant to the Virginia Public Procurement Act, in the event the lowest responsible bid exceeds available funds for the project, the Authority may enter into negotiations with the lowest responsible bidder in an effort to arrive at a contract amount within the limits of available funds. In such event, the Authority will inform the bidder of the amount of funds available, and will negotiate in good faith toward achieving the funding limit, preferably without any change in the scope or other change in the Contract Documents. However, negotiations may include change in scope, quantity of materials, or other changes, so long as any such changes are within the general scope of the original design. If

the Authority and bidder reach agreement, the Authority may award a contract in accordance with procedures or actions approved by the Authority Board. The Authority may terminate negotiations at any time prior to the award of a contract, and proceed as otherwise permitted by the Virginia Public Procurement Act.

Article 14: CONTRACT SECURITY

For all contracts of Five Hundred Thousand Dollars (\$500,000.00) or more, the Contractor shall deliver to the Authority or its designated representative, an AIA Document A312, Performance Bond and Labor and Material Payment Bond, each fully executed by one or more surety companies legally authorized to do business in Virginia and each in an amount equal to one hundred percent (100%) of the original Contract Sum. The bonds shall be conditioned as set forth in § 2.2-4337 of the Code of Virginia, as amended. Sureties shall be selected by the Contractor subject to approval by the Authority. No contract shall be deemed to be in effect until the bonds have been approved by the Authority. For the purposes of all Labor and Material Payment Bonds entered into pursuant to this Article, the term “subcontractors” as used in § 2.2-4337 A.2 of the Code of Virginia is interpreted to mean any contractors who participated in the prosecution of the Work undertaken by the Contractor, whether such subcontractor had a direct contract with the Contractor or whether there were one or more other intervening subcontractors.

Article 15: PROGRESS SCHEDULES

- (a) The Contractor shall, within ten (10) days of receipt of notice of award, prepare and submit to the Authority and Engineer a schedule for the completion of the Work within the timeframe set forth in the Contract Documents. This progress schedule shall be related to the entire Project; shall include all the Work; and shall meet the time for completion requirements of the Contract. It shall include an allowance for anticipated delay caused by ordinary adverse weather conditions and shall provide for the expeditious and practical execution of the Work within the time requirements of the Contract Documents. The schedule shall set forth as much detail as deemed necessary by the Authority.
- (b) The Authority’s acceptance of the schedule is not a representation or agreement that the schedule is logical or can be performed in the time or sequence indicated, but only that the Authority approves of the construction in that time and in that sequence.

Article 16: SHOP DRAWINGS, PRODUCT DATA and SAMPLES

- (a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instruction, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of Work.
- (c) Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards of quality and esthetics by which the Work will be judged.
- (d) The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Authority or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.
- (e) By preparing and submitting Shop Drawings, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that it has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents.
- (f) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Engineer’s approval of Shop Drawings, Product Data or Samples unless the Contractor had specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation. The Contractor

shall not be relieved from responsibility of errors or omissions in the Shop Drawings, Product Data or Samples by the Engineer's approval thereof.

- (g) The Contractor shall direct specific attention, inviting or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Engineer on previous submittals.
- (h) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Engineer. All such portions of the Work shall be in accordance with approved submittals.

Article 17: MATERIALS, SERVICES, AND FACILITIES

- (a) Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection.
- (b) Manufactured articles, materials, and equipment shall be stored, applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer, and as approved by the Engineer.
- (c) Materials, supplies, and equipment shall be in accordance with samples, shop drawings, and catalogue cuts submitted by the Contractor and approved by the Engineer and Authority.
- (d) Materials, supplies, or equipment to be incorporated into the work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- (e) All Work included in this Contract shall be performed to the standards specified. The Contractor shall employ no plant, equipment, materials, methods or persons to which the Engineer or the Authority reasonably objects, and shall remove no plant, equipment or other facilities from the site of the work without permission of the Engineer and the Authority. The Contractor's failure to comply with these requirements will constitute a breach of Contract and as such may result in a termination of the Contractor by the Authority.

Article 18: INSPECTION AND TESTING

- (a) All materials and equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with generally accepted industry standards and the Legal Requirements as defined in the Contract Documents.
- (b) If the Contract Documents or the Legal Requirements require any part of the Work to specifically be inspected, tested or approved by someone other than the Contractor, the Contractor shall initiate and coordinate those inspections, test, or approvals with the proper authorities and shall give the Engineer and the Authority three (3) working days written notice of each such inspection. The Contractor shall then furnish the Engineer and the Authority with the required certificates of inspection, testing or approval. Unless otherwise specifically provided for, the Contractor shall bear all costs of such inspections, tests or approvals.
- (c) Inspection, test, or approvals by the Engineer or others will not relieve the Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents.
- (d) The Authority, the Engineer and their representatives shall at all times have access to the Work. In addition, authorized representatives and agents of any participating federal, state or local agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. All such records shall remain available and accessible during performance of the Contract and until three years from the date of Final Payment, or, in case of dispute, for a period of three years after resolution of the dispute, whichever is later. The Contractor shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.

- (e) **If any work is covered without the approval of the Engineer contrary to requirements of the Contract Documents, it must, if requested by the Engineer or the Authority, be uncovered for its observation and then recovered at the Contractor's expense.**
- (f) **If the Engineer or the Authority considers it necessary or advisable that approved covered work be inspected or tested by others, the Contractor, at the Engineer's or the Authority's request, shall uncover, expose or otherwise make that portion of the Work available for observation, inspection or testing as the Engineer or the Authority may require. If it is found that such work is defective, the Contractor will bear all the expenses of such uncovering, exposure, and observation as well as all expenses for the inspection, testing, and satisfactory reconstruction of that portion of the Work. If, however, such work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, and an appropriate Change Order will be issued.**

Article 19: SUBSTITUTIONS

- (a) **After the Contract has been executed, the Authority and the Engineer will consider a written request for the substitution of products or materials specified by the Contract Documents. The Authority is not obligated to consider substitutions and such consideration is the Authority's sole discretion. By making requests for substitutions, the Contractor represents and certifies:**
 - (1) **that the Contractor has personally investigated the proposed substitute product or material and determined that it is equal or superior in all respects to that specified by the Contract Documents.**
 - (2) **that the Contractor will provide the Authority with a warranty of the substituted product equal or superior to the warranty furnished in connection with the product or material originally specified by the Contract Documents.**
 - (3) **that the cost data presented is complete and includes all related costs under this Contract and Contractor waives all claims for any additional costs related to the substitution; and**
 - (4) **that the Contractor will coordinate the installation of the substituted product or material and that the Contractor will make all changes necessitated by the use of the substituted product without any additional cost to the Authority.**

Article 20: PATENTS

The Contractor shall pay all applicable royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and save the Authority harmless from loss on account thereof, except that the Authority will be responsible for any such loss when a particular process, design or the product of a particular manufacturer or manufacturers as specified is an infringement of a patent. However, if the Contractor has reason to believe that such particular process, design or product is an infringement, he shall be responsible for such loss unless he gives written notice to the Authority and the Engineer of the possible infringement.

Article 21: SURVEYS, PERMITS, REGULATIONS

- (a) **The Authority will furnish all boundary surveys and establish all baselines for locating the principal component parts of the Work together with suitable number of benchmarks adjacent to the Work as shown in the Contract Documents.**
- (b) **Permits and licenses of a temporary nature necessary for the prosecution of the work, such as building, plumbing, and electrical permits, shall be secured and paid for by the Contractor unless otherwise stated in the Contract Documents. Permits, licenses, and easements for permanent use of structures or permanent changes in existing facilities shall be secured and paid for by the Authority unless otherwise specified.**

- (c) **The Contractor shall give all notices and comply with all permits and the Legal Requirements in the performance of the Work. The Contractor shall promptly notify the Engineer in writing if it comes to its attention that the Contract Documents are at variance with any such requirement.**
- (d) **If any permit, license or certificate expire, be revoked, terminated or suspended because of any act or omission of the Contractor, it shall not be entitled to any additional compensation for direct costs or to an extension of the Contract Time.**
- (e) **Permits obtained by the Authority for this Project are available for inspection in the Authority's offices.**

Article 22: PROTECTION OF WORK, PROPERTY AND PERSONS

- (a) **The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, in compliance with industry standards and the Legal requirements. Contractor shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction. In case of suspension of work for any cause whatever, the contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Work, provide for proper drainage and shall erect any necessary temporary structures, signs, or other facilities at its expense. During such period or suspension of work, the Contractor shall properly and continuously maintain in acceptable growing condition all living material in newly established plantings, seedings, and sodding furnished under this Contract, and shall take adequate precautions to protect new growth and other important growth against injury. Contractor shall also notify owners of adjacent utilities when prosecution of the Work may affect them.**
- (b) **In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in the Contract Documents.**

Article 23: SUPERVISION BY CONTRACTOR

- (a) **The Contractor shall supervise and direct the work. It shall be solely responsible for the means, methods, techniques, sequencers and procedures of construction. The Contractor shall employ and maintain on the work a qualified supervisor or superintendent ("Supervisor") and provide a resume of its experience. This Supervisor shall have been designated in writing as the Contractor's representative at the site and shall not thereafter be changed unless such change is approved by or directed by the Authority. The Authority shall have the right to approve this Supervisor or order its removal from the job site, which right shall not be unreasonably exercised. This Supervisor shall have full authority to act on behalf of the Contractor and all communications given to the Supervisor shall be as binding as if given to the Contractor. This Supervisor shall be present on the site at all times as required to perform adequate supervision, control and coordination of the Work as determined by the Engineer or the Authority.**
- (b) **The Contractor shall be responsible to the Authority for the acts and omissions of its employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.**
- (c) **The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Engineer and the Authority in their administration of the Contract or by inspections, tests, or approvals required or performed by persons other than the Contractor.**
- (d) **Prior to commencing work, the Contractor shall check all work performed by others that is necessary for the execution of the Contractor's work and shall promptly report to the Engineer in**

writing any deficiencies in such work which render it unacceptable or unsuitable for the Contractor's Work or which will increase the cost of the Work. Failure to give such written notice shall relieve the Authority of any responsibility therefore. The Contractor shall be responsible for all elevations, grades, and proper fitting of its Work.

Article 24: CHANGES IN THE WORK

- (a) The Authority, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and the Contract Time being adjusted accordingly. All such changes in Work shall be authorized by written Change Order signed by the Authority and the Engineer, and shall be performed under the applicable conditions of the Contract Documents.
- (b) The cost or credit to the Authority resulting from a change in the Work shall be determined in one or more of the following ways:
- (1) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (2) by unit prices stated in the Contract Documents or subsequently agreed upon;
 - (3) by cost to be determined in a manner agreed upon by the parties and a combined overhead and profit of 15% of such costs if the Contractor performs the work with its own forces, or 15% for the combined overhead and profit of a Subcontractor performing the work with its own forces and 5% for the Contractor; in no event shall the total mark-up for overhead and profit exceed 20% of the cost; or
 - (4) by the method provided in Article 25(c).
- (c) If none of the methods set forth above is agreed upon, the Contractor, provided it receives a Construction Change Directive signed by the Authority, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Engineer on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Article 25(b)(3) above, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data of the costs for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs shall be limited to the following: cost of materials, including sales tax and cost of delivery,, cost of labor, including social security, unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; and rental value of equipment and machinery. The amount of credit to be allowed by the Contractor to the Authority for any deletion or change that results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.
- (d) The Engineer or the Authority also may at any time by issuing a Field Order, make changes in the details of the Work. The Contractor shall proceed with the performance of any changes in the work so ordered and should the Contractor believe that such Field Order entitles it to a change in Contract Price or Time, or both, it shall give the Engineer and the Authority Written Notice thereof within ten days after the receipt of the Field Order. Failure to provide such written notice shall be deemed a waiver of any claims arising from or relating to the Field Order. Failure to proceed with work changed by a Field Order or a Change Order shall constitute a breach of contract and shall be cause for the termination of the Contract. All requests for a Change Order arising out of a Field Order must have a copy of the referenced Field Order attached.
- (e) Where the Work is contracted for on a unit price basis and the actual quantity of work for any pay item exceeds the estimated quantity by more than 25% of that amount stated in the Contract Documents, a Change Order will be issued for any increase or decrease in unit cost, which results

from the increased work. If the quantity variation is such as to cause an increase in the time necessary for completion, the Authority shall, upon receipt of a written request for an extension of time, make an appropriate adjustment for extending the completion date in accordance with Article 26.

Article 25: CHANGES IN THE CONTRACT SUM OR OTHER RELIEF

- (a) **If the Contractor wants to make a claim for an increase in the Contract Sum, or for any other relief under the Contract, it shall give the Engineer and the Authority written notice of the claim within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute any additional Work, except in an emergency endangering life or property. The notice shall set forth the basis for the claim and the relief or increase in the Contract Sum requested by the Contractor. After providing notice of its claim, Contractor shall provide the Authority and the Engineer with any information and/or documents requested by them to evaluate the claim. No such claim shall be valid unless so made. If the Authority and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Engineer in accordance with Article 40(e). Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.**
- (b) **If the Contractor claims that additional cost is required because of, but not limited to,**
 - (1) **any written interpretation of the Contract Documents;**
 - (2) **any order by the Authority to stop the Work where the Contractor was not at fault; or**
 - (3) **any Field Order directed change in the Work; the Contractor shall make such claim as provided in Article 25(a).**

Article 26: TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- (a) **All time limits stated in the Contract Documents are of the essence of the Contract.**
- (b) **The Contractor shall proceed with the Work with the diligence necessary to insure Substantial Completion within the Contract Time. It is expressly understood and agreed by and between the Contractor and the Authority that the Contract Time for the completion of the Work described herein is a reasonable and adequate time, taking into consideration the average climate and economic conditions and other factors prevailing in the locality of the Work.**
- (c) **If the Contractor shall fail to Substantially Complete the Work within the Contract Time, or extension of time granted by the Authority, then the Contractor shall pay to the Authority liquidated damages as specified in the Contract Documents for each calendar day after the date of Substantial Completion until the Work achieves Substantial Completion. Contractor agrees that the amount of liquidated damages is reasonable and waives any right it may have to contest the amount of liquidated damages as being unreasonable or a penalty. If liquidated damages are not set forth in the Contract Documents, Contractor shall be liable to Owner for any loss or damage arising from the Contractor's failure to complete the Work by the date of Substantial Completion.**
- (d) **If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Authority or the Engineer, or by any employee of either, or by any separate contractor employed by the Authority, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, unusual and adverse weather conditions that could not be reasonably anticipated, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Authority, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine.**
- (e) **Any claim for extension of time shall be made in writing to the Engineer and the Authority within (10) days after the commencement of the event giving rise to or causing the claimed delay; otherwise it shall be waived. The notice shall set forth the basis for the extension of time and any other relief requested by the Contractor. After providing notice of its claim, Contractor shall provide the Authority and the Engineer with any information and/or documents requested by them to evaluate**

the claim. In the case of a continuing delay only one notice of claim is necessary. The Contractor shall precisely identify the delay and its cause, and provide an estimate of the probable effect of such delay on the progress of the Work.

- (f) Contractor hereby expressly waives any claims against the Authority and the Engineer for any indirect or direct damages, costs or expenses which the Contractor or its Subcontractors may incur as a result of any delay in the performance of the Contract, except and then only to the extent that the delay is caused by any act or omission of the Authority or the Engineer, or their agents or employees, and is due to causes within their control. In such event, Contractor may seek direct costs arising solely from the delay but shall not be entitled to any indirect costs including, without limitation, home office overhead costs. It is understood and agreed that the Contractor's sole and exclusive remedy in case of any noncompensable delay shall be an extension of the Contract Time, but only as determined in accordance with the provisions of the Contract Documents.
- (g) In the event that Contractor has incurred a delay for which it believes it is entitled to compensation under this Contract, it shall give the Authority written notice of that claim within ten (10) days of the commencement of the delay, and shall identify what it considers to be the cause of and expected duration of the delay.

Article 27: CORRECTION OF WORK

- (a) The Contractor shall promptly remove from the premises all work rejected by the Engineer or the Authority for failure to comply with the Contract Documents whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract Documents and without expense to the Authority and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
- (b) Unauthorized work shall be any work done or materials ordered by the Contractor prior to receipt of the Notice to Proceed, previously rejected work incorporated into the Project, work done contrary to or regardless of the instructions of the Engineer, extra work performed without proper written authority, work done beyond the limits shown on the Plans, except as herein specified, any extra work done without written authority from the Engineer or the Authority, or any work done after discovery of a discrepancy, ambiguity, or inconsistency and before the Engineer provides any necessary instructions to the Contractor. The Authority shall not pay for unauthorized work. Unauthorized work may, at the Authority's sole discretion, be ordered removed or replaced at the Contractor's expense.

Article 28: SUSPENSION OF WORK; THE AUTHORITY'S RIGHT TO STOP AND CARRY OUT THE WORK

- (a) The Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Authority.
- (b) The Authority's Right to Stop the Work

If the Contractor fails to correct defective Work as required, fails to carry out the Work in accordance with the Contract Documents, or if an emergency situation exists that threatens the safety of persons or property, the Authority, in addition to any other remedies it may have, by a written notice direct the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. Contractor shall be liable to the Authority for any loss of damages arising from the stoppage of the Work including, without limitation, any loss or damage arising from a delay in the completion of the Work.

- (c) Authority's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within two (2) days after receipt of written notice from the Authority to commence and continue correction for such default or neglect with diligence and promptness, the

Authority may, after two (2) days following receipt by the Contractor of an additional written notice of its decision to do so, make good such deficiencies without prejudice to any other remedy it may have. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services or other services as may be required and made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Authority. All charges and back charges made against monies otherwise owed to or due to the Contractor shall be deemed accepted unless the Contractor rejects them in writing to the Authority within ten (10) days of receipt and states fully its reasons for rejecting them.

Article 29: TERMINATION

- (a) If the Contractor is adjudged a bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if it fails to supply sufficient skilled workmen or suitable materials or equipment, or if it fails to make prompt payments to subcontractors or for labor, materials or equipment, or if it refuses or fails to prosecute the Work or any separable part thereof, with such diligence as will insure its completion within the Contract Time, or if it fails to complete the Work within the Contract Time required, or if it disregards laws, ordinances, rules, regulations, directions or orders of any public body having jurisdiction over the Work, or if it disregards the authority of the Engineer, or if it otherwise violates any provision of the Contract Documents, then the Authority may, without prejudice to any other right or remedy, seven (7) days after delivery of a written notice to the Contractor and its surety, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method it may deem expedient. In such case, the Contractor will not be entitled to receive any future payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess will be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Authority. Such cost incurred by the Authority will be determined by the Engineer and incorporated in a Change Order.
- (b) If termination for cause by the Authority is deemed to be improper, it shall be deemed a termination for convenience.
- (c) Where the Contractor's services have been so terminated by the Authority, the termination shall not affect any rights the Authority then has or that may thereafter accrue against the Contractor. Any retention or payment of monies by the Authority due the Contractor will not release the contractor from compliance with the Contract Documents.
- (d) **Termination for Convenience**

The Authority may, effective not less than after seven (7) days from delivery of a written notice to the Contractor, without cause and without prejudice to any other rights or remedies it may have, terminate this Construction Contract for its own convenience for any reason. When this Construction Contract has been terminated for convenience, the Contractor shall be paid only for Work performed through the date of termination. The Contractor shall not be entitled to anticipated profits on unperformed portions of the Work.

Article 30: USE OF THE PREMISES

- (a) The Authority will have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work or the restoration of any damaged work, except such as may be caused by agents or employees of the Authority.

- (b) Prior to Substantial Completion, the Authority, with the concurrence of the Contractor, may use any completed or substantially completed portion of the Work. Such use shall not constitute a final acceptance of such portions of the Work unless otherwise stated so in writing.

Article 31: PAYMENTS TO THE CONTRACTOR

- (a) Prior to submitting its first application for payment, the Contractor shall submit to the Authority and the Engineer a schedule of values allocating the costs of the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as may be required by the Authority and the Engineer. This schedule, as approved, shall be used as a basis for Contractor's applications for payment, which shall be submitted on the current edition of the AIA Application and Certification for Payment ("Application for Payment"), AIA Document G702.
- (b) At least twenty days before each progress payment falls due (but not more than once a month), the Contractor, the Engineer, and the Authority shall meet at the Project to determine the percentage of completion of the individual items in the schedule of values. If no agreement is reached, the Contractor shall prepare its Application for Payment using percentages it considers correct. Thereafter, the Contractor shall submit to the Engineer three (3) copies of its completed and signed Applications for Payment covering the work performed during the period of the Application for Payment and supported by such data as the Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the Engineer, as will protect the Authority's interests therein, including applicable insurance. See Article 32(c). The Engineer will, within fifteen days after receipt of each Application for Payment, either certify in writing its approval of payment for an amount based either on the agreed percentages of completion or the percentages the Engineer considers correct and present the Application for Payment to the Authority, or return the Application for Payment to the contractor stating in writing its reasons for refusing to approve payment. If payment has been refused, the Contractor may make the necessary corrections and resubmit the Application for Payment to the Engineer. The Authority will, within thirty days of its receipt of an approved Application for Payment, pay the Contractor a progress payment in the amount certified by the engineer, unless the Authority has reason to refuse payment of that amount in whole or in part, in which event it shall state its reasons in writing to the Contractor. The Authority will retain five (5) percent of the amount of each payment due until final completion and acceptance of all work. However, the Authority may, in its sole discretion, reduce the amount retained to 150% of the value of work remaining when the work is substantially complete. The decision to reduce retainage and the amount of such reduction shall be solely that of the Authority. On completion and acceptance of a part of the Work on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages less authorized deductions. Prior to receiving each payment, and as part of its Applications for Payment, the Contractor shall certify in writing that it has made payment from the proceeds of prior payments and that it will make timely payments from the proceeds of progress and final payment then due it, to its subcontractors and suppliers in accordance with its contractual arrangement with them. If requested by the Authority, the Contractor shall provide evidence of such payments, including affidavits by subcontractors and suppliers.
- (c) The Application for Payment may also include an allowance for the cost of major materials and equipment not yet incorporated in the Work. When requested in writing by the Contractor and approved in writing by the Authority, payment will be made for nonperishable major material and equipment delivered and properly stored at the Work site or other approved site. Material for which payment has been made, wholly or partially, shall not be removed from the Work site or other approved site unless authorized by the Authority in writing.
- (d) The Contractor shall indemnify and save the Authority and its agents harmless from all losses, damages, liabilities, including attorney's fees, arising out of the demands of Subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the Work. The Contractor shall, at the Engineer's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so, the Authority may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims

until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor will be resumed in accordance with the terms of the Contract Documents. In no event, however, shall the provisions of the foregoing sentence be construed to impose any obligations upon the Authority to either the Contractor, its Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Authority will be considered as a payment made under the Contract Documents by the Authority to the Contractor and the Authority will not be liable to the Contractor for any such payments in good faith.

- (e) If the Authority fails to make a payment when due under the terms of this Contract, interest shall accrue on monies due and owing at the rate of 3% per annum commencing sixty (60) days after the date the payment was due.
- (f) The Authority may reduce in whole or in part any approved Application for Payment, whether or not it has been paid, to the extent necessary to protect the Authority from loss because of:
 - (1) defective Work not remedied;
 - (2) failure to timely or properly pay Subcontractors;
 - (3) evidence that the Work cannot be completed for the amount remaining to be paid; or
 - (4) damage to the Authority;
 - (5) a persistent failure to carry out the Work in accordance with the Contract Documents.

Article 32: SUBSTANTIAL COMPLETION OF THE WORK

- (a) When the Contractor considers that the Work or, if agreed to by the Authority, a designated portion thereof is Substantially Complete as defined in Article 1, the Contractor shall prepare for submission to the Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Engineer on the basis of its inspection determines that the Work or designated portion thereof is Substantially Complete, it will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Authority and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Authority and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.
- (b) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Engineer, the Authority shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

Article 33: FINAL COMPLETION AND FINAL PAYMENT

- (a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract fully performed, it will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance stated therein is due and payable to the Contractor. If the Contractor has completed all of the requirements and conditions, Final Payment shall be made within 30 days of receipt of the Contractor's Application. The Engineer's Final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Article 32(b) have been fulfilled.

- (b) Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) if required by the Authority, other data establishing payment or satisfaction of all such obligations, such as receipts, release and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Authority, (4) two (2) binders containing all product and equipment manuals, warranties and guarantees, and (5) as-built drawings. If any Subcontractor refuses to furnish a release or waiver required by the Authority, the Contractor may furnish a bond satisfactory to the Authority to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Authority all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- (c) If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Engineer so confirms, the Authority shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance of the Contract Sum is less than the retainage stipulated in the Contract Documents, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall then be made under the terms and conditions governing final payment. However, that payment shall not constitute a waiver of any claims the Authority may then or thereafter have.
- (d) The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing, properly reserved pursuant to these General Conditions, and identified by the Contractor as unsettled at the time of the final Application for Payment. Such contractual claims, whether for money or other relief, shall be submitted in writing not later than 60 days after final payment. The Authority's Capital Programs Director shall review such contractual claims and issue a final decision in writing within 90 days after receipt.

Article 34: INSURANCE

(a) Contractor's Liability Insurance

The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;
- (2) claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;
- (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- (4) claims for damages insured by usual personal injury liability coverage, which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- (5) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and
- (6) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- (1) Premises Operations (including X, C and U coverage);
- (2) Independent Contractor's Protective;
- (3) Products and Completed Operations;
- (4) Personal Injury Liability with Employment Exclusions deleted;
- (5) Contractual, including provisions for indemnity obligations under this Agreement;
- (6) Owned, non-owned and hired motor vehicles;
- (7) Broad Form Property Damage including Completed Operation

Contractor shall have and maintain the following insurance in the amounts set forth below unless otherwise agreed to by the Owner in writing:

- (1) Workers' Compensation Insurance in an amount as required by state law.
Employer's Liability with a minimum limit of \$500,000 per occurrence for bodily injury.
- (2) Commercial General Liability Insurance including coverage for bodily injury, property damage, contractual liability and products/completed operations with a minimum coverage of \$5,000,000 per occurrence and \$5,000,000 in the aggregate. Property damage coverage shall include coverage for explosion, collapse and underground hazards. Coverage for products/completed operations shall extend for a period of three (3) years after the date of substantial completion.
- (3) Comprehensive Automobile Liability Insurance for bodily injury and property damage with a minimum coverage of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.
- (4) Excess or Umbrella insurance supplementing coverage under the Commercial General Liability, Comprehensive Automobile Liability Insurance and Employer's Liability Insurance policies with a minimum coverage of \$5,000,000 per occurrence and \$5,000,000 in the aggregate

The Contractor shall endorse the Authority on its insurance policy as an additional insured to protect the interests of the public. Certificates of Insurance and Additional Insured Endorsements acceptable to the Authority shall be filed with the Authority prior to commencement of the Work. These Certificates and Endorsements shall contain a provision that coverages afforded under the policies will not be cancelled until at least thirty days prior written notice has been given to the Authority. Insurance certificates must include an additional insured endorsement naming the following as an additional insured: "The Northern Virginia Regional Park Authority, its officers, directors, agents, employees, and volunteers." The endorsement must be completed on endorsement form CG 20 10 11 85 or CG 20 10 07 04 or such other form acceptable to the Authority.

(b) The Authority's Liability Insurance

The Authority shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims that may arise from operations under the Contract.

(c) Property Insurance

Unless otherwise provided, the Authority shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Authority, the Contractor, Subcontractors, and Sub-subcontractors in the Work and shall

insure against the perils of fire and extended coverage and shall include “all risk” insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If the Authority does not intend to purchase such insurance for the full insurable value of the entire Work, it shall inform the Contractor in writing prior to commencement of the Work. The Contractor may then affect insurance that will protect the interests of itself, its Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Authority. If not covered under the all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment.

- (d) The Authority shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the Authority, the Contractor, Subcontractor and Sub-subcontractors in the Work
- (e) Any loss insured under Article 34(c) is to be adjusted with the Authority and made payable to the Authority as trustee for the insured’s, as their interests may appear. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its Sub-subcontractors in similar manner.
- (f) If the Contractor requests in writing that insurance for risks other than those described in Article 34(c) or (d) or other special hazards be included in the property insurance policy, the Authority may, if possible and in its sole discretion, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- (g) The Authority and the Contractor waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees each of the other, and (2) the Engineer and separate contractors, if any, and their subcontractors, sub-contractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to Article 34(c) or (d) or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Engineer as trustee. The foregoing waiver afforded the Engineer, its agents and employees shall not extend to the liability imposed by Article 36(a). The Authority or the Contractor, as appropriate, shall require of the Engineer, separate contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Article 34(g).
- (h) If required in writing by the Contractor, the Authority as trustee shall, upon the occurrence of an insured loss, deposit in a separate account any money so received, and shall distribute it in accordance with the interests of the parties. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.
- (i) The Authority as trustee shall have power to adjust and settle any loss with the insurers.
- (j) If the Authority finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the Authority and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be cancelled or lapsed on account of such partial occupancy or use. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

Article 35: ASSIGNMENTS

Neither the Contractor nor the Authority shall sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of its rights, title, or interest therein, or its obligations thereunder, without written consent of both parties.

Article 36: INDEMNIFICATION

- (a) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Authority, the Engineer and their agents, officers, directors and employees from and against all claims, damages, losses and expense, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Article.
- (b) In any and all claims against the Authority or the Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit act.
- (c) The Authority shall retain such monies due or to become due the Contractor under the Contract as considered necessary by the Authority until such suits, claims for damages costs or losses have been settled or otherwise disposed of or satisfactory evidence to that effect has been furnished to the Authority.

Article 37: CONTRACTOR LIABILITY

The Contractor shall be liable to Authority for all costs the Authority incurs as a result of the Contractor's failure to perform this Contract in accordance with its terms. The Contractor's failure to perform shall include the failure of its suppliers and or Subcontractors of any tier to perform. Contractor's liability shall include, but not be limited to, (1) damages, liquidated damages, and other delay costs payable to the Authority; (2) the Authority's increased costs of performance, such as extended overhead and increased performance costs resulting from Contractor-caused delays, improper Contractor work, or termination of the Contractor; (3) warranty and rework costs; (4) liability to third parties; (5) excess costs; and (6) attorney's fees and related costs.

Article 38: SEPARATE CONTRACTS

- (a) The Authority reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The commencement of work by the Contractor shall indicate an acceptance of the previous contractor's work.
- (b) The Authority may perform additional work related to the Project by itself, or it may let other contracts containing provisions similar to these. The Contractor shall afford the other contractors who are parties to such contracts, the Authority, if it is performing the additional work itself, reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate it Work with theirs.
- (c) If the performance of additional work by other contractors or the Authority is not specified in the Contract Documents prior to the execution of the Contract, Written Notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Authority or others will result in additional expense to the Contractor or entitle it to an extension of the Contract Time, it may make a claim therefore as provided in Articles 25, 26 and 27.

Article 39: SUBCONTRACTING

- (a) **The Contractor may utilize the services of Subcontractors – which will have been approved by the Authority prior to commencement of the work – on those parts of the Work that, under normal contracting practices are performed by Subcontractors. The Contractor shall submit a list of proposed Subcontractors prior to commencement of the Work for the Authority’s review and approval. The Contractor shall not employ a Subcontractor to which the Authority may object. The Authority shall not withhold its approval unreasonably.**
- (b) **The Contractor shall not award work to a single Subcontractors in excess of 50 percent of the Contract Price without prior written approval of the Authority.**
- (c) **The Contractor shall be fully responsible to the Authority for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of person directly employed by it. The Contractor shall be fully responsible for the coordination of the work of the trades, Subcontractors and suppliers, and their officers, agents and employees.**
- (d) **By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by the Contract Documents, assumes toward the Authority and the Engineer. The agreement shall preserve and protect the rights of the Authority and the Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by these Documents, has against the Authority. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph and identify to the Subcontractor any terms and conditions of the proposed Subcontract that may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Sub-subcontractors.**
- (e) **Nothing contained in the Contract Documents shall create any contractual arrangement between any Subcontractor and the Authority.**
- (f) **Within seven (7) days after receipt of amounts paid to it, contractor shall either:**

 - (1) **Pay its subcontractors for the proportionate share of the total payment received attributable to the work performed by the subcontractor under the contract; or**
 - (2) **Notify the Authority and subcontractor in writing of his intentions to withhold all or part of the subcontractor’s payment with the reasons for the nonpayment.**
- (g) **Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor that the contractor is subject to in subparagraph (f) and Article 32(e).**

Article 40: ENGINEER

- (a) **The Engineer will act as the Authority’s representative during the construction period and until final payment.**
- (b) **The Engineer will visit the site at intervals appropriate to the stage of construction to familiarize itself and determine in general if the work is proceeding in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of its on-site observations, it will keep the**

Authority informed of the progress of the Work, and will endeavor to guard the Authority against defects and deficiencies in the Work of the Contractor.

- (c) The Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and it will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work. This Article shall in no way change the Engineer's responsibilities or liability to Authority.
- (d) The Engineer will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make a written request to the Engineer for such interpretations.
- (e) Claims, disputes, and other matters in question between the Contractor and the Authority relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Engineer for decision, which it will render in writing within a reasonable time. Unless the Contractor provides written notice to the Authority and the Engineer of any objection to the Engineer's decision, the Engineer's decision shall be final and binding.
- (f) All interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. The Engineer will endeavor to secure faithful performance by both the Authority and The Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.
- (g) The Engineer's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents and agreed to by the Authority.
- (h) The parties agree to perform the Work, accept the interpretation or otherwise follow the decision of the Engineer so as to not delay the progress of the Work. Notwithstanding this provision, the Authority may stop the Work pending a judicial review of the Engineer's decision.
- (i) The Engineer will have authority to reject Work, which does not conform to the Contract Documents.
- (j) The Engineer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (k) The Engineer will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the Authority for the Authority's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Article 34.
- (l) Notwithstanding any other provision to the contrary, Article 40(e) to (h) shall not apply to this project if there IS no Project Engineer.

Article 41: WARRANTY

- (a) The Contractor warrants to the Authority and the Engineer that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be performed in a good and workmanlike manner and will be of good quality, free from faults and defects and in conformance with the Contract Documents and the Legal Requirements. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence of the kind and quality of materials and equipment.

- (b) The Contractor shall promptly correct all Work rejected by the Engineer as defective or as failing to conform to the Contract Documents whether observed before or after substantial Completion and whether or not fabricated, installed, or completed. The Contractor shall bar all costs of correcting such rejected Work, including compensation for the Engineer's additional services made necessary thereby.
- (c) If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Authority of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Authority to do so unless the Authority has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Authority shall give such notice promptly after discovery of the condition.

Article 42: CONTRACTUAL DISPUTES

Contractual claims, whether for money or for other relief, shall be submitted in writing not later than (60) sixty days after final payment; however, written notice of the Contractor's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. A written decision upon any such claims will be made by the Authority within thirty (30) days after submittal. The Contractor may not institute legal action prior to receipt of the Authority's decision on the claim unless it fails to render such decision within 120 days. The decision of the Capital Programs Director or other signatory on the Contract shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in § 2.2-4364 of the Code of Virginia. Failure of the Authority to render a decision within 120 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Authority's failure to render a decision within the time allotted shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia has established for contractual claims under this Contract.

Revised 12/10/13

SECTION #5

VDOT Supplemental Specifications, Special Provisions, and Special Provision Copied Notes

VDOT SUPPLEMENTAL SPECIFICATIONS (SSs), SPECIAL PROVISIONS (SPs) AND SPECIAL PROVISION COPIED NOTES (SPCNs)

Where Virginia Department of Transportation (VDOT) Supplemental Specifications, Special Provisions and Special Provision Copied Notes are used in this contract, the references therein to “the Specifications” shall refer to the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2007 for both imperial and metric unit projects. References to the “Road and Bridge Standard(s)” shall refer to the *Virginia Department of Transportation Road and Bridge Standards*, dated 2008 for both imperial and metric unit projects. References to the “Virginia Work Area Protection Manual” shall refer to the 2011 edition of the *Virginia Work Area Protection Manual with Revision Number 1* incorporated, dated April 1, 2015 for imperial and metric unit projects. References to the “MUTCD” shall refer to the 2009 edition of the *MUTCD with Revision Numbers 1 and 2* incorporated, dated May 2012; and the 2011 edition of the *Virginia Supplement to the MUTCD with Revision Number 1* dated September 30, 2013 for imperial and metric unit projects.

Where the terms “Department”, “Engineer” and “Contract Engineer” appear in VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes used in this contract and the VDOT publication(s) that each references, the authority identified shall be in accordance with the definitions in Section 101.02 of the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2007. Authority identified otherwise for this particular project will be stated elsewhere in this contract.

VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes used in this contract and the VDOT publication(s) that each reference are intended to be complementary to the each other. In case of a discrepancy, the order of priority stated in Section 105.12 of the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2007 shall apply.

VDOT Special Provision Copied Notes in this contract are designated with “(SPCN)” after the date of each document. VDOT Supplemental Specifications and Special Provision Copied Notes in this contract are designated as such above the title of each document.

The information enclosed in parenthesis “()” at the left of each VDOT Special Provision Copied Note in this contract is file reference information for VDOT use only. The information in the upper left corner above the title of each VDOT Supplemental Specification and VDOT Special Provision in this contract is file reference information for VDOT use only.

The system of measurement to be used in this project is stated elsewhere in this contract. VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes containing imperial units of measure with accompanying expressions in metric units shall be referred to hereinafter as “dual unit measurement” documents. Such a “dual unit measurement” is typically expressed first in the imperial unit followed immediately to the right by the metric unit in parenthesis “()” or brackets “[]” where parenthesis is used in the sentence to convey other information. Where a “dual unit measurement” appears in VDOT documents, the unit that applies shall be in

accordance with the system of measurement as stated elsewhere in this contract. The unit shown that is not of the declared unit of measurement is not to be considered interchangeable and mathematically convertible to the declared unit and shall not be used as an alternate or conflicting measurement. Where VDOT Specifications are used for metric unit projects and only imperial units of measurement appear the document, the provision(s) in this contract for imperial unit to metric unit conversion shall apply.

6-10-15 (SPCN)

(c102r00-0116)

COMPLIANCE WITH THE CARGO PREFERENCE ACT – As required by 46 CFR 381.7 (a)-(b) "Use of United States-flag vessels, when materials or equipment are acquired for a specific highway project, the Contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States. a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

This requirement will not be applicable when materials or equipment used on the Project are obtained from the existing inventories of suppliers and contractors; they are only applicable when the materials or equipment are acquired for the specific project, and have been transported by ocean vessel.

12-14-15 (SPCN)

(c103i01-0814)

SECTION 103—AWARD AND EXECUTION OF CONTRACTS of the Specifications is amended as follows:

Section 103.09—Execution of Contract is amended to include the following:

According to Section 2.2-4308.2 of the *Code of Virginia*, any employer with more than an average of 50 employees for the previous 12 months

entering into a contract in excess of \$50,000 with the Department to provide work or provide services pursuant to such contract shall register and participate in the U.S. Department of Homeland Security's "E-Verify" system to verify information and work authorization of its newly hired employees performing work pursuant to such contract.

Contractors are not required to be enrolled with "E-Verify" at the time bids are submitted, however, prior to award, the lowest responsive and responsible bidder must be enrolled with "E-Verify". Contractors may use the following website to enroll in "E-Verify", <http://www.uscis.gov/e-verify>.

8-8-14 (SPCN)

PERSONNEL REQUIREMENTS FOR WORK ZONE TRAFFIC CONTROL - Section 105 and 512 of the Specifications are amended as follows:

Section 105.14—Maintenance During Construction is amended to add the following:

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

The Department's Intermediate Work Zone Traffic Control trained person or an ATSSA Virginia Intermediate TCS can oversee multiple/separate work locations but shall be on site within 60 minutes of notification to oversee changes made to temporary traffic control otherwise the Engineer will suspend that maintenance operation until that operation is appropriately staffed in accordance with the requirements herein.

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

In the event none of the Contractor's personnel on the project site have, at a minimum, the required Basic Work Zone Traffic Control verification, the Engineer will suspend that construction/maintenance operation until that operation is appropriately staffed in accordance with the requirements herein.

Section 512.03 Procedures is amended to add (r) **Work Zone Traffic Control** as the following:

- (r) **Work Zone Traffic Control:** The Contractor shall provide individuals trained in Work Zone Traffic Control in accordance with the requirements of Section 105.14 of the Specifications.

Section 512.04 Measurement and Payment is amended to add the following:

Basic Work Zone Traffic Control – Separate payment will not be made for providing a person to meet the requirements of Section 105.14 of the Specifications. The cost thereof shall be included in the price of other appropriate pay items.

Intermediate Work Zone Traffic Control - Separate payment will not be made for providing a person to meet the requirements of Section 105.14 of the Specifications. The cost thereof shall be included in the price of other appropriate pay items.

11-24-15a (SPCN)

(c105hf1-0309) **SECTION 105.06 SUBCONTRACTING** of the Specifications is amended to include the following:

Any distribution of work shall be evidenced by a written binding agreement on file at the project site. Where no field office exists, such agreement shall be readily available upon request to Department inspector(s) assigned to the project.

The provisions contained in Form FHWA-1273 specifically, and other federal provisions included with the prime Contract are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into all contracts, as well as, appropriate subcontracts for work so as to be binding in those agreements.

12-19-08 (SPCN)

PREDETERMINED MINIMUM WAGE RATES

General Decision Number: VA160135 01/08/2016 VA135

Superseded General Decision Number: VA20150135

State: Virginia

Construction Type: Highway

Counties: Alexandria*, Arlington, Clarke, Culpeper, Fairfax, Fairfax*, Falls Church*, Fauquier, Fredericksburg*, King George, Loudoun, Manassas Park*, Manassas*, Prince William, Spotsylvania, Stafford and Warren Counties in Virginia.

*INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any

classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/08/2016

SUVA2013-010 09/20/2013

	Rates	Fringes
ASBESTOS WORKER.....	\$ 16.91	
CARPENTER (STRUCTURE).....	\$ 16.02	
CEMENT MASON/CONCRETE FINISHER....	\$ 21.71	
ELECTRICIAN.....	\$ 29.27	
FORM SETTER.....	\$ 14.00	
IRONWORKER, REINFORCING.....	\$ 34.18	

IRONWORKER, STRUCTURAL.....\$ 19.13

LABORER

Asphalt Raker.....\$ 15.85

Blaster.....\$ 35.00

Construction Worker I
(Skilled Laborer).....\$ 15.77

Construction Worker II
(Laborer).....\$ 14.14

Deckhand.....\$ 13.00

Fence Erector.....\$ 14.41

Flagger.....\$ 13.64

Grade Checker.....\$ 13.42

Guardrail Erector.....\$ 22.15

Landscape Worker.....\$ 11.97

Pipe Layer.....\$ 19.00

Power Tool Operator.....\$ 15.00

Sign Erector.....\$ 25.00

MASON (STRUCTURE).....\$ 17.64

PAINTER.....\$ 15.00

PLUMBER.....\$ 25.00

POWER EQUIPMENT OPERATOR:

Air Compressor.....	\$ 13.50
Asphalt Distributor.....	\$ 18.64
Asphalt Paver.....	\$ 19.35
Backhoe.....	\$ 20.59
Boom/Auger.....	\$ 20.29
Bulldozer (Utility).....	\$ 15.50
Bulldozer.....	\$ 20.40
Concrete Finish Machine Operator.....	\$ 18.54
Concrete Finisher Machine Screed Operator (Bridge)....	\$ 14.60
Concrete Paving Machine Operator.....	\$ 20.75
Concrete Pump Operator.....	\$ 33.00
Concrete Saw Operator.....	\$ 16.00
Crane, Derrick, Dragline (1 cm & under).....	\$ 24.53
Crane, Derrick, Dragline (over 1 cm).....	\$ 25.00
Crusher Tender.....	\$ 14.25
Drill Operator.....	\$ 15.70
Excavator (Gradall).....	\$ 19.32
Front End Loader (2 cm & under).....	\$ 19.00
Front End Loader (over 2 cm).....	\$ 20.42
Hydro Seeder.....	\$ 17.13

Log Skidder Operator.....	\$ 18.50
Mechanic.....	\$ 21.75
Mobile Mixer.....	\$ 17.00
Motor Grader (Fine Grade)...	\$ 27.25
Motor Grader (Rough Grade)..	\$ 13.58
Oiler, Greaser.....	\$ 14.00
Pavement Marking Operator...	\$ 17.00
Pavement Marking Truck Operator.....	\$ 16.72
Pavement Planing Groundman..	\$ 19.75
Pavement Planing Operator...	\$ 19.25
Pile Driver Operator.....	\$ 20.35
Pile Driver, Leadsman.....	\$ 21.32
Pipe Boring/Jacking Machine Operator.....	\$ 16.00
Plant Operator.....	\$ 14.88
Roller (Finish).....	\$ 17.94
Roller (Rough).....	\$ 17.06
Scraper Pan Operator.....	\$ 13.00
Shot Blast Machine Operator..	\$ 16.02
Shovel Operator (2 yds and under).....	\$ 16.00
Shovel Operator (over 2 yds).....	\$ 25.00
Slip-Form Paver.....	\$ 21.00
Slurry Seal Paver Machine Operator.....	\$ 13.75

Slurry Seal Paver Truck

Operator.....	\$ 10.32
Stabilizer Operator.....	\$ 15.70
Stone-Spreader.....	\$ 13.35
Subgrade Machine Operator....	\$ 19.00
Tractor Operator, Crawlers..	\$ 12.47
Tractor Operator, Utility....	\$ 12.25
Trenching Machine.....	\$ 29.87
Vacuum Machine.....	\$ 18.20

TRAFFIC SIGNALIZATION:

Traffic Signal Installation.....	\$ 21.16
----------------------------------	----------

TRUCK DRIVER

Fuel & Lubricant Service

Truck Driver.....	\$ 17.73
Transit Mix Truck Driver....	\$ 15.00
Truck Driver (Multi-Rear Axle).....	\$ 16.69
Truck Driver (Single Rear Axle).....	\$ 17.50
Truck Driver (Tandem Rear Axle).....	\$ 16.91
Truck Driver, Heavy Duty....	\$ 17.29

WELDER.....	\$ 18.15
-------------	----------

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates

the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

END OF GENERAL DECISION.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON
DECISION OF THE SECRETARY

This case is before the Department of Labor pursuant to a request for a wage predetermination as required by law applicable to the work described.

A study has been made of wage conditions in the locality and based on information available to the Department of Labor the wage rates and fringe payments listed are hereby determined by the Secretary of Labor as prevailing for the described classes for labor in accordance with applicable law.

This wage determination decision and any modifications thereof during the period prior to the stated expiration date shall be made a part of every contract for performance of the described work as provided by applicable law and regulations of the Secretary of Labor, and the wage rates and fringe payments contained in this decision, including modifications, shall be the minimums to be paid under any such contract and subcontractors on the work.


The contracting officer shall require that any class of laborers and mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for determination.

Before using apprentices on the job the contractor shall present to the contracting officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration by the U.S. Bureau of Apprenticeship and Training.

The contractor shall submit to the contracting officer written evidence of the established apprentice-journeyman ratios and wage in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions.

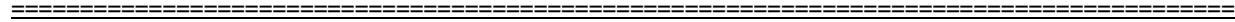
Fringe payments include medical and hospital care, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance (all designated as health and welfare), pensions, vacation and holiday pay, apprenticeship or other similar programs and other bona fide fringe benefits.

By direction of the Secretary of Labor



E. Irving Manger, Associate Administrator
Division of Wage Determinations
Wage and Labor Standards Administration

The following Form **FHWA-1273** titled **REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS** shall apply to this contract:



FHWA-1273 – Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

- 1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The

design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth

under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

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

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

- 4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

- 5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

- 6. **Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

- 8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
- 9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
- 10. Assurance Required by 49 CFR 26.13(b):**
- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
- 11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
- a. The records kept by the contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
 - b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This

information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. Davis-Bacon and Related Act Provisions

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are

deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (I) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (II) The classification is utilized in the area by the construction industry; and
 - (II) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (I) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (II) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (III) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
 - a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards

(29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local)

transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred,

suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Participants:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

Females- 6.9%

Minorities - See Attachment "A"

The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 workings days the award of any construction subcontract in excess of \$10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As, used in this provision:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.
 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
 6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
 7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by

recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even though the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT A

<u>Economic Area</u>	<u>Goal (Percent)</u>
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll;	
VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland;	
VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski;	
VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena	
Vista:	
VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg;	
VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro;	
WV Pendleton.	
022 Richmond, VA	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell;	
VA Petersburg.	
6760 Richmond, VA	24.9

	VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
	Non-SMSA Counties	27.9
	VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023	Norfolk - Virginia Beach - Newport News VA:	
	SMSA Counties:	
	5680 Newport News- Hampton, VA	27.1
	VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.	
	5720 Norfolk - Virginia Beach - Portsmouth, VA - NC	26.6
	NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
	Non-SMSA Counties	29.7
	NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.	
Washington, DC:		
020	Washington, DC.	
	SMSA Counties:	
	8840 Washington, DC - MD - VA	28.0
	DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William VA Alexandria; VA Fairfax City; VA Falls Church.	
	Non- SMSA Counties	25.2
	MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:		
052	Johnson City - Kingsport - Bristol, TN - VA	
	SMSA Counties:	
	3630 Johnson City - Kingsport -Bristol, TN-VA	2.6
	TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott: VA Washington; VA Bristol.	
	Non-SMSA Counties	3.2
	TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.	
Maryland:		
019	Baltimore MD	
	Non-SMSA Counties	23.6
	MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.	

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 105.06–SUBCONTRACTING
(FEDERAL FUNDED PROJECTS)

August 19, 2015a

SECTION 105.06–SUBCONTRACTING of the Specifications is amended to include the following:

According to Commonwealth of Virginia Executive Order 20, the Contractor is encouraged to seek out and consider Small, Women-owned, and Minority-owned (SWaM) businesses certified by the Department of Small Business and Supplier Diversity (DSBSD) as potential subcontractors and vendors. Further, the Contractor shall furnish and require each subcontractor (first-tier) to furnish information relative to subcontractor and vendor involvement on the project.

For purposes of this provision, the term “vendor” is defined as any consultant, manufacturer, supplier or hauler performing work or furnishing material, supplies or services for the contract. The Contractor and, or subcontractor (first-tier) must insert this provision in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). The applicable requirements of this provision are incorporated by reference for work done by vendors under any purchase order, rental agreement or agreement for other services for the contract. The Contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or vendor.

The submission of a bid will be considered conclusive evidence that the Contractor agrees to assume these contractual obligations and to bind subcontractors contractually to the same at the Contractor’s expense.

When an approved Form C-31 “Subletting Request” is required according to IIM-CD-2013-06.01, the Contractor shall indicate on the Subletting Request if a subcontractor is a certified DBE or SWAM business.

The Contractor shall report all SWAM, and Non-SWAM/DBE vendor payments annually on June 30th (if not a business day, then the next business day), and within 30 days after final acceptance of the work, to the District Civil Rights Section. The Contractor shall provide the information in a format consistent with revised Form C-61 Vendor Payment Report, subject to the approval of the Engineer.

DBE Participation and reporting shall be in accordance with the Special Provision for Section 107.15 (Use of Disadvantaged Business Enterprises). The Contractor shall provide the information in a format consistent with Form C-63 Vendor Payment Compliance Report.

If the Contractor fails to provide the required information, the Department may delay final payment according to Specification Section 109.10 of the Specifications.

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 107.15

December 10, 2010

Section 107.15 of the Specifications is replaced by the following:

Section 107.15—Use of Disadvantaged Business Enterprises (DBEs)

A. Disadvantaged Business Enterprise (DBE) Program Requirements

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

For the purposes of this provision, Contractor is defined as the Prime Contractor of the contract; and sub-contractor is defined as any DBE supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Contractor shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

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

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

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

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

B. DBE Certification

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Minority Business Enterprise (DMBE) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Minority Business Enterprise and the Metropolitan Washington Airports Authority Internet websites: <http://www.dmbv.virginia.gov/> ; <http://mwaa.com/362.htm>

C. Bank Services

The Contractor and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit. Such information is available from the VDOT's Internet Civil Rights Division website: <http://insidevdot/C7/Civil%20Rights/default.aspx>

D. DBE Program-Related Certifications Made by Bidders\Contractors

By submitting a bid and by entering into any contract on the basis of that bid, the bidder/Contractor certifies to each of the following DBE Program-related conditions and assurances:

1. That the management and bidding officers of its firm agree to comply with the bidding and project construction and administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.
2. Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the contract.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a bidder and a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders is prohibited.
4. As a bidder, good faith efforts were made to obtain DBE participation in the proposed contract at or above the goal for DBE participation established by VDOT. It has submitted as a part of its bid true, accurate, complete, and detailed documentation of the good faith efforts it performed to meet the contract goal for DBE participation. The bidder, by signing and submitting its bid, certifies the DBE participation information submitted within the stated time thereafter is true, correct, and complete, and that the information provided includes the names of all DBE firms that will participate in the contract, the specific line item(s) that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE. The specific line item must reference the VDOT line number and item number contained in the proposal.

5. The bidder further certifies, by signing its bid, it has committed to use each DBE firm listed for the specific work item shown to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the bid, the bidder certifies on work that it proposes to sublet; it has made good faith efforts to seek out and consider DBEs as potential subcontractors. The bidder shall contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents.
6. Once awarded the contract, the Contractor shall make good faith efforts to utilize DBE firms to perform work designated to be performed by DBEs at or above the amount or percentage of the dollar value specified in the bidding documents. Further, the Contractor understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Contractor's own forces or those of an affiliate of the Contractor without the prior written consent of VDOT as set out within the requirements of this provision.
7. Once awarded the contract, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBEs. The designation and identity of this officer need be submitted only once by the Contractor during any twelve (12) month period at the preconstruction conference for the first contract the Contractor has been awarded during that reporting period. The Department will post such information for informational and administrative purposes at VDOT's Internet Civil Rights Division website.
8. Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract regulations and/or requirements have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.
9. In the event a bond surety assumes the completion of work, if for any reason VDOT has terminated the prime Contractor, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original prime Contractor in accordance with the requirements of this specification.

E. Disqualification of Bidder

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge Specifications.

F. Bidding Procedures

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

1. **Contract Goal, Good Faith Efforts Specified:** All bidders evidencing the attainment of DBE goal commitment equal to or greater than the required DBE goal established for the project must submit completed Form C-111, Minimum DBE Requirements, and Form C-48, Subcontractor/Supplier Solicitation and Utilization, as a part of the bid documents.

Form C-111 may be submitted electronically or may be faxed to the Department, but in no case shall the bidder's Form C-111 be received later than 10:00 a.m. the next business day after the time stated in the bid proposal for the receipt of bids. Form C-48 must be received within ten (10) business days after the bid opening.

If, at the time of submitting its bid, the bidder knowingly cannot meet or exceed the required DBE contract goal, it shall submit Form C-111 exhibiting the DBE participation it commits to attain as a part of its bid documents. The bidder shall then submit Form C-49, DBE Good Faith Efforts Documentation, within two (2) business days after the bid opening.

The lowest responsive and responsible bidder must submit its properly executed Form C-112, Certification of Binding Agreement, within three (3) business days after the bids are received. DBEs bidding as prime contractors are not required to submit Form C-112 unless they are utilizing other DBEs as subcontractors.

If, after review of the apparent lowest bid, VDOT determines the DBE requirements have not been met, the apparent lowest successful bidder must submit Form C-49, DBE Good Faith Efforts Documentation, which must be received by the Contract Engineer within two (2) business days after official notification of such failure to meet the aforementioned DBE requirements.

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

Instructions for submitting Form C-111 can be obtained from the VDOT website at:
http://www.virginiadot.org/business/resources/const/Exp_DBE_Commitments.pdf

2. **Bid Rejection:** The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid.

If the lowest bidder is rejected for failure to submit the required documentation in the specified time frames, the Department may award the work to the next lowest bidder, or re-advertise the proposed work at a later date or proceed otherwise as determined by the Commonwealth.

3. **Good Faith Efforts Described:** In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

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

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

for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal for DBE participation;

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

G. Documentation and Administrative Reconsideration of Good Faith Efforts

During Bidding: As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, the bidder must provide Form C-49, DBE Good Faith Efforts Documentation, of its efforts made to meet the DBE contract goal as proposed by VDOT within the time frame specified in this provision. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firms participation in the proposed contract work.

However, regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed forms C-111, C-112, C-48, and C-49, as aforementioned, or face potential bid rejection.

If a bidder does not submit its completed and executed forms C-111, or C-112, when required by this Special Provision, the bidder's bid will be considered non-responsive and may be rejected.

Where the Department upon initial review of the bid results determines the apparent low bidder has failed or appears to have failed to meet the requirements of the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision and has failed to adequately document that it made a good faith effort to achieve sufficient DBE participation as specified in the bid proposal, that firm upon notification of the Department's initial determination will be offered the opportunity for administrative reconsideration before VDOT rejects that bid as non-responsive. The bidder shall address such request for reconsideration in writing to the Contract Engineer within five (5) business days of receipt of notification by the Department and shall be given the opportunity to discuss the issue and present its evidence in person to the Administrative Reconsideration Panel. The Administrative Reconsideration Panel will be made up of VDOT Division Administrators or their designees, none of who took part in the initial determination that the bidder failed to make the goal or make adequate good faith efforts to do so. After reconsideration, VDOT shall notify the bidder in writing of its decision and explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. The Contractor is still encouraged to seek additional DBE participation during the life of the contract.

However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

During the Contract: If a DBE, through no fault of the Contractor, is unable or unwilling to fulfill his agreement with the Contractor, the Contractor shall immediately notify the Department and provide all relevant facts. If a Contractor relieves a DBE subcontractor of the responsibility to perform work under their subcontract, the Contractor is encouraged to take the appropriate steps to obtain a DBE to perform an equal dollar value of the remaining subcontracted work. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the performance of the contract.

If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, and the Contractor has not taken the preceding actions, the Contractor and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as conformance with the schedule of DBE participation is achieved.

Project Completion: If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the State Construction Engineer to substantiate that failure was due solely to quantitative underrun(s), elimination of items subcontracted to DBEs, or to circumstances beyond their control, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to enjoin the Contractor from bidding on other VDOT work as described herein, the enjoinder period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

H. DBE Participation for Contract Goal Credit

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

1. Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.
2. The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the contract goal for DBE participation in accordance with the **DBE Program-Related Certifications Made by Bidders\Contractors** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself or subcontracted by the DBE to other DBE firms.
3. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the distinctly defined portion of the contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the DBE's credit toward the DBE contract goal.
4. When a DBE subcontracts part of the work of the contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a certified DBE. Work that a DBE subcontracts to either a non-DBE firm or to a non-certified DBE firm will not count toward the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or the prime's affiliated firms will not count toward the contract goal for DBE participation.
5. The Contractor may count expenditures to a DBE subcontractor toward the DBE contract goal only if the DBE performs a Commercially Useful Function (CUF) on that contract.
6. A Contractor may not count the participation of a DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a certified DBE manufacturer.
 - (a) For the purposes of this Special Provision, a regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the DBE firm shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products or equipment in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.
 - (b) A DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the DBE both owns and operates distribution equipment for the products it sells and provides for the contract work.

Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.

- (c) If a DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the DBE regular dealer, who shall be responsible for their distribution.
- (d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.
- (g) A Contractor may count toward the DBE contract goal the following expenditures to DBE firms that are not regular dealers or manufacturers for DBE program purposes:
 - 1. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.
 - 2. The entire amount of that portion of the construction contract that is performed by the DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the DBE for contract work, including supplies purchased or equipment leased by the DBE, except supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or its affiliates.
- (h) A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. A Contractor shall not count costs for the removal or relocation of excess material from or on the job site when the DBE trucking company is not the manufacturer of or a regular dealer in those materials and supplies. The DBE trucking firm shall also perform a Commercially Useful Function (CUF) on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project. See section on **Miscellaneous DBE Program Requirements; Factors used to Determine if a DBE Trucking Firm is Performing a CUF.**
- (i) The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special

Provision, a broker is defined as a person or firm that regularly engages in arranging for delivery of material, supplies, and equipment, or regularly arranges for the providing of project services as a course of routine business but does not own or operate the delivery equipment necessary to transport materials, supplies, or equipment to or from a job site.

I. Performing a Commercially Useful Function (CUF)

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

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

VDOT will monitor the Contractor's DBE involvement during the performance of the contract. However, VDOT is under no obligation to warn the Contractor that a DBE's participation will not count toward the goal.

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

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

VDOT Makes Final Determination On Whether a CUF Is Performed: VDOT has the final authority to determine whether a DBE firm has performed a CUF on a federal-aid contract. To determine whether a DBE is performing or has performed a CUF, VDOT will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Contractor or by employees or equipment of the Contractor shall be subject to disallowance

under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated.

J. Verification of DBE Participation and Imposed Damages

Within fourteen days after contract execution, the Contractor shall submit to the Responsible Engineer, with a copy to the District Civil Rights Office (DCRO), a fully executed subcontract agreement for each DBE used to claim credit in accordance with the requirements stated on Form C-112. The subcontract agreement shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subcontractor. Because of the commercial damage that the Contractor and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff will treat subcontract agreements as proprietary Contractor trade secrets with regard to Freedom of Information Act requests. In lieu of subcontract agreements, purchase orders may be submitted for haulers, suppliers, and manufacturers. These too, will be treated confidentially and protected. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

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

Form C-63 can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov/>

The Contractor shall submit to the Responsible Engineer its progress schedule with a copy to the DCRO, as required by Section 108.03 of the Specifications or other such specific contract scheduling specification that may include contractual milestones, i.e., monthly or VDOT requested updates. The Contractor shall include a narrative of applicable DBE activities relative to work activities of the Contractor's progress schedule, including the approximate start times and durations of all DBE participation to be claimed for credit that shall result in full achievement of the DBE goal required in the contract.

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component or quarter of the work, as applicable, in which DBE work is to be performed, the Contractor shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any current DBEs not previously submitted who will

perform the work during that major component or quarter for which the Contractor seeks to claim credit toward the contract DBE goal. The Contractor shall obtain the prior approval of the Department for any assistance it may provide to the DBE beyond its existing resources in executing its commitment to the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If the Contractor is aware of any assistance beyond a DBE's existing resources that the Contractor, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, the Contractor shall submit a new or revised narrative statement for VDOT's approval prior to assistance being rendered.

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

K. Documentation Required for Semi-final Payment

On those projects nearing completion, the Contractor must submit Form C-63 marked "Semi-Final" within twenty (20) days after the submission of the last regular monthly progress estimate to the DCRO. The form must include each DBE used on the contract work and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the accepted creditable work on the contract. The form shall be certified under penalty of perjury, or other applicable law, to be accurate and complete. VDOT will use this certification and other information available to determine applicable DBE credit allowed to date by VDOT and the extent to which the DBEs were fully paid for that work. The Contractor shall acknowledge by the act of filing the form that the information is supplied to obtain payment regarding a federal participation contract. A letter of certification, signed by both the prime Contractor and appropriate DBEs, will accompany the form, indicating the amount, including any retainage, if present, that remains to be paid to the DBE(s).

L. Documentation Required for Final Payment

On those projects that are complete, the Contractor shall submit a final Form C-63 marked "Final" to the DCRO, within thirty (30) days of the final estimate. The form must include each DBE used on the contract and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the creditable work on the contract. VDOT will use this form and other information available to determine if the Contractor and DBEs have satisfied the DBE contract goal percentage specified in the contract and the extent to which credit was allowed. The Contractor shall acknowledge by the act of signing and filing the form that the information is supplied to obtain payment regarding a federal participation contract.

M. Prompt Payment Requirements

The Contractor shall make prompt and full payment to the subcontractor(s) of any retainage held by the prime Contractor after the subcontractor's work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by VDOT. When VDOT has made partial acceptance of a portion of the prime contract, the Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will

be made in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

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

The Contractor shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from VDOT in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

If the Contractor fails to make payment for the subcontractor's portion of the work within the time frame specified herein, the subcontractor shall contact the Responsible Engineer and the Contractor's bonding company in writing. The bonding company and VDOT will investigate the cause for non-payment and, barring mitigating circumstances that would make the subcontractor ineligible for payment, ensure payment in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations, and to bind the Contractor's subcontractors contractually to those prompt payment requirements.

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

N. Miscellaneous DBE Program Requirements

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

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

Termination of DBE: If a certified DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, the Contractor must promptly

request approval to substitute or replace that firm in accordance with this section of this Special Provision.

The Contractor, as aforementioned in **DBE Program-Related Certifications Made by Bidders/Contractors**, shall notify VDOT in writing before terminating and/or replacing the DBE that was committed as a condition of contract award or that is otherwise being used or represented to fulfill DBE contract obligations during the contract performance period. Written consent from the Department for terminating the performance of any DBE shall be granted only when the Contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform its obligations for which the Contractor sought credit toward the contract DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE shall not be based on the Contractor's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a certified DBE.

1. All Contractor requests to terminate, substitute, or replace a certified DBE shall be in writing, and shall include the following information:
 - (a) The date the Contractor determined the DBE to be unwilling, unable, or ineligible to perform.
 - (b) The projected date that the Contractor shall require a substitution or replacement DBE to commence work if consent is granted to the request.
 - (c) A brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the Contractor's assertion that the DBE is unwilling, unable, or ineligible to perform;
 - (d) A brief statement of the affected DBE's capacity and ability to perform the work as determined by the Contractor;
 - (e) A brief statement of facts regarding actions taken by the Contractor which are believed to constitute good faith efforts toward enabling the DBE to perform;
 - (f) The current percentage of work completed on each bid item by the DBE;
 - (g) The total dollar amount currently paid per bid item for work performed by the DBE;
 - (h) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and with which the Contractor has no dispute;
 - (i) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and over which the Contractor and/or the DBE have a dispute.
2. Contractor's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

The Contractor shall send a copy of the "request to terminate and substitute" letter to the affected committed DBE firm, in conjunction with submitting the request to the DCRO. The affected DBE firm may submit a response letter to the Department within two (2) business days of receiving the notice to terminate from the Contractor. The affected DBE firm shall explain its position concerning performance on the committed work. The

Department will consider both the Contractor's request and the DBE's response and explanation before approving the Contractor's termination and substitution request, or determining if any action should be taken against the Contractor.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Contractor is unsuccessful in notifying the affected DBE firm, the Department will verify that the affected, committed DBE firm is unable or unwilling to continue the contract. The Department will immediately approve the Contractor's request for a substitution.

3. Proposed Substitution of Another Certified DBE

Upon termination of a DBE, the Contractor shall use reasonable good faith efforts to replace the terminated DBE. The termination of such DBE shall not relieve the Contractor of its obligations pursuant to this section, and the unpaid portion of the terminated DBE's contract will not be counted toward the contract goal.

When a DBE substitution is necessary, the Contractor shall submit an amended Form C-111 with the name of another DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The Contractor shall furnish all pertinent information including the contract I.D. number, project number, bid item, item description, bid unit and bid quantity, unit price, and total price. In addition, the Contractor shall submit documentation for the requested substitute DBE as described in this section of this Special Provision.

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

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

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

1. To perform a CUF the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE is responsible by subcontract on a particular contract. There shall not be a contrived arrangement, including, but not limited to, any arrangement that would not customarily and legally exist under regular construction project subcontracting practices for the purpose of meeting the DBE contract goal;
2. The DBE must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the necessary materials or supplies;
3. The DBE receives full contract goal credit for the total reasonable amount the DBE is paid for the transportation services provided on the contract using trucks the DBE owns, insures, and operates using drivers that the DBE employs and manages;

4. The DBE may lease trucks from another certified DBE firm, including from an owner-operator who is certified as a DBE. The DBE firm that leases trucks from another DBE will receive credit for the total fair market value actually paid for transportation services the lessee DBE firm provides on the contract;
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, *not to exceed the value of transportation services provided by DBE-owned trucks on the contract*. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

EXAMPLE

DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z.

		Value of Trans. Serv.
		(For Illustrative Purposes Only)
<u>Firm X</u>		
Truck 1	Owned by DBE	\$100 per day
Truck 2	Owned by DBE	\$100 per day
<u>Firm Y</u>		
Truck 1	Leased from DBE	\$110 per day
Truck 2	Leased from DBE	\$110 per day
<u>Firm Z</u>		
Truck 1	Leased from Non DBE	\$125 per day
Truck 2	Leased from Non DBE	\$125 per day
Truck 3	Leased from Non DBE	\$125 per day
Truck 4	Leased from Non DBE	\$125 per day
Truck 5	Leased from Non DBE*	\$125 per day
Truck 6	Leased from Non DBE*	\$125 per day

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

Credit = 8 Trucks

Total Value of Transportation Services = \$820

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

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

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

Data Collection: In accordance with 49CFR Section 26.11, all firms bidding on prime contracts and bidding or quoting subcontracts on federal-aid projects shall provide the following information to the Contract Engineer annually.

- Firm name
- Firm address
- Firm's status as a DBE or non-DBE
- The age of the firm and
- The annual gross receipts of the firm

The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. However, the above information can be submitted by means of the Annual Gross Receipts Survey as required in the Prequalification/Certification application.

All bidders, including DBE prime Contractor bidders, shall complete and submit to the Contract Engineer the Subcontractor/Supplier Solicitation and Utilization Form C-48 for each bid submitted; to be received within ten (10) business days after the bid opening. Failure of bidders to submit this form in the time frame specified may be cause for disqualification of the bidder and rejection of their bid in accordance with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge specifications.

O. Suspect Evidence of Criminal Behavior

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted, prosecution.

Suspected DBE Fraud

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

P. Summary of Remedies for Non-Compliance with DBE Program Requirements

Failure of any bidder\Contractor to comply with the requirements of this Special Provision for Section 107.15 of the Virginia Road and Bridge Specifications, which is deemed to be a condition of bidding, or where a contract exists, is deemed to constitute a breach of contract shall be remedied in accordance with the following:

1. Disadvantaged Business Enterprise (DBE) Program Requirements

The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein.

2. DBE Program-Related Certifications Made by Bidders\Contractors

Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each certified DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract requirements have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

3. Disqualification of Bidder

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge Specifications.

4. Bidding Procedures

The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid. If the lowest bidder is rejected for failure to submit required documentation in the specified time frames, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth.

In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were to the extent a bidder actively and aggressively seeking to meet the requirements would make. Regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111, C-112, C-48, and Form C-49, as aforementioned, or face potential bid rejection. If a bidder does not submit it's completed and executed C-111, or C-112, when required by this Special Provision, the bidder's bid will be considered non-responsive and may be rejected. If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected. If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the

actual commitment identified by the lowest successful bidder at the time of its bid. The Contractor is encouraged to seek additional participation during the life of the contract.

If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, the Contractor and any aforementioned affiliates may be enjoined from bidding for 60 days or until such time as conformance with the schedule of DBE participation is achieved. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the prosecution of the contract.

If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the State Construction Engineer to substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. The enjoinder period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

5. Verification of DBE Participation and Imposed Damages

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received by VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

In addition to the remedies described heretofore in this provision VDOT also exercises its rights with respect to the following remedies:

Suspect Evidence of Criminal Behavior

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.

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

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
USE OF DOMESTIC MATERIAL

July 26, 2013

SECTION 102.05 PREPARATION OF BID of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as "Buy America", except as otherwise specified, all iron and steel products (including miscellaneous steel items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America regardless of the percentage they exist in the manufactured product or final form they take. Therefore, "Domestically produced in the United States of America" means all manufacturing processes must occur in the United States of America, to mean, in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. Manufacturing processes are defined as any process which alters or modifies the chemical content, physical size or shape or final finish of iron or steel material) such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating whereby a raw material or a reduced iron ore material is changed, altered or transformed into a steel or iron item or product which, because of the process, is different from the original material. For the purposes of satisfying this requirement "coating" is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material. Materials used in the coating process need not be domestic materials.

For the purposes herein the manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America. The use of foreign source steel or iron billet is not acceptable under the provisions of Buy America. For the purposes of this provision all steel or iron material not meeting the criteria as domestically produced in the United States of America will be considered as "foreign" material. All iron and steel items will be classified hereinafter as "domestic" or "foreign", identified by and subject to the provisions herein.

Domestically produced iron or steel ingots or billets shipped outside the United States of America for any manufacturing process and returned for permanent use in a project would not comply with "Buy America" requirements.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.

Section 635.410(b) of Title 23 CFR permits a minimal amount of steel or iron material to be incorporated in the permanent work on a federal-aid contract. The cost of such materials or products must not exceed one-tenth of one percent of the contract amount or \$2500, whichever is greater. The cost of the foreign iron or steel material is defined as its monetary value delivered to the job site

and supported by invoices or bill of sale to the Contractor. This delivered to site cost must include transportation, assembly, installation and testing.

In the event the total cost of all "foreign" iron and steel product or material does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater, the use of such material meeting the limitations herein will not be restricted by the domestic requirements herein. However, by signing the bid, the Bidder certifies that such cost does not exceed the limits established herein.

Waivers:

With prior concurrence from Federal Highway Administration (FHWA) headquarters, the Federal Highway Division Administrator may grant a waiver to specific projects provided it can be demonstrated:

1. that the use of domestic steel or iron materials would be inconsistent with the public interest; or
2. materials or products requested for use are not produced in the United States in sufficient or reasonably available quantities and are of satisfactory quality for use in the permanent work.

The waiver request shall be submitted with supportive information to include:

1. Project number\description, project cost, waiver item, item cost, country of origin for the product, reason for the waiver, and
2. Analysis of redesign of the project using alternative or approved equal domestic products

In order to grant such a waiver the request for the waiver must be published in the Federal Register for a period not less than 15 days or greater than 60 days prior to waiving such requirement. An initial 15 day comment period to the waiver will be available to the public by means of the FHWA website: <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>. Following that initial 15 day period of review and comment the request for waiver will be published by the FHWA in the Federal Register. The effective date of the FHWA finding, either to approve or deny the waiver request, will be 15 days following publication in the Federal Register.

Only the FHWA Administrator may grant nationwide waivers which still are subject to the public rulemaking and review process.

Alternative Bidding Procedures:

An alternative bidding procedure may be employed to justify the use of foreign iron and/or steel. To qualify under this procedure the total project is bid using two alternatives, one based on the use of domestic products and the other, the use of corresponding foreign source steel and/or iron materials.

In accordance with the provisions of Section 103.02 the Contract will be awarded to the lowest responsive and responsible bidder who submits the lowest total bid based on furnishing domestic iron or steel unless such total exceeds the lowest total bid based on furnishing foreign iron and/or steel by more than 25 percent, in which case the award will be made to the lowest responsive and responsible bidder furnishing foreign iron and/or steel based upon furnishing verifiable supportive data. The bidder shall submit a bid based on permanently incorporating only domestic iron and/or steel in the construction of the project. The bidder may also submit a bid for the same proposed contract based on being allowed to permanently incorporate corresponding foreign iron and/or steel materials meeting the other contract requirements into the work on the contract. If he chooses to submit such a bid, that alternate bid shall clearly indicate which foreign iron and/or steel items will be permanently

installed in the work as well as contain prices for all other items listed in the corresponding domestic proposal to complete a total "Foreign" bid.

In the event the contract is awarded to the bidder furnishing foreign iron and/or steel materials or items the provision for price adjustment of steel items will be permitted, however, price fluctuations shall use the U.S. index as stated in the Special Provision for Price Adjustment For Steel. The Contractor must indicate which corresponding eligible steel items he chooses price adjustment to apply. In the event the contract is awarded to a bidder furnishing foreign iron and/or steel items and during the life of that contract the Contractor discovers he can not furnish foreign iron and/or steel material as originally anticipated and agreed upon, he shall be responsible to honor the total bid price and furnish such iron and/or steel materials meeting the contract requirements from other sources as necessary to complete the work.

In the event the Contractor proposes to furnish "foreign" iron and steel and can verify a savings in excess of 25 percent of the overall project cost if bid using domestic materials, the Contractor shall submit a second complete paper bid proposal clearly marked "Foreign" including Form C-7 and supportive data supplement on all sheets. Supportive data shall list, but not be limited to, origin of material, best price offer, quantity and complete description of material, mill analysis, evidence or certification of conformance to contract requirements, etc. The "Foreign" bid shall be completed using the best price offer for each corresponding bid item supplying foreign material in the alternative bid and submit the same with the Contractor's "Domestic" bid. The Contractor shall write the word "Foreign" by the bid total shown on Form C-7 as well as last page of Schedule of Items showing the total bid amount. The bidder shall also contact the State Contract Engineer to inform him that he is also submitting an alternate "Foreign" paper bid..

The information listed on the supportive data sheet(s) will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel items does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and/or steel and prices given there for shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

Certification of Compliance:

Where domestic material is supplied, prior to incorporation into the Work, the Contractor shall furnish to the Department a certificate of compliance (such as may be furnished by steel mill test reports) that all steel and/or iron products supplied to the project except as may be permitted (one-tenth of one percent of the total contract cost or \$2,500, whichever is greater) and permanently incorporated into the work satisfies the domestic requirements herein. This certification shall contain a definitive statement about the origin of all products covered under the provisions of Buy America as stated herein.

In lieu of the Contractor providing personal certification, the Contractor may furnish a stepped certification in which each handler of the product, such as supplier, fabricator, manufacturer, processor, etc. furnishes an individual certification that their step in the process was domestically performed.

(c100II3)	VDOT SSs, SPs & SPCNs	6-10-15 (SPCN)	5
(c102r00)	COMPLIANCE WITH THE CARGO PREFERENCE ACT	12-14-15 (SPCN)	6
(c103i01)	SEC. 103—AWARD & EXECUTION OF CONTRACTS (E-Verify)	8-8-14 (SPCN)	6
	PERSONNEL REQUIREMENTS FOR WORK ZONE TRAFFIC CONTROL	11-24-15a (SPCN)	7
(c105hf1)	SECTION 105.06 SUBCONTRACTING	12-19-08 (SPCN)	8
SF001AF	- PREDETERMINED MINIMUM WAGE RATES	Re. 7-08	9
SF010DF	- FHWA 1273—REQ. CONTRACT PROVISIONS, FED-AID CONST.	5-1-12	11
SF030AF	- NOTICE OF REQUIRE. FOR AFFIRM. ACT. TO ENSURE EEO	Re. 7-08	32
	SECTION 105.06—SUBCONTRACTING (FEDERAL FUNDED PROJECTS)	8-19-15a	38
S107HF1	- SECTION 107.15	12-10-10	39
S102CF2	- USE OF DOMESTIC MATERIAL	7-26-13	61

SECTION #6

Virginia Stormwater Management Program (VSMP) General Permit and Conditions



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

General Permit No.: VAR10

Effective Date: July 1, 2014

Expiration Date: June 30, 2019

**GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION
ACTIVITIES**

**AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT
PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT**

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, operators of construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth herein.

PART I

DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

- A. Coverage under this general permit.
1. During the period beginning with the date of coverage under this general permit and lasting until the general permit's expiration date, the operator is authorized to discharge stormwater from construction activities.
 2. This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:
 - a. The support activity is directly related to the construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;
 - b. The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;
 - c. The support activity does not operate beyond the completion of the last construction activity it supports;
 - d. The support activity is identified in the registration statement at the time of general permit coverage;
 - e. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and
 - f. All applicable state, federal, and local approvals are obtained for the support activity.
- B. Limitations on coverage.
1. Post-construction discharges. This general permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any support activity sites covered under the general permit registration, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.
 2. Discharges mixed with nonstormwater. This general permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Part I E (Authorized nonstormwater discharges) and are in compliance with this general permit.
 3. Discharges covered by another state permit. This general permit does not authorize discharges of stormwater from construction activities that have been covered under an individual permit or required to obtain coverage under an alternative general permit.
 4. Impaired waters and TMDL limitation. Discharges of stormwater from construction activities to surface waters identified as impaired in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations. In addition, the operator shall implement the following items:

- a. The impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, shall be identified in the SWPPP;
 - b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;
 - c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
 - d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:
 - (1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and
 - (2) Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to surface waters identified as impaired or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit.
5. Exceptional waters limitation. Discharges of stormwater from construction activities not previously covered under the general permit issued in 2009 to exceptional waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general permit unless the operator implements the following:
- a. The exceptional water(s) shall be identified in the SWPPP;
 - b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;
 - c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
 - d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:
 - (1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and
 - (2) Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to exceptional waters.
6. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- C. Commingled discharges. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

D. Prohibition of nonstormwater discharges. Except as provided in Parts I A 2, I C, and I E, all discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities. All other discharges including the following are prohibited:

1. Wastewater from washout of concrete;
2. Wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
4. Oils, toxic substances, or hazardous substances from spills or other releases; and
5. Soaps, solvents, or detergents used in equipment and vehicle washing.

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit when discharged in compliance with this general permit:

1. Discharges from firefighting activities;
2. Fire hydrant flushings;
3. Waters used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;
5. Potable water sources, including uncontaminated waterline flushings;
6. Routine external building wash down where soaps, solvents or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated ground water or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigation.

F. Termination of general permit coverage.

1. The operator of the construction activity shall submit a notice of termination in accordance with 9VAC25-880-60 to the VSMP authority after one or more of the following conditions have been met:

- a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. When applicable, long term responsibility and maintenance requirements shall be recorded in the local land records prior to the submission of a notice of termination;
 - b. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
 - c. Coverage under an alternative VPDES or state permit has been obtained; or
 - d. For residential construction only, temporary soil stabilization has been completed and the residence has been transferred to the homeowner.
2. The notice of termination should be submitted no later than 30 days after one of the above conditions in subdivision 1 of this subsection is met. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this subsection. Termination of authorizations to discharge for the conditions set forth in subdivision 1 a of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 a of this subsection have been met or 60 days after submittal of the notice of termination, whichever occurs first.
3. The notice of termination shall be signed in accordance with Part III K of this general permit.

G. Water quality protection.

1. The operator must select, install, implement and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard.
2. If it is determined by the department that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in consultation with the VSMP authority, may take appropriate enforcement action and require the operator to:
 - a. Modify or implement additional control measures in accordance with Part II B to adequately address the identified water quality concerns;
 - b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
 - c. Submit an individual permit application in accordance with 9VAC25-870-410 B 3.

All written responses required under this chapter must include a signed certification consistent with Part III K.

PART II

STORMWATER POLLUTION PREVENTION PLAN

A stormwater pollution prevention plan (SWPPP) shall be developed prior to the submission of a registration statement and implemented for the construction activity, including any support activity, covered by this general permit. SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a larger common plan of development or sale and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger common plan of development or sale.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II A. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.

Any operator that was authorized to discharge under the general permit issued in 2009, and that intends to continue coverage under this general permit, shall update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

A. Stormwater pollution prevention plan contents. The SWPPP shall include the following items:

1. General information.

- a. A signed copy of the registration statement, if required, for coverage under the general VPDES permit for discharges of stormwater from construction activities;
- b. Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter);
- c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities;
- d. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);
- e. A legible site plan identifying:
 - (1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;
 - (2) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed;
 - (3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;
 - (4) Locations of surface waters;

- (5) Locations where concentrated stormwater is discharged;
- (6) Locations of support activities, when applicable and when required by the VSMP authority, including but not limited to (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage; and
- (7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection purposes.

2. Erosion and sediment control plan.

- a. An erosion and sediment control plan approved by the VESCP authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), an "agreement in lieu of a plan" as defined in 9VAC25-840-10 from the VESCP authority, or an erosion and sediment control plan prepared in accordance with annual standards and specifications approved by the department. Any operator proposing a new stormwater discharge from construction activities that is not required to obtain erosion and sediment control plan approval from a VESCP authority or does not adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval.
- b. All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls used.
- c. A properly implemented approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, adequately:
 - (1) Controls the volume and velocity of stormwater runoff within the site to minimize soil erosion;
 - (2) Controls stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
 - (3) Minimizes the amount of soil exposed during the construction activity;
 - (4) Minimizes the disturbance of steep slopes;
 - (5) Minimizes sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site;
 - (6) Provides and maintains natural buffers around surface waters, directs stormwater to vegetated areas to increase sediment removal, and maximizes stormwater infiltration, unless infeasible;
 - (7) Minimizes soil compaction and, unless infeasible, preserves topsoil;
 - (8) Ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days; and

- (9) Utilizes outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

3. Stormwater management plan.

- a. New construction activities. A stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), or an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority, or a stormwater management plan prepared in accordance with annual standards and specifications approved by the department. Any operator proposing a new stormwater discharge from construction activities that is not required to obtain stormwater management plan approval from a VSMP authority or does not adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval.
- b. Existing construction activities. Any operator that was authorized to discharge under the general permit issued in 2009, and that intends to continue coverage under this general permit, shall ensure compliance with the requirements of 9VAC25-870-93 through 9VAC25-870-99 of the VSMP Regulation, including but not limited to the water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:

- a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater;
- b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan;
- c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity;
- d. Identify the person responsible for implementing the pollution prevention practice or practices for each pollutant-generating activity (if other than the person listed as the qualified personnel);
- e. Describe the pollution prevention practices and procedures that will be implemented to:
 - (1) Prevent and respond to leaks, spills, and other releases including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G;
 - (2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);

- (3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants);
 - (4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing (e.g., locating activities away from surface waters and stormwater inlets or conveyance and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters, or using similarly effective controls);
 - (5) Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters;
 - (6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials;
 - (7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, and sanitary wastes; and
 - (8) Address any other discharge from the potential pollutant-generating activities not addressed above; and
- f. Describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices, and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP.
5. SWPPP requirements for discharges to impaired waters, surface waters with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit, and exceptional waters. The SWPPP shall:
- a. Identify the impaired water(s), approved TMDL(s), pollutant(s) of concern, and exceptional waters identified in 9VAC25-260-30 A 3 c, when applicable;
 - b. Provide clear direction that:
 - (1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;
 - (2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and
 - (3) A modified inspection schedule shall be implemented in accordance with Part I B 4 or Part I B 5.

6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.
7. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.
8. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.

B. SWPPP amendments, modification, and updates.

1. The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.
2. The SWPPP must be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures must be accomplished as described in Part II G.
3. The SWPPP must clearly identify the contractor(s) that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.
4. The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:
 - a. A record of dates when:
 - (1) Major grading activities occur;
 - (2) Construction activities temporarily or permanently cease on a portion of the site; and
 - (3) Stabilization measures are initiated;
 - b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and where modified as soon as possible;
 - c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;
 - d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;
 - e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;
 - f. Measures taken to prevent the reoccurrence of any prohibited discharge; and
 - g. Measures taken to address any evidence identified as a result of an inspection required under Part II F.

5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K.

C. Public Notification. Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity. For linear projects, the operator shall post the notice of coverage letter at a publicly accessible location near an active part of the construction project (e.g., where a pipeline crosses a public road). The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.

D. SWPPP availability.

1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.
2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.
3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II C. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.

E. SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II F identifies a control measure that is not operating effectively, corrective action(s) shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.
2. If site inspections required by Part II F identify an existing control measure that needs to be modified or if an additional control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.

F. SWPPP Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection.
2. Inspection schedule.
 - a. Inspections shall be conducted at a frequency of:

- (1) At least once every five business days; or
 - (2) At least once every 10 business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted no later than the next business day.
- b. Where areas have been temporarily stabilized or land-disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.
- c. Representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:
- (1) Temporary or permanent soil stabilization has been installed and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance increasing the potential for erosion;
 - (2) Inspections occur on the same frequency as other construction activities;
 - (3) Control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction activity and access does not compromise temporary or permanent soil stabilization); and
 - (4) Inspection locations are provided in the report required by Part II F.
3. Inspection requirements.
- a. As part of the inspection, the qualified personnel shall:
- (1) Record the date and time of the inspection and when applicable the date and rainfall amount of the last measurable storm event;
 - (2) Record the information and a description of any discharges occurring at the time of the inspection;
 - (3) Record any land-disturbing activities that have occurred outside of the approved erosion and sediment control plan;
 - (4) Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:
 - (a) All perimeter erosion and sediment controls, such as silt fence;
 - (b) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures;
 - (c) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization;

- (d) Cut and fill slopes;
 - (e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;
 - (f) Temporary or permanent channel, flume, or other slope drain structures installed to convey concentrated runoff down cut and fill slopes;
 - (g) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and
 - (h) Construction vehicle access routes that intersect or access paved roads for minimizing sediment tracking;
- (5) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for initiation of stabilization activities;
- (6) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for completion of stabilization activities within seven days of reaching grade or stopping work;
- (7) Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications has not been properly implemented. This includes but is not limited to:
- (a) Concentrated flows of stormwater in conveyances such as rills, rivulets or channels that have not been filtered, settled, or similarly treated prior to discharge, or evidence thereof;
 - (b) Sediment laden or turbid flows of stormwater that have not been filtered or settled to remove sediments prior to discharge;
 - (c) Sediment deposition in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface waters. Inlets and catch basins with failing sediments controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;
 - (d) Sediment deposition on any property (including public and private streets) outside of the construction activity covered by this general permit;
 - (e) Required stabilization has not been initiated or completed on portions of the site;
 - (f) Sediment basins without adequate wet or dry storage volume or sediment basins that allow the discharge of stormwater from below the surface of the wet storage portion of the basin;
 - (g) Sediment traps without adequate wet or dry storage or sediment traps that allow the discharge of stormwater from below the surface of the wet storage portion of the trap; and
 - (h) Land disturbance outside of the approved area to be disturbed;
- (8) Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance and effectiveness of the procedures and practices;
- (9) Identify any pollutant generating activities not identified in the pollution prevention plan; and

(10) Identify and document the presence of any evidence of the discharge of pollutants prohibited by this general permit.

4. Inspection report. Each inspection report shall include the following items:
 - a. The date and time of the inspection and when applicable, the date and rainfall amount of the last measurable storm event;
 - b. Summarized findings of the inspection;
 - c. The location(s) of prohibited discharges;
 - d. The location(s) of control measures that require maintenance;
 - e. The location(s) of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;
 - f. The location(s) where any evidence identified under Part II F 3 a (7) exists;
 - g. The location(s) where any additional control measure is needed that did not exist at the time of inspection;
 - h. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;
 - i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and
 - j. The date and signature of the qualified personnel and the operator or its duly authorized representative.

The inspection report and any actions taken in accordance with Part II must be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated. The inspection report shall identify any incidents of noncompliance. Where an inspection report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit. The report shall be signed in accordance with Part III K of this general permit.

G. Corrective actions.

1. The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.
2. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this general permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the VSMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

NOTE: Discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this general permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).
3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Monitoring records and reports shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the registration statement for this general permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results.

1. The operator shall update the SWPPP to include the results of the monitoring as may be performed in accordance with this general permit, unless another reporting schedule is specified elsewhere in this general permit.
2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.

3. If the operator monitors any pollutant specifically addressed by this general permit more frequently than required by this general permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this general permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this general permit.

D. Duty to provide information. The operator shall furnish, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this general permit or to determine compliance with this general permit. The board, department, EPA, or VSMP authority may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and the Virginia Stormwater Management Act. The operator shall also furnish to the board, department, EPA, or VSMP authority, upon request, copies of records required to be kept by this general permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this general permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department and the VSMP authority within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this general permit.

Discharges reportable to the department and the VSMP authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset," as defined herein, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department and the VSMP authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department and the VSMP authority within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service of some or all of the facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The operator shall report any noncompliance which may adversely affect surface waters or may endanger public health.

1. An oral report to the department and the VSMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:
 - a. Any unanticipated bypass; and
 - b. Any upset that causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The department may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Part III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Part III I 2.

NOTE: The reports required in Part III G, H and I shall be made to the department and the VSMP authority. Reports may be made by telephone, email, or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the VSMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department and the VSMP authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:
 - a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420;
 - b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this general permit; or
2. The operator shall give advance notice to the department and VSMP authority of any planned changes in the permitted facility or activity, which may result in noncompliance with state permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
2. Reports, etc. All reports required by this general permit, including SWPPPs, and other information requested by the board or the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described in Part III K 1;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized

representative may thus be either a named individual or any individual occupying a named position); and

- c. The signed and dated written authorization is included in the SWPPP. A copy must be provided to the department and VSMP authority, if requested.
3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.
4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The operator shall comply with all conditions of this general permit. Any state permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this general permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this general permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing general permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing general permit.

N. Effect of a state permit. This general permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this general permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in general permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this general permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the operator to achieve compliance with the conditions of this general permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this general permit.

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

S. Duty to mitigate. The operator shall take all steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.
2. Notice.
 - a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, if possible at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Part III I.
3. Prohibition of bypass.
 - a. Except as provided in Part III U 1, bypass is prohibited, and the board or department may take enforcement action against an operator for bypass unless:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
 - (3) The operator submitted notices as required under Part III U 2.

- b. The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An "upset," as defined in 9VAC25-870-10, means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based state permit effluent limitations if the requirements of Part III V 4 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
4. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:
 - a. An upset occurred and that the operator can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The operator submitted notice of the upset as required in Part III I; and
 - d. The operator complied with any remedial measures required under Part III S.
5. In any enforcement proceeding, the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department as the board's designee, the VSMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), upon presentation of credentials and other documents as may be required by law to:

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this general permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring state permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. State permit actions. State permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.
2. As an alternative to transfers under Part III Y 1, this state permit may be automatically transferred to a new operator if:
 - a. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
 - b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and
 - c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.
3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

Z. Severability. The provisions of this general permit are severable, and if any provision of this general permit or the application of any provision of this state permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this general permit shall not be affected thereby.

DEFINITIONS

"Business day" means Monday through Friday excluding state holidays.

"Commencement of land disturbance" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Construction site" means the land where any land-disturbing activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity.

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
 - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
 - b. The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.
3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the land-disturbing activities have temporarily or permanently ceased. In the context of this general permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report.

"Infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices.

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;
2. Applying mulch or other nonvegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area;
or
5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

SECTION #7

Form of Construction Contract

CONSTRUCTION CONTRACT

This Construction Contract is made this _____ day of _____, 2015 by and between NOVA Parks, 5400 Ox Road, Fairfax Station, Virginia 22039 ("Authority"), and _____ (Contractor) for the project known as _____.

Article 1.

1.1 The Contract Documents consist of this Construction Contract, the Conditions of the Contract (General Supplementary, Special, and other Conditions), the Drawings, the Specifications, all standard details that apply to any portion of the Work, and all addenda issued prior to and Change Orders issued after execution of this Construction Contract. The Contract Documents are more specifically listed in Exhibit A. Minimum contractor's liability insurance amounts are listed in Exhibit B.

Article 2. The Work

2.1 The Contractor shall furnish all labor, materials, and equipment necessary to perform _____ as shown, indicated or reasonably implied by the Contract Documents. The Work shall be done in strict accordance with the Contract Documents and all applicable federal, state, and local governmental specifications and requirements.

Article 3. Time of Commencement and Completion

3.1 The Contract Time will begin to run on the date indicated in the Authority's written Notice to Proceed. The Contractor shall start the Work within five (5) days of the date of the Notice to Proceed. The Contractor shall prosecute the work in such a manner as to achieve Substantial Completion of the base portion of the work within the time limits indicated in the Supplemental General Conditions.

3.2 If the Work is not Substantially Completed within the time required, as that time may be adjusted by Change Orders, there shall be imposed on the Contractor Liquidated Damages of \$____ per calendar day for each day beyond the Contract Time it takes to substantially complete the Work. Contractor is specifically referred to the General Conditions regarding its duties to notify the Authority in writing of any delays caused to it during the Work. The Liquidated Damages amount shall, in no event, be considered a penalty or other than the liquidated and adjusted damages to the Authority because of the delay. The Contractor and its surety agree that the stated sum per day shall be deducted and retained out of the monies which may become due hereunder and if not so deducted, the Contractor and its surety shall be liable therefore.

Article 4. Contract Sum

4.1 Authority agrees to pay Contractor _____ (Dollars) (\$____) for the Work including the Base Bid, subject to additions and deductions by Change Order.

4.2 The Authority shall make monthly progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the last day of each month. Not later than fifteen (15) days after the end of the period covered by the Application for Payment, Contractor will submit to the Architect a Request for Payment based on the payment schedule of values agreed to by the Architect. The Contractor's submission of its Application for Payment, the Authority's and Architect's review, and the Authority's payment of progress and final payments shall all be in accordance with the General Conditions.

Article 5. Miscellaneous Provisions

5.1 This Contract shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

5.2 During the performance of this Contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupation qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

C. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Contractor will include the provisions of subparagraphs A, B, and C above, in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

5.3 These terms and provisions supersede all previous communications, representations, or agreements, either oral or written, between the parties with respect to the subject matter of this Contract. This Agreement is entered into as of the day and year first written above.

NOVA Parks

CONTRACTOR

By: _____
Title: _____
Date: _____

Company: _____
By: _____
Title: _____
Date: _____

Exhibit A - Contract Documents

Exhibit B - Contractor's Liability Insurance

- General liability in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- Property damage in the amount of not less than \$1,000,000 for any one accident. Additional limits may be required.
- Umbrella policy for not less than \$1,000,000.
- Auto liability insurance for not less than \$1,000,000 combined single limits.
- Workers' Compensation per statutory limits and employer's liability in the following minimum amounts: EL Each Accident - \$500,000, EL Disease Policy Limit - \$500,000, EL Disease Each Employee \$500,000.
- Contractor shall endorse the Authority on its insurance policy as an additional insured using form CG 20 10 11 85 or CG 20 10 07 04.