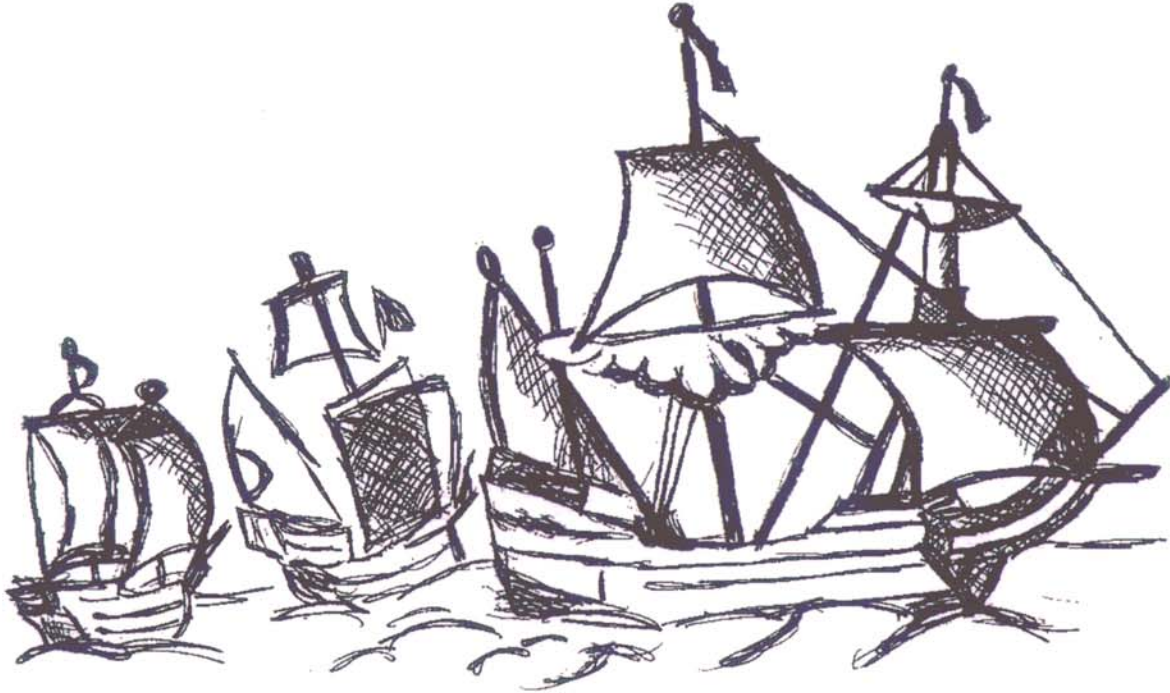


JAMESTOWN CORRIDOR IMPROVEMENTS



Comprehensive Agreement And Design Build Contract

October 21, 2002

Virginia Department of Transportation
Jamestown 2007 Corridor Constructors, LLC



CURTIS CONTRACTING, INC.



BRYANT
CONTRACTING, INC.

JAMESTOWN CORRIDOR IMPROVEMENTS

OCTOBER 21, 2002

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EXHIBIT A

DEFINITIONS

Agreement Date, for purposes of the Comprehensive Agreement, means the date written on the cover page of the Comprehensive Agreement, and for purposes of the Design-Build Contract, means the date written on the cover page of the Design-Build Contract.

Authorized Contractor Representative means any person designated to act on behalf of the Contractor by a certificate signed by its Management Committee or Project Manager and filed with Department.

Authorized Department Representative means any person designated to act on behalf of Department by a certificate signed by the Commissioner and filed with the Contractor.

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

Change Order means a written amendment to the terms and conditions of the Contract Documents issued in accordance with Article 19 of the Design-Build Contract.

Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses, including any expenses of the Department resulting from a violation by any Contractor Party of Laws, Regulations and Ordinances in connection with or relating to the Project or the Work.

Code of Virginia means the Code of Virginia (1950, as amended).

Commissioner means the Commonwealth Transportation Commissioner or any successor in function.

Comprehensive Agreement means the Comprehensive Agreement to Design and Construct Jamestown Corridor Improvements between the Contractor and the Department dated as of October 21, 2002 and all exhibits thereto, as supplemented or amended from time to time.

Conformity means compliance with the most stringent customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, conformity means compliance with the most stringent of such tolerances.

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

Construction Segment means each or any segment of a Project which the Department and the Contractor designate pursuant to Article 13 of the Design-Build Contract for the purpose of scheduling construction.

Construction Traffic Management Plan means the plan for traffic management submitted and approved in accordance with Section 9.1 of the Design-Build Contract.

Contract Documents means the Design-Build Contract, including all appendices, the Scope of Work, the Preliminary Engineering, the Standard Specifications and the Plans and Specifications, including all amendments to any of the foregoing and all Change Orders issued.

Contractor means Jamestown 2007 Corridor Constructors, LLC, a Virginia limited liability company.

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

Contractor Default shall have the meaning set forth in Section 13.1 of the Comprehensive Agreement.

Contractor Party means and includes Contractor, any Related Party (other than the Department), subcontractor (other than the Department) at any tier or any representative of Contractor or any Related Party.

Contract Price shall have the meaning set forth in Section 14.1.1 of the Design-Build Contract.

CPM/Payment Schedule means the most current schedule for the Project approved by Department as described in Article 13 of the Design-Build Contract.

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

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

Days means calendar days, unless otherwise designated.

Defect means, with respect to each element or aspect of the Work for which acceptable tolerances are specified in the Contract Documents, any such element or aspect not conforming to such specified tolerances, and with respect to each element or aspect of the Work for which acceptable tolerances are not specified in the Contract Documents, any such element or aspect not conforming to industry standards applicable thereto as of the time such element or aspect of the Work is undertaken; provided that in all instances "Defect" includes any element or aspect of the Work not conforming to the Design-Build Contract, Plans and Specifications, Laws, Regulations and Ordinances or Regulatory Approvals.

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

Department-Caused Delays means delays, to the extent that they affect a Critical Path and which the Contractor could not have reasonably mitigated (without additional cost to Contractor), arising from the following matters and no others: (a) a suspension order pursuant to Section 20.1 of the Design-Build Contract to the extent the same is treated as a Department-Caused Delay thereunder, (b) Directed Changes, (c) failure of Department to provide responses to submittals and matters for which response by such Person is required, within the time periods indicated in the Contract Documents, (d) uncovering, removing and restoring Work, to the extent provided in Section 5.2.2.5 of the Design-Build Contract, (e) any improper failure to act by Department within a reasonable time after delivery of notice by Contractor to Department requesting such action, or (f) failure by the Department to issue Notice to Proceed for any Project Phase on or before the dates specified in Appendix 6 Scope of Work. Any court order to suspend Work shall not be considered a Department-Caused Delay (although it may qualify as a Force Majeure event) despite the fact that Department may specifically direct Contractor to comply with the court order.

Department Default shall have the meaning set forth in Section 13.4 of the Comprehensive Agreement.

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

Design-Build Contract means the Design-Build Contract between the Department and the Contractor dated as of October 21, 2002 a copy of which is attached to the Comprehensive Agreement as Exhibit C, and any and all amendments and supplements thereto.

Differing Site Condition means, subject to the limitations in the next paragraph, any permanent condition on, within, under or of the Project Right of Way differing materially from those identified in the Preliminary Engineering and not apparent from a reasonable visual inspection.

With respect to the following conditions, Differing Site Condition means: (i) with respect to unknown existing Utilities, only those utilities not identified in Attachment E to Appendix 6 of the Design Build Contract; (ii) with respect to unknown subsurface man-made structures and obstructions, all such structures and obstructions not identified in the Preliminary Engineering referred in Appendix 2; (iii) with respect to additional settlement of fills occurring after being monitored for 120 days at the following locations:

- Segment I – Between stations 83+60 and 85+00,
- Segment I – Between stations 86+60 and 86+80,
- Segment I – Between stations 89+00 and 90+00,
- Segment I – Between stations 93+40 and 93+80,
- Segment II – Between stations 11+70 and 12+60,
- Segment II – Between stations 13+25 and 13+80,
- Segment II – Between stations 14+75 and 15+90,
- Segment II – Between stations 16+28 and 16+50,
- Segment II – Between stations 17+05 and 17+25,
- Segment II – Between stations 18+10 and 18+45,
- Segment II – Between stations 19+34 and 19+70 and
- Segment II – Between stations 26+00 and 26+60;

and (iv) with respect to miscellaneous underground conditions, unusual underground water conditions that affect wells or other sources of water supplies. A Differing Site Condition shall not be deemed to exist, and Contractor shall have no claim, with respect to the general nature, stability and/or character of excavation materials encountered on the Project Site, including excavation of bridge piers and abutments and foundation design changes resulting therefrom. A Differing Site Condition shall be deemed to include all manifestations of the same condition.^{1/}

1/ For example, if a given geologic formation or unknown cavern or mine is continuous and affects the Project Right of Way in more than one location, all such locations are together part of the same "condition." Conversely, if, for example, a location is affected by a geologic fault and a nearby location is affected by a rock formation, each would be a separate "condition." Similarly, each and every discrete archeological site would be a separate "condition."

Directed Change means any change in the Work (including changes in the standards applicable to the Work) which Department has directed Contractor to perform by Directive Letter pursuant to Section 19.3.1 of the Design-Build Contract or by Change Order under Section 19.3.2 of the Design-Build Contract. The term shall also include changes in the Work which are directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by Department. The fact that Department has delivered a Directive Letter does not necessarily mean that a change in the Work has occurred.

Directive Letter means each letter issued by Department pursuant to Section 19.3.1 of the Design-Build Contract.

Dispute means a controversy, matter in question, or difference of opinion that remains unresolved following good faith negotiations between representatives of Department and Contractor. Disputes may include such matters as Change Orders, interpretation of the Contract, Contract Documents, costs, time for performance and Differing Site Conditions. Disputes eligible for submission to the Dispute Review Board shall not include insurance requirements and compliance, claims on bonds, enforcement of Warranties and indemnities, exercise of remedies and rights to termination.

Dispute Review Board means the Dispute Review Board established pursuant to Section 27.1 and Appendix 13 of the Design-Build Contract.

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

Draw Request means a draw request from Contractor on the Draw Request and Certificate form attached as Appendix 3 to the Design-Build Contract.

Engineer of Record means the firm or entity ultimately responsible to insure compliance of the Project engineering design with generally accepted professional engineering principles.

Environmental Inspector means the individual or entity responsible for insuring compliance by the Contractor with applicable environmental laws, regulations and permits and who shall serve as a resource in securing environmental permits and providing expert advice with respect to environmental matters on the Project.

Environmental Laws means all Laws, Regulations and Ordinances now or hereafter in effect during the term of Contract relating to the environment or to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater and air) including, but not limited to, the statutes listed in the definition of Hazardous Substances; the National Environmental Policy Act, as amended, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. §§ 1801 et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.

Event of Default, for purposes of the Design-Build Contract, shall have the meaning set forth in Section 25.1 of the Design-Build Contract.

Final Acceptance means the occurrence of the events described in subsections (a) through (j) inclusive of Section 18.2.1 of the Design-Build Contract.

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

Fiscal Year means the consecutive 12-month period beginning July 1 and ending June 30, or any other consecutive 12-month fiscal period used by Department for financial accounting purposes.

Fixed Price Amount means the Fixed Price Amount described in Section 14.1.1 of the Design-Build Contract.

Force Majeure means any of the following events (provided such events are beyond the control of Contractor and are not due to an act or omission of Contractor) which materially and adversely affects Contractor's obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by Contractor:

- (a) any tidal wave, hurricane force wind, flood, tornado or earthquake;
- (b) any epidemic, blockade, rebellion, war, riot or act of sabotage, terrorism or civil commotion;

(c) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence, except as excluded under subsection (iii) below;

(d) any unreasonable delay by a utility owner in connection with a Utility Relocation;

(e) any change in or new enactment of any written Laws, Regulations and Ordinances, or change in the judicial or administrative interpretation of, or adoption of any new Laws, Regulations and Ordinances which is materially inconsistent with Laws, Regulations and Ordinances in effect on the Agreement Date (subject to the exclusions set forth below);

(f) any suspension of the Work to the extent permitted under Section 25.4 of the Design-Build Contract; and

(g) any court order which restrains, enjoins, challenges or delays performance of the Work or the granting or renewal of any Regulatory Approval, including any order delaying completion of condemnation proceedings or relocation beyond the time periods provided by law.

The term "Force Majeure" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered force majeure:

(i) fire or other physical destruction or damage, including lightning, explosion, drought, rain, storm or action of the elements or other acts of God not listed in subsection (a) above;

(ii) except as provided in subsection (b) above, explosion, malicious or other acts or similar occurrence;

(iii) strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence particular to a Contractor Party or the Project except any such event affecting a Suppliers' work solely at locations other than the Project site;

(iv) the presence at, near or on the Site of any Hazardous Substance;

(v) the presence at, near or on the Site of any archaeological, paleontological, historical or cultural resource or endangered species;

(vi) Differing Site Conditions;

(vii) the suspension, termination, interruption, denial or failure to obtain or non-renewal of any permit, license, consent, authorization or approval which is necessary for the performance of the Work or the operation or

maintenance of the Project, except for any such matter resulting from a lawsuit by any utility that unreasonably delays a Utility Relocation;

(viii) a change in any Laws, Regulations and Ordinances (such as increase in tax rates) which causes an increase in amounts payable by Contractor for deliverables but which does not change the obligations to be performed by Contractor hereunder, provided however that this exclusion shall not apply with respect to any increase in the state sales tax enacted by the General Assembly or by local or regional referendum;

(ix) any lawsuit relating to any Regulatory Approval which is Contractor's risk under Article 10 of the Design-Build Contract, except as provided in subsection (e) above;

(x) Directed Changes;

(xi) any cost risk (including cost of delay) for which coverage is to be provided through insurance required hereunder; and

(xii) all other matters not caused by Department or beyond the control of Department and not listed in subsections (a) through (g) above.

Guaranteed Completion Date shall have the meaning set forth in Section 17.2.1 of the Design-Build Contract.

Hazardous Substance means (a) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136 et seq., Virginia Waste Management Act, §10.1-1400 et seq., Code of Virginia (1950) as amended, all as amended or as may be amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum or crude oil or products thereof other than petroleum and petroleum products which are contained within regularly operated motor vehicles, (d) asbestos containing materials and (e) radioactive wastes and substances. Hazardous Substance shall not be deemed to include consolidated and unconsolidated sulfidic geological materials.

Implementation Guidelines means the Implementation Guidelines under the PPTA originally adopted by the Commissioner on July 1, 1995 (as revised effective April 1, 2001) governing the selection of solicited and unsolicited proposals for negotiation under the PPTA, as such Implementation Guidelines may be further revised, amended or supplemented.

Inspection means the act of viewing or looking carefully at construction, manufacturing and design and maintenance practices, processes and products, including document control and Shop Drawing review, to ensure the practices, processes and products comply with the quality requirements contained in the Contract Documents.

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

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

Liquidated Damages shall have the meaning set forth in Section 25.6 of the Design-Build Contract.

Maximum Payment Curve means the "Maximum Payment Curve" attached as Attachment A to the approved CPM/Payment. The Maximum Payment Curve shall reflect the amount of funds reasonably expected by the Department to be available for payment of Project costs in accordance with the Plan of Finance. The Maximum Payment Curve shall not include proceeds from the issuance of bonds until such bonds have been issued.

Member of Members shall mean, individually or collectively (as the context may require), Bryant Contracting, Inc., Curtis Contracting, Inc., and/or Jack L. Massie Contractor, Inc., and any successor entity that may own a membership interest or any other equity interest in the Contractor from time-to-time.

NEPA means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended and as it may be amended from time to time.

Notice to Proceed means the authorization specified in Section 4.1.1 and 4.1.2, respectively, of the Design-Build Contract and in Article 4 of the Comprehensive Agreement given to Contractor to proceed with design and construction for the Project.

Notice of Proposed Change/Direction means a notice issued by Department concerning a possible Change Order, as specified in Section 19.3.2 of the Design-Build Contract.

Notice of Termination means a notice issued by Department to terminate the Design-Build Contract and the performance of the Work by Contractor pursuant to Article 26 of the Design-Build Contract.

Payment Bond means the payment bond described in Section 22.6 of the Design-Build Contract.

Performance Bond means each performance bond to be provided by a Subcontractor as described in Section 22.6 of the Design-Build Contract.

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

Phase, when followed by the capital letter **A**, **B**, **C**, or **D**, or **Project Phase** means a phase of the Jamestown Corridor Improvements Project as described in Appendix 6 Scope of Work.

Phase A ROW Allowance means the allowance established pursuant to Section 14.1.2 which shall exclusively fund payments applicable to Phase A of the Project made in accordance with Sections 6.5.1 and 6.5.6 of the Design-Build Contract.

Phase B ROW Allowance means the allowance established pursuant to Section 14.1.2 which shall exclusively fund payments applicable to Phase B of the Project made in accordance with Sections 6.5.1 and 6.5.6 of the Design-Build Contract.

Phase I Environmental Investigation means a study that meets the requirements of 42 U.S.C. Section 9601 (35) (B), as amended and at a minimum, meets the requirements of ASTM Standard 1527-00.

Phase II Environmental Investigation means a study that meets the requirements of 42 U.S.C. Section 9601 (35) (B), as amended and at a minimum, meets the requirements of ASTM Standard 1903-97.

Plan of Finance means the Plan of Finance for the Project set forth in Article IV of the Comprehensive Agreement and on Exhibit D attached thereto.

Plans and Specifications means the 100% completed maps, plans, drawings and specifications for different components of the Work as approved by Department's Chief Engineer of Programming and Development and bearing the seal of a Virginia licensed engineer.

PPTA means the Public-Private Transportation Act of 1995, which is codified as Title 56, Chapter 22, Section 56-556 et seq., Code of Virginia, as amended from time to time.

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

Preliminary Engineering means the engineering work undertaken by the Department and accepted by the Contractor pursuant to Section 1.4 of the Design Build Contract and which is contained on drawings referred to in Appendix 2 thereof.

Project means (a) all improvements constituting the Jamestown Corridor Improvements as generally described in the Scope of Work, and (b) all other improvements and other Work Product to be provided by Contractor as a condition to Final Acceptance in accordance with the Contract Documents, including all replacement wetlands and other off-site improvements required by applicable Law, Regulations and Ordinances and Regulatory Approvals.

Project Agreement means any of the Comprehensive Agreement, the Contract Documents and any other contracts entered into in accordance with the Plan of Finance; and the term "Project Agreements" means all such agreements and documents in the aggregate.

Project Manager shall have the meaning set forth in Section 2.2.3 of the Design-Build Contract.

Project Purposes means and is limited to the developing, permitting, design, financing, acquisition, construction, installation, equipping, maintenance and repair of the Project. Project Purposes exclude, however, any activities associated with Reserved Rights.

Project Right of Way means all real property (which term is inclusive of all estates and interests in real property) which is necessary for ownership and operation of the Project by Department. The term specifically includes all property within the access control line for the Project. The term specifically excludes any temporary easements or other real property interests which Contractor deems necessary or advisable in connection with construction of the Project and/or Utility Relocations.

Punch List means the list of minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety or operability of the Project which is required to be completed prior to Final Acceptance.

Qualifying Transportation Facility shall have the meaning assigned to such term in Section 56-557 of the PPTA.

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

Quality Assurance Manager means the individual, who may be an employee of Contractor who reports directly to the Project Manager, responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program as described in Attachment B attached to the Scope of Work.

Quality Assurance Team shall mean all individuals or entities involved in executing the Quality Assurance and Control Inspection Program.

Quality Assurance and Control Inspection Program means the program described in Attachment B attached to the Scope of Work.

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

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

Related Party means:

- (a) any person or entity that is a stockholder of Contractor that owns, directly or through one or more intermediate entities a 10% or greater equity interest in Jamestown Corridor Constructors, LLC (each a "substantial owner");

- (b) any entity in which a substantial owner owns directly or through one or more intermediate entities a 10% or greater equity interest; or
- (c) any entity effectively controlled by a substantial owner.

Reserved Rights means all rights reserved to the Department under Section 15.1 of the Comprehensive Agreement.

Responsible Public Entity shall have the meaning assigned to such term in Section 56-557 of the PPTA and, for purposes of the Comprehensive Agreement, means Department.

Retainage shall have the meaning set forth in Section 14.2.6.1 of the Design-Build Contract.

RFC Notice shall have the meaning set forth in Section 19.4.2.1 of the Design-Build Contract.

Right of Way Acquisition Plan means the Right of Way Acquisition Plan for a Project Segment prepared by Contractor and approved by Department in accordance with Section 6.2 of the Design-Build Contract and Attachment C to Appendix 6 of the Design-Build Contract, including the modifications to Department's Right of Way Manual of Instructions included in Appendix 11 to the Design-Build Contract.

Right of Way Plans means the Project Right of Way plans for a Project Segment prepared by Contractor in accordance with Attachment C to Appendix 6 the Design-Build Contract and approved by Department in accordance with Section 6.2 of the Design-Build Contract.

Safety Program means Contractor's approved safety program meeting the requirements set forth in Section 5.1.2 of the Design-Build Contract.

Scope of Work means the scope of work for construction of the Project attached to the Design-Build Contract as Appendix 6.

Segment, when followed by the roman numerical designation I, II, III, IV or V, or **Project Segment**, means a segment of the Jamestown Corridor Improvements Project as described in the Scope of Work attached as Appendix 6 to the Design-Build Contract.

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

Site means those areas designated in writing by Department for performance of the Work and such additional areas as may, from time to time, be designated in writing by Department for Contractor's use in performance of the

Work. The Site initially includes the area within the Project Right of Way limits. For purposes of insurance, indemnification, safety and security requirements and payment for use of equipment the term "Site" also includes any areas on which Utility Relocation Work is performed and any property being temporarily used by Contractor for storage of equipment and/or construction Work.

Standard Specifications means the Virginia Department of Transportation Road and Bridge Specifications dated 2002 as noted, provided that the document attached to the Design-Build Contract as Appendix 9 shall be substituted for Division I thereof.

State means the Commonwealth of Virginia.

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

State Indemnitee means and includes Department, the Commissioner, the CTB, the State and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them.

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

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

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

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

Term, for purposes of the Comprehensive Agreement, means the time period commencing on the Agreement Date and expiring on December 31, 2007,

unless earlier terminated in accordance with Article XII of the Comprehensive Agreement.

Transaction Screen Process means a study that, at a minimum, meets the requirements of ASTM Standard 1528-00.

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

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

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

Warranties means the warranties made by Contractor in Article 11 of the Design-Build Contract.

Work means all of the administrative, design, engineering, permitting, real property acquisition support services, Utility Relocation, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation, reporting, record keeping and other duties and services to be furnished and provided by Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance except for those efforts which such Contract Documents specify will be performed by Persons other than a Contractor Party.

Working Drawings means drawings required to show details associated with the Contractor's means and methods or the process it intends to utilize to construct portions of the Project, but which will not be part of the permanent construction, e.g., formwork, shoring, etc.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of any Contractor Party and in any way related to the Project or Project Right of Way, including but not limited to Shop Drawings, Working Drawings, Draft Plans and Specifications, Plans and Specifications, record and as-built plans and

specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, the Right of Way Plan, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all documents described in Section 6.4.2 of the Design-Build Contract), engineers' and inspectors' diaries and reports, utility relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Regulatory Approvals, Change Orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which Contractor and Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 14.2 of the Comprehensive Agreement and which is not conceived or first reduced to practice for Project Purposes, such as but not limited to the escrowed pricing documents and other proprietary financial and pricing information of Contractor.

EXHIBIT B
DESCRIPTION OF PROJECT PHASES

Phase A: Segments I, II, III and a portion of Segment IV (from Station 13+25 to 26+60.22)

Phase B: Acquisition of the real estate owned by Vermillion

Phase C: Remaining Portion of Segment IV (from Station 10+00 to 13+25)

Phase D: Segment V

*All of which Segments are more particularly described in and modified by Appendix 6 to the
Design-Build Contract*

DESIGN-BUILD CONTRACT
Jamestown Corridor Improvements Project

Dated as of October 21, 2002

by and between

VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia

and

JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, L.L.C.

a Virginia limited liability company

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DESIGN-BUILD CONTRACT

This DESIGN-BUILD CONTRACT ("Contract") is made and entered into as of October 21, 2002, by and between the Virginia Department of Transportation, a department of the Commonwealth of Virginia ("Department"), and Jamestown 2007 Corridor Constructors, L.L.C., a Virginia limited liability company ("Contractor"), with reference to the following facts:

RECITALS

- A. Concurrently herewith, Department and Contractor have entered into a Comprehensive Agreement concerning the design, construction, and warranty of the Jamestown Corridor Improvements (the "Comprehensive Agreement"). This Contract is entered into pursuant to the Comprehensive Agreement.
- B. The parties intend this Contract to be a lump sum design-build contract obligating Contractor to perform all Work necessary to obtain completion of the Project by the deadline specified herein, for the Contract Price, subject only to certain specified exceptions set forth herein. Department has determined, and Contractor has acknowledged, that this approach is necessary due to the fact limited funds are available for the Project.
- C. The Work will consist of five independent Segments as follows: Segment I – Route 199 Improvements at Mounts Bay Road and Quarterpath Road; Segment II – Route 199 Improvements over College Creek; Segment III – Route 199 and Route 31 Intersection Improvements; Segment IV – Route 359 Improvements; and Segment V – Landscaping Improvements along Route 199 and Route 359.
- D. The Project shall be constructed in four separate Project Phases as enumerated in detail in Appendix 6 Scope of Work and the Department will issue Notices to Proceed for each Project Phase on or before the dates specified.
- E. If Contractor fails to complete the Project or Segment IV in accordance with the time limitations set forth in the Contract Documents, then Department will suffer losses and damages which are extremely difficult, if not impossible, to ascertain. This Contract thus provides that Contractor shall be liable for Liquidated Damages in the event such completion is delayed.
- F. The Preliminary Engineering, which consists of drawings and documents referred to in Appendix 2, shall, subject to provisions contained in Section 3.3, be the basis for the final design of each Project Segment to be furnished by Contractor. It is intended that Contractor will assume full responsibility and liability with respect to design of the Work authorized hereunder in accordance with the terms of the Contract.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS; CONTRACT DOCUMENTS; ACCEPTANCE OF PROJECT SITE

1.1 Certain Definitions

Appendix 1 contains the meaning of certain terms used in the Contract Documents. Division 1 of the Standard Specifications, attached hereto as Appendix 9, contains the meaning of certain technical terms.

1.2 Recitals

Recitals A through F are hereby incorporated by reference herein.

1.3 Order of Precedence

Each of the Contract Documents is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract. In the event of any conflict among the Contract Documents, this Contract and all Change Orders shall in all events control. With respect to the other Contract Documents the order of precedence (highest to lowest) shall be as set forth below.

- (a) For design Work:
 - 1. Scope of Work
 - 2. Standard Specifications (including the order of precedence set forth in § 105.05 thereof)
 - 3. Preliminary Engineering
- (b) For all other matters:
 - 1. Plans and Specifications, excluding any deviations from requirements of the other Contract Documents contained therein which have not been approved in writing as such by Department
 - 2. Scope of Work
 - 3. Standard Specifications

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

1.4 Acceptance of Preliminary Engineering

1.4.1 Contractor has reviewed the Preliminary Engineering and the Scope of Work and has carefully evaluated the feasibility of performing the Work within the deadlines specified herein and for the Contract Price, without relying on any matter other than the Contract Documents, and has reasonable grounds for believing and does affirmatively believe that such performance is feasible and practicable.

1.4.2 Contractor has, prior to the Agreement Date, reviewed the preliminary geotechnical, hydrology and environmental information made available for the Project, inspected and examined the Site and surrounding locations and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Project to the extent Contractor deemed necessary or advisable for pricing the Project, and as a result of such review, inspection, examination and other activities Contractor is familiar with and accepts the physical requirements of the Work. Contractor further acknowledges and agrees that changes in conditions at the Site may occur after the Agreement Date, and that Contractor shall not be entitled to a Change Order in connection therewith except as specifically permitted under Article 19.

ARTICLE 2. CONTRACTOR'S DESIGN, PROCUREMENT AND CONSTRUCTION RESPONSIBILITIES

2.1 Design and Construction

Contractor shall furnish the design of each Project Segment, and shall construct the Project as designed in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, and in accordance with the terms and conditions set forth in the Contract Documents. Except as otherwise specifically provided in this Contract, Contractor shall be solely responsible for providing all equipment, materials, labor, services and efforts necessary to achieve Final Acceptance of the Project on or before the deadline set forth herein; and, subject only to the terms of Article 19, the cost of all such equipment, materials, labor, services and efforts is included in the Contract Price .

2.2 Contractor Obligations

Contractor hereby covenants as follows:

2.2.1 Except as provided in Sections 6.5 and 10.2.4 of this Contract, Contractor shall furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, equipment, labor, services and efforts which this Contract specifies will be undertaken by other Persons) to construct each Project Segment in accordance with the requirements of the Contract Documents, the CPM/Payment Schedule, all Regulatory Approvals, the approved Quality Assurance and Control Inspection Program, the approved Safety Program, the approved Construction Traffic Management Plan and all other applicable safety, environmental and other requirements, taking into account the Project Right of Way limits and other physical limits resulting from constraints affecting each such Project Segment, so as to achieve Final Acceptance of the Project by the deadline specified herein, and otherwise to do in a timely manner everything required by and in accordance with the Contract Documents.

2.2.2 All design and engineering Work shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State, by personnel with demonstrated competence, integrity, responsibility and professional qualifications necessary for the satisfactory performance of the Work in accordance with the Contract Documents. Such Persons shall assume professional responsibility for the accuracy and completeness of the Construction Documents prepared by them and shall exercise their skill, ability and judgment reasonably for Department's benefit.

2.2.3 Contractor shall at all times provide a Project Manager approved by Department who will have responsibility for the prosecution of the Work and who will act as a single point of contact in all matters on behalf of Contractor. Contractor shall not change the Project Manager without the prior written notification to the Department.

2.2.4 Contractor shall obtain and pay the cost of obtaining all Regulatory Approvals required in connection with the Project (except as provided otherwise in Sections 10.2. and 10.3 and Appendix 6).

2.2.5 Contractor shall undertake and properly perform all actions required by and all actions necessary to maintain in full force and effect all Regulatory Approvals, including performance of all environmental mitigation measures required by the Contract Documents.

2.2.6 Contractor shall cooperate with Department and local agencies in all matters relating to the Project, including review of the design of the Project and conducting inspections during the construction of the Project.

2.2.7 Contractor shall supervise and be responsible to Department for acts and omissions of Contractor's employees, agents, officers and Subcontractors and other Persons performing portions of the Work, as though all such Persons were directly employed by Contractor.

2.2.8 Contractor waives any right to file or enforce any mechanics liens with respect to parcels acquired for and transferred to the Department or the Commonwealth of Virginia or any other property of the Department or the Commonwealth of Virginia. Contractor acknowledges that consideration for such waiver is reflected in the Contract Price. Contractor shall require each Subcontractor to waive its right to file or enforce any such mechanics liens.

2.2.9 Contractor shall lead the public involvement program, with the support of the Department. The public involvement program shall include but not be limited to a web page, a public affairs contact, and various meetings as requested by the public or local governing bodies.

ARTICLE 3. PLANS AND SPECIFICATIONS

3.1 Commencement of Design Work

Contractor shall commence performance of design and design verification promptly following Notice to Proceed.

3.2 In-Progress Review

Contractor shall provide Department with the opportunity to perform continuous review and overview of the design through a series of design reviews incorporated into a CPM/Payment Schedule agreed to from time to time by Department and Contractor. Contractor shall furnish a schedule for provision and review of design submittals which shall be subject to approval by Department. Contractor shall cause all design submittals to be produced and delivered to Department, local agencies and any other Persons whose approval is required, in compliance with the requirements of the Scope of Work, and the Plan Preparation and Plan Development document attached as Attachment C to the Scope of Work within the time periods set forth in the CPM/Payment Schedule.

3.3 Design Approval

Department shall have the right to review and comment on all Draft Plans and Specifications for compliance with the requirements of the Contract Documents. Contractor acknowledges that it is responsible for satisfying all such requirements and that Department will have the right to disapprove any design approach that is not consistent with the Preliminary Engineering or that is not in compliance with the requirements of the Contract Documents unless said approach was previously approved in writing by Department. However, the Department and Contractor acknowledge that the Preliminary Engineering for Segments I, II, and III is in various stages of design and Contractor retains the flexibility during design and design verification to make changes to details and features contained in such Preliminary Engineering so long as such changes are in accordance with generally accepted professional engineering principles and such changes provide the Department with a design equal to or better than that contained in the Preliminary Engineering. The Department and Contractor further acknowledge that specific changes to the Preliminary Engineering details have been agreed upon and approved as outlined in Appendix 6, and Contractor shall be responsible to incorporate such changes into the Project design. Provided that Department has the opportunity to perform continuous review and overview of the design as provided in Section 3.2, Department's Chief Engineer for Program Development's review of the completed Draft Plans and Specifications shall be conducted within 15 Business Days after receipt thereof. Contractor shall revise and modify all such documents or materials so as to fully reflect all comments and shall deliver to Department the revised submittal for review and comment. Department's right to review and comment, and Contractor's responsibility to comply with the requirements of the Contract Documents, shall be subject to the provisions of Section 3.8.

3.4 Review Deadlines

Department shall use reasonable efforts to accommodate reasonable requests by Contractor for review of specific design submittals within 10 Days of submission. Contractor acknowledges that expediting the review of prioritized submittals may result in a delay in review of lower priority submittals. Department and Contractor shall work cooperatively to prioritize the different submittals and achieve an acceptable review schedule. Contractor shall bear full responsibility for obtaining approvals from local agencies and others, provided that Department will use reasonable efforts to expedite critical approvals from such entities, if and as requested by Contractor.

3.5 Status of Design at Commencement of Work

Contractor shall have no right to rely on any of the documentation or information provided by Department or other Persons, other than the Contract Documents supplied by Department. Contractor shall have full responsibility for the design of the Project. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Guaranteed Completion Date or the date for Final Acceptance of Segment IV contained in Section 25.6 as a result of increased costs or delays incurred due to any errors, omissions or defects in design. Contractor agrees that it shall have no right to seek additional compensation or a time extension, except as specifically permitted by Article 19.

NO REPRESENTATION OR WARRANTY IS MADE TO ANY CONTRACTOR PARTY BY DEPARTMENT OR ANY OTHER PERSON THAT THE INFORMATION CONTAINED IN THE PRELIMINARY ENGINEERING OR REFERENCE DOCUMENTS IS CORRECT, SUFFICIENT, COMPLETE OR ACCURATE OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS, NOTWITHSTANDING THE FACT THAT DEPARTMENT'S AUTHORIZED REPRESENTATIVE SIGNED THE PRELIMINARY ENGINEERING. SUCH SIGNATURE IS SOLELY FOR THE PURPOSE OF INDICATING THAT DEPARTMENT HAS COMPLETED ITS REVIEW OF THE PRELIMINARY ENGINEERING AND REQUIRES NO CHANGES THERETO.

3.6 Preliminary Engineering Work

Except as provided in Section 3.5, the Contractor understands and agrees that Department shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be legally or contractually responsible, by reason of any use of any information contained in the Preliminary Engineering or any action or forbearance in reliance thereon, except to the extent that Article 19 provides for an increase in the Contract Price and/or an extension of the Guaranteed Completion Date or the date for Final Acceptance of Segment IV contained in Section 25.6 with respect to such matter. Contractor further acknowledges and agrees that Contractor is capable of conducting, and is obligated hereunder to conduct, any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at Contractor's own risk and at its own discretion.

3.7 Exceptions and Deviations from Department Standards

3.7.1 Department will reasonably consider Contractor's requests for exceptions to the Department Standards, in addition to the modifications already reflected in Appendix 9 and Attachment D to Appendix 6, as they relate to means and methods of construction that are not necessary or appropriate for design-build implementation.

3.7.2 Contractor may apply for deviations from applicable Department Standards. All applications shall be in writing and shall include justification for the request, addressing safety and cost considerations. Department shall consider in good faith, but has no obligation to approve, any such application, and Contractor shall bear the burden of persuading Department that the deviation sought constitutes sound and safe engineering and achieves or substantially achieves Department's applicable safety standards and criteria. No deviation shall exist or be effective unless and until stated in writing signed by Department. Department's failure to issue a written approval of a requested deviation within 21 Days after Contractor applies therefor in writing shall be deemed a denial of such application. Department's determination regarding Contractor's application for a deviation shall be final and shall not be subject to dispute resolution hereunder.

3.7.3 Contractor may apply for approvals from Department of interpretive engineering decisions concerning the meaning, scope, interpretation and application of the Department Standards. All applications for such approvals shall be in writing. Department may issue a written approval of Contractor's proposed interpretive engineering decision (if any), may issue its own interpretive engineering decision or may disapprove any interpretive engineering decision Contractor proposes. Department's failure to issue a written approval or of Contractor's own interpretive engineering decision within 21 Days after Department received Contractor's written application shall be deemed a denial of such application. Department's determination regarding Contractor's application for an interpretive engineering decision shall be final but subject to dispute resolution hereunder.

3.7.4 In the event that Department reverses a written deviation or interpretive engineering decision previously given under Section 3.7.2 or 3.7.3, such reversal shall constitute a Directed Change.

3.8. Limitations on Contractor's Right to Rely.

3.8.1 Contractor expressly acknowledges and agrees that the Department's rights under the Contract Documents (i) to review, comment on, approve, disapprove and/or accept designs, plans, specifications, work plans, construction, equipment, installation, books, records, reports or statements, and (ii) to review, comment on and approve or disapprove qualifications and performance of, and to communicate with, contractors, subcontractors, architects, engineers or other consultants of Contractor (A) exist solely for the benefit and protection of the Department, (B) do not create or impose upon the Department any standard or duty of care toward any Contractor Party, all of which are hereby disclaimed, other than a duty to act in good faith, (C) may not be relied upon, nor may the Department's exercise or failure to exercise any such rights be relied upon, by Contractor in determining whether Contractor has satisfied the standards and requirements set forth in this Contract or any other Contract Document, and (D) may not be asserted, nor may the Department's exercise or failure to exercise any such rights be asserted, against the Department by Contractor as a defense, legal or equitable, to Contractor's obligation to fulfill such standards and requirements. Regardless of the Department's exercise or failure to exercise any such rights, regardless of the issuance of permits or certificates of completion or acceptance, and regardless of Final Acceptance, except as provided in Section 6.5 and 10.2.4, Contractor at all times shall have an independent duty and obligation to obtain all necessary Regulatory Approvals to, design, acquire, and construct the Project and Project Right of Way in accordance with the standards and requirements set forth in the Contract Documents.

3.8.2 To the maximum extent permitted by law, and unless otherwise provided herein, Contractor hereby releases and discharges the Department from any and all duty and obligation to cause permitting, right of way acquisition, Utility Relocation, construction, and equipping of or for the Project or Project Right of Way, by the Contractor, to satisfy the standards and requirements set forth in the Contract Documents.

3.8.3 No rights of the Department described in Section 3.8.1 above, no exercise or failure to exercise such rights, no failure of the Department to meet any particular standard of care in the exercise of such rights, no issuance of permits or certificates of completion or acceptance and no Final Acceptance shall:

(i) relieve Contractor of its responsibility for the selection and the competent performance of all contractors, subcontractors, architects, engineers and other consultants (except those hired by the Department);

(ii) relieve Contractor of any of its obligations or liabilities under the Contract Documents;

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

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

3.8.4 Notwithstanding subsections 3.8.1, 3.8.2 and 3.8.3 above, (i) Contractor shall be entitled to rely on specific written deviations and interpretative engineering decisions the Department gives under the Contract Documents, (ii) the Department is not relieved from any liability arising out of a knowing, intentional misrepresentation under any written statement the Department delivers, and (iii) the Department is not relieved from its obligations under the Contract Documents.

ARTICLE 4. CONSTRUCTION WORK

4.1 Conditions Precedent to Commencement of Construction Work

Contractor shall have no right to commence construction Work unless and until the following conditions, in addition to the conditions set forth in Section 4.2, are satisfied or unless Department, in its sole discretion, waives any such condition in writing:

4.1.1 All conditions precedent to the issuance of a Notice to Proceed for Phase A of the Project as set forth in the Comprehensive Agreement shall have been satisfied, and the Department shall have issued a Notice to Proceed for Phase A;

4.1.2 Not Used;

4.1.3 Department shall have approved the Contractor's Safety Program;

4.1.4 Contractor shall not then be in breach of any material requirement of the Contract Documents or the other Project Agreements to which it is a party, including requirements regarding non-discrimination, minority employment and disadvantaged business enterprises;

4.1.5 all required insurance policies and bonds shall have been received by Department; and

4.1.6 there exists no court order that restrains, enjoins, challenges or delays performance of the Work or the granting or renewal of any Regulatory Approval.

4.2 Conditions Precedent to Construction of Portion of the Project or a Project Segment

Contractor shall have no right to commence construction of any portion of the Project or a Project Segment unless and until all of the following conditions, in addition to the conditions set forth in Section 4.1, are satisfied or unless Department in its sole discretion waives any such condition in writing, and Contractor shall commence such construction in accordance with the CPM/Payment Schedule promptly following satisfaction of all such conditions and the conditions set forth in Section 4.1:

4.2.1 All conditions precedent to the issuance of a Notice to Proceed for the Project Phase in which the portion of the Project or Project Segment lies as set forth in the Comprehensive Agreement shall have been satisfied, and the Department shall have issued the Notice to Proceed for such Project Phase;

4.2.2 Department's Chief Engineer of Program Development shall have approved in writing the Plans and Specifications and Construction Traffic Management Plan for such portion of the Project or Project Segment;

4.2.3 all Regulatory Approvals necessary for construction of the applicable portion of the Project or Project Segment shall have been obtained and all conditions of such Regulatory Approvals which are a legal prerequisite to commencement of such construction shall have been satisfied; and

4.2.4 all necessary rights of access shall have been obtained for such portion of the Project or Project Segment.

4.3 Conditions Precedent for Department's Benefit

All the conditions precedent set forth in this Article 4 are for the sole benefit of Department. Any condition precedent may be waived by Department; provided, however, that no person or entity shall be entitled to assume that Department will waive or refuse to waive any condition precedent in the absence of strict compliance therewith. No waiver of any condition precedent shall be enforceable unless signed by Department in writing. Unless Department waives a condition precedent which requires action by Contractor to be satisfied, Contractor shall remain bound to use diligent efforts to satisfy the condition precedent.

4.4. State Environmental Review Process Commitments

Contractor understands that the Department will conduct the administrative portion of the State Environmental Review Process (SERP) and that the Contractor shall be responsible for addressing all commitments resulting from the SERP.

ARTICLE 5. PROJECT MANAGEMENT

5.1 Supervision and Construction Procedures

5.1.1 Responsibility

Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and Site safety and for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

5.1.2 Safety Program

Contractor shall have full responsibility for jobsite safety, including provision of and compliance with the Safety Program to be submitted to Department for its approval prior to commencement of any construction Work. Department will advise Contractor of situations which Department deems unsafe and shall have the right to require Work to be stopped as specified in Section 20.2. Contractor shall take all reasonable precautions and be responsible for the safety of, and shall provide protection to prevent damage, injury or loss to: (a) all employees of Contractor and its Subcontractors performing the Work and other persons (including employees of Department) who are on Site or would reasonably be expected to be affected by the Work; (b) the Work and materials and equipment to be incorporated therein; and (c) other property at or adjacent to the Site.

5.1.3 Security

Until Final Acceptance of a Project Segment, Contractor shall provide appropriate security for such Segment.

5.1.4 Adjoining Property

Contractor shall ensure that all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom Contractor may be legally or contractually responsible are undertaken in a manner that will reasonably minimize the effect on surrounding property and the public.

5.1.5 Differing Site Conditions

In addition to the requirements of Article 19, the procedures set forth in this Section 5.1.5 shall apply in the event of Contractor's discovery of any Differing Site Conditions.

5.1.5.1 Notification to Department; Work Stoppage

In the event of any such discovery, Contractor shall, within the close of the second Business Day following such discovery, notify Department thereof telephonically or in person, to be followed immediately by written notification. Contractor shall immediately stop Work in and secure the affected area. In such event, Department shall have the right, but not the obligation, to view the location. Following the close of the second Business Day following written notice to Department, Contractor may proceed with the Work, provided it can do so in compliance with all applicable requirements of the Contract Documents. Contractor shall keep Department apprised regarding actions which it is taking to assure compliance with all such requirements. The notification and work stoppage described above

constitute a condition precedent to Contractor's right to file a Request for Change Order for Work performed prior to such notification.

5.1.5.2 Assumption of Risk

Contractor acknowledges and agrees that it shall not be entitled to any increase in the Contract Price for additional costs of performing the Work associated with any of the above-described conditions, except to the extent of any Change Order issued under Article 19 or as directed under Article 27. Contractor acknowledges and agrees that Contractor's right to obtain a time extension with respect to delays caused by such conditions is subject to the limitations and conditions contained in Article 19.

5.2 Department Oversight

5.2.1 Effect of Reviews, Inspections, Tests and Approvals

Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by reviews, tests, inspections or approvals performed by any Persons, or by any failure of any Person to take such action. Subject to Section 3.7.4, the reviews, inspections, tests and approvals conducted by Department, Governmental Persons and others do not constitute acceptance of the materials or Work reviewed, tested or inspected, and Department may reject or accept any Work or materials, request changes and/or identify additional Work which must be done at any time prior to the Final Acceptance Date, whether or not previous reviews, inspections, tests or approvals were conducted by any such Persons.

5.2.2 Inspection and Testing

5.2.2.1 Contractor shall perform whatever inspection, sampling and testing Contractor deems appropriate in order to comply with its obligations under the Contract Documents.

5.2.2.2 The QA Manager shall be responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program.

5.2.2.3 During the construction of the Project and until the Final Acceptance Date, Department shall designate two qualified staff engineers to perform oversight activities for the Project and to provide necessary coordination with Contractor. Such Department representatives shall have full and complete access to the Project, the Work in progress, the "daily QA/QC diaries," and to other technical documents and Project records associated with quality control, materials verification, materials installation and testing. Contractor shall give such Department representatives not less than two (2) Business Days prior notice of and opportunity to participate in any meetings described in the Quality Assurance and Control Inspection Program attached to the Scope of Work.

5.2.2.4 All materials and each part or detail of the Work shall also be subject to inspection and testing by Department. Contractor shall not be entitled to any additional compensation or time so long as any such inspection and testing reasonably conforms to the CPM/Payment Schedule. Such inspection does not make such Person a party to this Contract nor will it change the rights of the parties hereto. Contractor hereby consents to such inspection and testing. Upon request from Department, Contractor shall furnish information to such persons as are designated in such request and shall permit such persons access to all parts of the Work.

5.2.2.5 At all times before Final Acceptance of the Project or of a Project Segment or structure, Contractor shall remove or uncover such portions of the finished construction Work as directed by Department. After examination by any Persons designated by Department, Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Contractor's cost. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by Department in accordance with Attachment B to the Scope of Work or without adequate documentation that the Work was inspected by the QA Manager in accordance with Attachment B to the Scope of Work may be ordered uncovered, removed or restored at Contractor's cost, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.2.2.5 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a Department-Caused Delay, and Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

ARTICLE 6. PROJECT RIGHT OF WAY ACQUISITION

Contractor shall be responsible for acquiring the Project Right of Way as specified in this Article 6.

6.1 Project Right of Way Acquisition Requirements

6.1.1 Contractor shall prepare and obtain the Department's approval of the Right of Way Acquisition Plan for each Project Segment prior to commencement of any Project Right of Way acquisitions for such Project Segment.

6.1.2 Contractor shall comply with all Laws, Regulations and Ordinances applicable to right of way acquisitions by Department, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. Section 4651 et seq. and any amendments thereto, as supplemented by the regulations of 49 C.F.R., Part 24, and Title 25, Chapter 6, Section 25-235 et seq., Code of Virginia. Contractor's activities shall also be in substantial conformity with Department's Manual of Instructions for Right of Way and Utility Relocations as modified by the provisions of Appendix 11, attached hereto.

6.1.3 All real property interests that Contractor acquires for the Project shall be acquired by Contractor as agent of the Department for purposes of acquiring property only. Such interests shall be fee simple title, or such other real property interest approved in writing by the Department, and shall be conveyed by a general warranty deed (unless otherwise approved in writing by the Department), subject only to conditions of title that may be approved in writing by the Department in its sole discretion. Permanent easements for drainage or slopes, utility easements, limited access rights, and temporary construction easements shall be included as part of the same transfer document or be transferred by separate instrument, when so indicated in the Right of Way Acquisition Plan.

6.1.4 All persons or firms Contractor intends to use in performing any portion of the acquisitions shall meet Department's Consultant Prequalification Guidelines.

6.1.5 Contractor shall perform environmental assessments, investigations and studies in accordance with the requirements of Section 6.5.1 of this Contract on property to be acquired for the Project Right of Way. Contractor shall notify Department of any recommendations and conclusions contained in the studies conducted pursuant to Section 6.5.1 pertaining to the property to be acquired for the Project Right of Way to allow Department to consider whether and in what form it wishes title to be acquired.

6.1.6 Contractor shall cause all persons performing acquisition activities by or on behalf of Contractor to maintain a complete, legible diary of each contact with a property owner or his or her representative (which may be maintained electronically). The diary shall include the time, place, amount of offer, identification of the party(ies) to whom any offer is made, all parties present, and the response of the owner or its representative. The diary is to be retained for Contractor's permanent records and made available to Department upon request. In addition, Contractor shall furnish to Department, upon request, miscellaneous correspondence and written recommendations regarding future negotiations. All parcels are to be set up and tracked in the Right of Way Utilities Management System (RUMS) in accordance with Department policy and procedures (for which training will be provided by the Department upon Contractor's request).

6.1.7 Upon reasonable notice, all persons performing acquisition activities by or on behalf of Contractor shall be available for consultation and testimony (including discussion of diary notes and acquisition events) with Department representatives during and after completion of acquisitions.

6.1.8 Except for disclosures to Department or to attorneys designated and appointed by the State Attorney General and other disclosures first approved or directed by Department in writing, Contractor shall keep strictly confidential and not disclose any diaries, notes, correspondence, documents, agreements, appraisals or other information pertaining to or arising out of Contractor's acquisition work and activities except as required by law or order of any court. Should such records become subject of a request for public disclosure, Contractor shall immediately notify Department of such request and the date by which any response is due in order to give the Department an opportunity, if it so determines, to oppose the request and seek appropriate legal relief.

6.1.9 All costs in connection with acquisitions of Project Rights of Way shall be paid as provided in Section 6.6. The CPM/Payment Schedule shall set forth the dates by which Contractor anticipates acquiring the properties specified in the Right of Way Acquisition Plan; however, the parties recognize that such dates are estimates only, and so long as the Contractor is diligently pursuing the acquisitions in accordance with the provisions of this Contract, the Contractor shall be entitled to a time extension in the event the acquisitions affect the Critical Path of the Work, as reasonably determined by the Department.

6.2 Right of Way Plans

6.2.1 (a) Prior to commencement of Right of Way acquisition activities, Contractor shall prepare a Right of Way Acquisition Plan for the Project.

(b) The Right of Way Plans are required to be approved by the Department and the State Transportation Commissioner prior to any acquisition of property. The Department shall approve or disapprove in writing the Right of Way Plans within fifteen (15) Days after submission by Contractor. If the Department disapproves such plans, it shall indicate, in writing, the reasons for such disapproval. Provided, however, the Department's failure to provide written approval or disapproval within fifteen (15) Days shall not be deemed an approval. If disapproved, Contractor shall submit revised Right of Way Plans, incorporating Department's comments.

6.2.2. In the event that Contractor desires to obtain any parcels not covered by the approved Right of Way Acquisition Plan and/or Right of Way Plans, Contractor shall submit a revision to the Right of Way Acquisition Plan and the Right of Way Plans to Department, and shall obtain Department's written approval thereof prior to undertaking any negotiations or other acquisition work with respect to any new parcels to be obtained pursuant to the revised plans.

6.2.3 Contractor may offer an additional amount in an attempt to reach a voluntary settlement as authorized in writing by the Department.

6.3 Acquisition by Condemnation.

6.3.1 Contractor may request Department to institute eminent domain proceedings only after complying with the requirements for negotiations as indicated in the approved Right of Way Acquisition Plan. Contractor shall initiate such process by submittal to the Department of a complete Condemnation Package as described in Section 6.3.2. Contractor shall be responsible for making available condemnation witnesses, including experts, as may be requested by the Office of the Attorney General in all eminent domain proceedings. All attorney's fees, trials costs, and costs of pre-trial and trial testimony

by witnesses and experts shall be paid from either the Phase A ROW Allowance or Phase B ROW Allowance as applicable. Department shall be responsible for determining if exceptions to the award are to be filed and further legal actions are warranted. Department shall be responsible for making any condemnation award payments in excess of the condemnation certificate amount.

6.3.2 The following documents are required to be included in the Condemnation Package:

- (a) A request for initiation of condemnation proceedings signed by an authorized representative of Contractor, identifying the parcel and certifying that the requirements for negotiations and the approved Right of Way Acquisition Plan have been satisfied;
- (b) A copy of Contractor's written offer to the property owner and any written response from the owner;
- (c) A legal description of the parcel;
- (d) A fair market value appraisal, reviewed and approved in accordance with Department policy;
- (e) A 60-year title examination by individuals approved by the Department (including copies of documents identified in all exceptions listed therein and a plat of all easements identified therein); and
- (f) The studies and analyses required by Section 6.5, including, in the event that the studies and analyses show any Hazardous Substances within the real property interest to be conveyed, a copy of any proposed conceptual remediation or containment plan and, if then available, the approval thereof by the Department of Environmental Quality or the United States Environmental Protection Agency as described in Section 6.5.3.

6.3.3 Within fifteen (15) Days after receiving a Condemnation Package in compliance with the requirements of Section 6.3.2 and applicable laws, Department shall execute and deposit with the Clerk of Court a Certificate of Take or Certificate of Deposit pursuant to Title 33, Chapter 1, Article 7, Code of Virginia.

6.3.4 Eminent domain proceedings shall be prosecuted by the Office of the Attorney General though designated appointed counsel. Department shall have sole discretion with respect to all decisions regarding the settlement of any eminent domain proceeding.

6.3.5 In any proceeding brought pursuant to its condemnation power Department shall, upon Contractor's request, reasonably consider any and all theories of valuation Contractor seeks to employ supported by a fair market value appraisal.

6.4 Acquisitions by Negotiation and Conveyances to Department.

6.4.1 Title to property shall be acquired in the Department's name as shown on the Right of Way Acquisition Plan upon presentation of the following documents by the Contractor:

- (a) A copy of the conveyance and other closing documents.

- (b) Fair market value appraisal reviewed and approved in accordance with Department's requirements and showing a value, which supports the acquisition price.
- (c) For all parcels where fee simple title is being acquired or where the consideration is greater than \$10,000 for any type of property rights being acquired other than temporary construction easements, an American Land Title Association (ALTA) extended coverage owner's policy of title insurance (1992 or 1970 form) issued by a title insurance company acceptable to Department (including copies of documents identified in all exceptions listed therein and a plat of all easements identified therein); and
- (d) The studies and analyses required by Section 6.5, including, in the event that the studies and analyses show any Hazardous Substances within the real property interests to be conveyed, a copy of any proposed remediation or containment plan, and if then available, the approval of such plan by the Department of Environmental Quality or the United States Environmental Protection Agency as described in Section 6.5.3.

6.4.2 Department will pre-approve forms to be used for purchase agreements and conveyance documents so that only the business terms and any revisions to the pre-approved forms will require written approval by Department.

6.4.3 Contractor shall use commercially reasonable efforts to ensure that the conveyance documents are recorded and that Department receives a complete set of closing documents within ninety (90) Days following the closing.

6.5 Hazardous Substance Investigations and Remediation.

6.5.1 Contractor shall cause a Transaction Screen Process or Phase I Environmental Investigation (study selection as appropriate), to be performed on all such properties to be acquired by Department by a qualified environmental consultant and in accordance with 42 U.S.C. Section 9601 (35) (B), as amended, with respect to the range of contaminants within the scope of the Comprehensive Environmental Response Compensation and Liability Act and petroleum products. The costs of such Transaction Screen Processes and Phase I Environmental Investigations are included in the Contract Price. Contractor shall submit a summary of the results of such investigations and recommendations for additional studies or Phase II Environmental Investigations, as needed, to Department for review and approval.

In the event the Department authorizes further studies and analyses, Contractor shall develop the minimum standards and cost estimates for such further studies and analyses for review and approval of Department, and Contractor shall cause additional studies and analyses to be performed. The costs of additional studies required or Phase II Environmental Investigations shall be funded from either the Phase A ROW Allowance or Phase B ROW Allowance as applicable.

Such Transaction Screen Processes, Phase I Environmental Investigations, and Phase II Environmental Investigations shall constitute all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial and customary practice as defined in 42 U.S.C. Section 9601(35)(B), as amended. Contractor shall submit a summary of results from any further studies and analyses to Department. The requirements of this Section 6.5.1 shall not relieve Contractor from performing additional investigation of any properties necessary to ensure proper management of

contaminated construction residuals and providing worker and environmental protection from hazardous conditions during the course of construction or from otherwise complying with all Laws, Regulations and Ordinances.

6.5.2 In the event that such further studies and reports indicate the presence of Hazardous Substances on the property, Department's Chief for Program Development or his designated representative shall determine whether Department is willing to consider an acquisition notwithstanding the presence of such Hazardous Substances and if so, on what basis (easement, lease, etc.).

6.5.3 If Department is willing to consider the acquisition; Contractor shall prepare and design containment, management, mitigation or remediation (CMMR) plans, estimates to perform these services, for Department review and approval. Contractor shall submit the Department approved plans to the Department of Environmental Quality or the United States Environmental Protection Agency, or otherwise coordinate its activities through these agencies. The Contractor shall be responsible for the containment, management, mitigation, disposal and remediation of Hazardous Substances. All costs of CMMR design or redesign shall be paid from either the Phase A ROW Allowance or the Phase B ROW Allowance as applicable in accordance with Article 19.

6.5.4 If Department determines that it is not willing to proceed with the acquisition in accordance with Article 6.5.2 or that the requirements associated with containment, management, mitigation or remediation are unacceptable, Department shall notify Contractor and Contractor shall identify alternative property acceptable to Department. In the event that Department is unwilling to acquire any contaminated property, Contractor shall be eligible for a Change Order with respect to cost of redesign and working around the contaminated site and/or a time extension to the extent such work affects the Critical Path, to the extent provided in Article 19. Any additional time made necessary by CMMR or selection of alternate property shall be the subject of a Change Order.

6.5.5 Contractor shall not knowingly transfer to Department any contaminated property without a conceptual CMMR plan, or demonstration that the levels of contamination are insignificant from a human health or an environmental protection standpoint, and, if then available, the approval of such CMMR plan by the Department and the Department of Environmental Quality or the United States Environmental Protection Agency.

6.5.6 Should work be conducted for petroleum storage tank releases, the work shall be performed pursuant to Article 9 of the State Water Control Law, Virginia Code Section 62.1-44.34:8-9 and Article 11 of the State Water Control Law, Virginia Code Section 62.1-44.34:14-23, and their respective regulations (9VAC 25-580-10 et.seq. and 9VAC 25-120-100 et.seq.) and shall be conducted in accordance with said requirements and with fees not to exceed the rate schedule established by the Virginia Department of Environmental Quality. Contractor shall receive compensation for such work from either the Phase A ROW Allowance or Phase B ROW Allowance as applicable pursuant to Change Order to the Contract, but shall pursue available reimbursement from the Virginia Petroleum Storage Tank Fund (VPSTF) for eligible activities by preparing and submitting all applications for fund reimbursement. Contractor shall notify the Virginia Department of Environmental Quality of any petroleum-related eligible activities and seek appropriate activity authorization prior to performing said activities. Contractor shall state on reimbursement application that Contractor is acting in the capacity as an agent to the Department and is therefore seeking reimbursement at "0-dollar" deductible pursuant to Virginia Code 62.1-44.34:11.2.P. Reimbursement for VPSTF eligible remediation activities shall be credited by the Contractor to either the Phase A ROW Allowance or Phase B ROW Allowance as applicable. If the VPSTF is no longer in operation at the time of reimbursement, then the costs shall be paid from the ROW Allowance pursuant to Change Order to the Contract.

6.5.7 An asbestos inspection shall be conducted on each structure located on acquired right-of-way acquisition parcels in accordance with standard industry inspection protocols. No inspection shall be performed on structures that have not been acquired and vacated. The costs of such asbestos inspections shall be included in the Contract Price. The Contractor shall be responsible for proper removal and disposal of asbestos containing materials (ACM) in accordance with Department Standard Specifications, Special Provisions and applicable regulations. Contractor and Subcontractors shall comply with licensure and conflict of interest requirements pursuant to Virginia Code Section 54.1-500, et.seq. and their respective regulations (18 VAC 15-20-10 et.seq.). The costs of asbestos removal and disposal shall be paid from either the Phase A ROW Allowance or Phase B ROW Allowance as applicable.

6.5.8 Any remediation-related activities that exceed the period of the Contract shall remain the responsibility of Jamestown Corridor Constructors through regulatory close out of the remediation-related activity. All project-related documents, records, etc. shall be provided to the Department during a debriefing meeting. Cost for transfer activities shall be included in the Contract Price.

6.6 Acquisition Costs.

The amounts to be paid to a property owner in connection with a negotiated acquisition shall be paid from either the Phase A ROW Allowance or Phase B ROW Allowance as applicable. Contractor shall identify each such recipient as the payee in the Draw Request and Certificate under Section 14.2.2 which requests funds for such purpose. Amounts to be paid to a property owner in connection with a condemnation action shall be paid by the Department directly as provided in Sections 6.3.1 and 6.3.3. With respect to Phase A of the Project, payment for such Project Right of Way acquisition costs shall be limited to: (i) direct payments for ownership or other property rights; (ii) direct payments for eligible relocation expenses as provided for under the Uniform Act; (iii) attorneys' fees, filing fees, and deposition costs and expenses arising from condemnation proceedings; and (iv) expenses incurred to cure or avoid damages proximately related to the acquisition of the rights of way. All other costs incurred by Contractor in connection with acquisitions for Phase A or the Project shall be part of the Contract Price. With respect to Phase B of the Project, payment of such Right of Way acquisition costs shall be limited to (i), (ii), (iii) and (iv) above, and also a lump sum administration fee to Contractor in the fixed amount of \$20,000. All other costs incurred by Contractor in connection with acquisitions for Phase B of the Project shall be part of the Contract Price. Notwithstanding the foregoing, and with the exception of any right of way potentially required for relocation of the 300 mm James City Service Authority water main in Segment II, Contractor shall be responsible, at its own cost and expense, without any entitlement to reimbursement, for acquisition of any property or temporary easements or other property rights outside of the Project Right of Way limits which Contractor determines is necessary to accommodate its construction methods, or to facilitate temporary Utility Relocations.

6.7 Changes in Project Right of Way Limits.

Any changes in the Project approved Right of Way limits as shown on the Right of Way Plans requires the Department Chief Engineer for Program Development's written consent.

6.8 Residue Parcels.

Whenever indicated on the approved Right of Way Plans or when determined by Contractor during negotiation, uneconomic residue parcels, to the extent possible by law, may, with the Department's written approval, be acquired as part of the acquisition. To extent required by law, Contractor shall acquire residue parcels on behalf of the Department in the same manner as other parcels in the Right of Way are acquired hereunder. All residue parcels acquired in connection with the Project shall be conveyed to Department for management and disposal. These properties shall be the sole property of the

Department and managed by the Department's Property Management Section. Contractor shall at no time be allowed to sell any of these residue parcels.

6.9 Record Documents

Contractor shall provide to Department a complete set of right of way conveyance documents indicating the date and recordation data for each tract or parcel, along with an annotated set of the approved Right of Way Plans.

ARTICLE 7. UTILITIES

This Article 7 sets forth provisions relating to relocation of Utilities. An Inventory of Utilities likely to be impacted by the Work is contained in Attachment E to Appendix 6. Contractor bears full responsibility for ascertaining the existence and exact location and size of all affected facilities.

7.1 Commencement of Utility Work.

Contractor shall commence Work relating to Utility Relocations promptly after issuance of the Notice to Proceed. Such work shall be performed in compliance with the other applicable provisions set forth herein.

7.2 Contractor's Utility Relocations Obligations.

Contractor is responsible for causing all Utility Relocations to occur in accordance with the CPM/Payment Schedule. Contractor shall comply with Title 56, Chapter 22, Section 56-570. Code of Virginia, in such efforts. Contractor shall obtain and process for payment final billings for any utility protection, adjustment, or relocation within one calendar year after the utility work has been completed. Contractor shall certify to Department that all eligible costs have been paid and there are no outstanding claims pending with a utility owner. Contractor shall cause the performance of the Utility Relocations (including the design of both horizontal and vertical alignments) to be consistent with the final design, such that the construction of the final design shall not require any further removal or relocation of such utilities, or any further installation of permanent protection structures therefor.

7.2.1 Not Used

7.2.2 Avoiding Utility Relocations

The location of utility facilities and potential impact of Utility Relocations of such facilities shall be evaluated in accordance with Department's Utility Accommodation Policy and the Land Use Permit Manual in finalizing the design of the Project, with the following goals: (a) avoiding Utility Relocations to the extent practicable; (b) if a Utility Relocation is not reasonably avoidable, protecting the facility in place to the extent practical, and (c) otherwise minimizing the potential costs and delays relating to Utility Relocations to the extent practicable.

7.2.3 Relocation Plan

The Contractor shall prepare and implement a relocation plan for all affected Utilities in accordance with the CPM/Payment Schedule. Such plan shall comply with all requirements contained in Title 56, Chapter 22, Section 56-570 Code of Virginia and shall be submitted to and approved by Department Chief for Program Development before commencement of construction work for affected Utilities.

7.2.4 Agreements with Utility Owners

Except as otherwise indicated in the Contract Documents, Contractor shall enter into a written agreement with each affected Utility, if required, (see Volume II, Right of Way Manual of Instructions, for examples) providing for the appropriate protection, adjustment, or relocation of the utility facilities and setting forth the terms and conditions under which said work will be performed, the cost responsibility, and payments to be made therefor, provided that Department shall enter into any such agreement with an affected utility upon Contractor's request if it would result in a Project cost savings and the form of agreement is acceptable to Department. Department will assist in negotiations with utility owners as reasonably requested by Contractor. Contractor shall have no right to enter into any agreement with a Utility Owner which purports to bind Department to its terms without the Department's prior written consent. In no event shall any agreement with a utility owner be deemed to modify the terms of this Contract, and in the event of any conflict between the terms of any such agreement and the terms of the Contract Documents, the Contract Documents shall prevail as between Department and Contractor.

7.2.5 Coordination of Utility Relocation

Contractor shall be responsible for coordinating the Work with the various utilities. The resolution of any conflicts between utilities and the construction of the Project shall be the responsibility of Contractor.

7.3 Payment for Utility Relocation.

7.3.1 The costs of Utility Relocations shall be paid by the Contractor and are included in the Contract Price, except to the extent such Utility Relocations are a result of Differing Site Conditions to the extent provided in Article 19.

7.4 Obligations of Department.

7.4.1 To the maximum extent available, Department shall provide to Contractor the benefit of any provisions in permits, easements and agreements affecting the Project which require the holders thereof to relocate at the Utility Owner's expense.

7.4.2 Department shall, at its sole cost, issue land use permits for utilities needing to cross the Project Right of Way and shall ensure that the installations are in compliance with Department's Land Use Permit Manual.

ARTICLE 8. PRICING DOCUMENTS

8.1 Definition

“Pricing Documents” include documentary information demonstrating the basis of the Fixed Price Amount for each Project Section and Change Orders adjusting the Fixed Price Amount for each Project Section adequate to enable an understanding and interpretation of how Contractor arrived at the Fixed Price Amount and Change Orders adjusting the Fixed Price Amount including:

- (i) itemization of the estimated costs of performing the Work separated into usual and customary items and sub-items (as applicable) to present a detailed estimate of costs, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit; and
- (ii) all assumptions, detailed quantity takeoffs, rates of production and progress calculations, and quotes from Subcontractors and Suppliers used to arrive at the Fixed Price Amount.

8.2 Exclusions from Pricing Documents

The Pricing Documents shall not include documents showing costs of work in similar projects or individual estimates supporting a reconciled pricing by Contractor.

8.3 Format of Pricing Documents

Representatives of the Department and Contractor will meet at a mutually agreeable time to verify the completeness and legibility of the Pricing Documents, after which the Pricing Documents will be sealed jointly by the representatives of the Department and Contractor.

In the event that, following the initial organization, it becomes apparent that the Pricing Documents do not include the information required under Section 8.1, Contractor shall submit to the escrow agent described in Section 8.4.1 supplemental information to make the documents complete within ten (10) Days after written request by Department which supplemental information shall be date stamped and labeled to identify it as supplemental Pricing Documents information.

8.4 Delivery of Pricing Documents into Escrow

8.4.1 Fixed Price Amount. Within 30 Days after issuance of the Notice to Proceed for Phase A, Contractor shall deliver to an escrow agent mutually agreeable to Contractor and Department (as used in this Article 8, the “Escrow Agent”) the Pricing Documents related to the Contract Amount for each Segment of the Project, including Work authorized in Phases.

8.4.2 Change Orders. For Change Orders that include an adjustment in excess of \$10,000 to the Contract Price, within 30 Days after execution of such Change Orders, Contractor shall deliver to the Escrow Agent the Pricing Documents related to such Change Orders.

8.4.3 Certification. With each submission of Pricing Documents to the Escrow Agent, Contractor shall submit a certification signed by an authorized officer, addressed to Department, certifying to the best of his or her knowledge that the Pricing Documents were personally examined by

the person signing the certificate, who determined that they comply with all applicable requirements of Sections 8.1 and 8.2.

8.5 Review of Pricing Documents

8.5.1 Joint Review. Upon ten (10) Days written notice, the Pricing Documents shall be available during business hours for joint review by Department and Contractor in connection with resolution of disputes arising under this Agreement, and, if mutually agreed, in connection with negotiation of Change Orders. If any party persistently fails to attend a noticed time for review, then the other party or parties shall be entitled to submit the issue of access to pricing documents to the Dispute Review Board. Department shall be entitled to make and retain copies of Pricing Documents as each deems appropriate in connection with any such matters, provided that Department has executed and delivered to Contractor a confidentiality agreement in a form to be mutually agreed upon consistent with Section 14.2 of the Comprehensive Agreement.

8.5.2 No Impact on Discovery. The provisions contained in this Section 8.5 shall in no way be deemed a limitation on discovery rights with respect to the information contained in the Pricing Documents.

8.6 Proprietary Information

The Pricing Documents are, and shall always remain, Contractor's property subject to the rights to review the Pricing Documents set forth in Section 8.5. Department acknowledges that Contractor considers the Pricing Documents to constitute trade secrets or proprietary information. This acknowledgment is based upon Department's understanding that the information that is or will be contained in the Pricing Documents is not known outside Contractor's business, is known only to a limited extent and by a limited number of its employees, is safeguarded while in its possession, and may be valuable to its business strategies, assumptions and intended means, methods and techniques. Department further acknowledges that Contractor expended money in developing the information included in the Pricing Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. If the Pricing Documents become subject to a request for public disclosure, the provisions of Section 14.2 of the Comprehensive Agreement shall apply hereto as if fully set forth herein.

8.7 Return of Pricing Documents

The Pricing Documents shall be maintained in escrow until all of the following have occurred: (i) 180 Days have elapsed from the occurrence of all the following (i) termination of this Agreement, (ii) all disputes regarding this Agreement related to the Project have been resolved, and (iii) final payment of all amounts due Contractor under the Contract has been made and accepted. At such time, Department and all parties or persons who have received copies of all or a portion of the Pricing Documents through them shall return all copies of the Pricing Documents to the Escrow Agent for destruction, and Escrow Agent shall return the original Pricing Documents to Contractor.

ARTICLE 9. TRAFFIC CONTROL AND RESTRICTIONS

9.1 Construction Traffic Management Plan

9.1.1 Contractor shall prepare a Construction Traffic Management Plan for each Project Segment and shall submit to the Department and receive its approval of a Construction Traffic Management Plan as a condition precedent to commencing construction Work on such Project Segment. The Construction Traffic Management Plan shall be prepared and implemented to promote safe and efficient operation of adjacent public transportation facilities and State Highways at all times during the course of construction of any Project Segment.

9.1.2 The Construction Traffic Management Plans shall comply with all applicable Contract Documents, including the Section of the Scope of Work entitled "Maintenance of Traffic" and Sections 104.04, 107.07 and 107.10 of the Standard Specifications as set forth in Appendix 9.

9.2 Traffic Control

Subject to Department oversight, Contractor shall provide or cause to be provided traffic management and operations services in compliance with and to the extent required of Contractor by the approved Construction Traffic Management Plans.

ARTICLE 10. APPLICABLE LAW AND REGULATORY APPROVALS

10.1 Obligation to Comply with Laws, Regulations and Ordinances, and Regulatory Approvals

Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws, Regulations and Ordinances and the conditions of all Regulatory Approvals prior to entering into this Contract. Contractor shall comply with, and shall ensure that all Subcontractors comply with, all applicable Laws, Regulations and Ordinances and the conditions and requirements of all Regulatory Approvals, including, but not limited to, survey work, wetland and other impact mitigation, asbestos abatement, water and air quality analyses and any applicable consultation and commitments required by the Endangered Species Act of 1973, 16 U.S.C. Section 1531 et seq. To the extent there is a change in Regulatory Approvals (other than Regulatory Approvals relating to the corporate existence or maintenance of the business of Contractor) or other Laws, Regulations and Ordinances which increase the time of performance, such change shall be deemed Force Majeure hereunder, and shall entitle the Contractor to a Change Order in accordance with the provisions of Article 19. To the extent there is a change in Regulatory Approvals (other than Regulatory Approvals relating to the corporate existence or maintenance of the business of Contractor) or other Laws, Regulations and Ordinances which increase the cost of performance, such change shall be deemed a Change in Law hereunder, and shall entitle the Contractor to a Change Order in accordance with the provisions of Article 19.

10.2 Obligation to Obtain Regulatory Approvals

10.2.1 Contractor has no reason to believe that any Regulatory Approval required to be obtained by Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. Prior to any construction, equipping or installation of any Work or any portion thereof, Contractor shall obtain all Regulatory Approvals required in connection therewith; provided, however, that Department shall not prohibit commencement of any such activity where Contractor has satisfied all other requirements and conditions set forth in this Contract, and either:

(a) Contractor lacks a Regulatory Approval (other than from Department and other than the lead agency under NEPA, if applicable) but instead is contesting diligently and in good faith the validity, applicability or terms of such Regulatory Approval through appropriate proceedings, has posted any bonds or other undertaking which may be lawfully required to commence and proceed with such activity without such Regulatory Approval and certifies in writing to Department that it will obtain and abide by such Regulatory Approval if and when it is upheld; or

(b) a Regulatory Approval not yet obtained is not necessary in order to commence such activity and can be expected to be issued in due course during construction.

10.2.2 Not Used

10.2.3 Except as provided in Appendix 6, prior to Final Acceptance of the Project or a Project Segment, Contractor shall obtain all Regulatory Approvals required to open the Project or Project Segment for normal use and operation. Contractor shall obtain all such Regulatory Approvals in the name of Department, provided that if doing so is impossible or impracticable, then Contractor shall obtain a transferable Regulatory Approval and transfer and assign the same in writing to Department prior to Final Acceptance. Contractor shall deliver to Department, promptly after Contractor's receipt, the original of each such Regulatory Approval.

10.2.4 Contractor shall obtain all Regulatory Approvals required in the jurisdictional areas in accordance with applicable laws. Contractor shall deliver to Department, promptly after Contractor's receipt, a copy of each such Regulatory Approval.

10.3 Payment for Regulatory Approvals

Except as provided in Section 6.5, Contractor shall pay all charges and fees and shall not be entitled to any time extension incident to obtaining any modifications to Regulatory Approvals and all new Regulatory Approvals and for any changes in the Work arising therefrom, provided that in the event a modification to a Regulatory Approval or a new Regulatory Approval is necessitated by a Directed Change, a Force Majeure event, Differing Site Condition or Change in Law (other than Regulatory Approvals relating to the corporate existence or maintenance of the business of Contractor), Contractor shall receive compensation and/or a time extension for obtaining such modification or new Regulatory Approval and for any changes in the Work resulting therefrom pursuant to the Change Order covering the Directed Change, Force Majeure event or Differing Site Condition (but only to the extent eligible under Section 19.4.1), as appropriate. With respect to existing, known Regulatory Approvals, Contractor shall be entitled to additional costs and time in obtaining Regulatory Approvals only to the extent the failure to obtain Regulatory Approvals is due to reasons other than the fault of Contractor.

ARTICLE 11. WARRANTIES

11.1 Warranties

11.1.1 Contractor warrants to Department that (a) all design Work performed pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State, (b) all new construction performed on the Project shall be free of Defects (except to the extent such Defects are inherent in prescriptive specifications in the Standard Specifications and as outlined herein in this Article 11), (c) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (d) the Work shall meet all of the requirements of the Contract Documents and will be performed in a workmanlike manner. The Project shall be fit for use for the intended function. The Warranties shall not extend to routine maintenance items such as periodic rework of bridge joints, restriping and other like work required as a result of normal wear and tear or to damage from Force Majeure or negligence of the Department. The Warranties shall not extend to existing improvements, structures, pipes, culverts, excavations, pavements, steel sheeting, embankments or other features previously constructed by others and upon or in which Contractor constructs new Work hereunder. By way of example, but not limitation, the Warranties hereunder shall not apply to pavement and/or subgrade damage or rutting found to have been caused by failure or settlement of existing embankments placed previously by others or to settlement of new pipes installed within existing embankments constructed previously by others where settlement of such pipes occur in conjunction with failure or settlement of the previously-placed fill or embankment. The Department hereby recognizes that existing sub-grade soil settlement may occur in areas on the Project in Segments I and II identified in Appendix 6 where the Contractor plans to install settlement plates and monitor settlement for a period of 120 days. The warranties hereunder shall not extend to the Work that settles or fails as a result of continued settlement of the existing sub-grade soils.

11.1.2 The Warranties shall commence upon Final Acceptance of the Project. However, where, in accordance with Section 18.2, the Department issues Final Acceptance for a Project Segment, Warranties shall commence on the Final Acceptance Date of such Project Segment, or with respect to any structures put into service prior to the Final Acceptance Date in accordance with Section 18.1, the date of acceptance of such portions. The Warranties shall remain in effect for a five-year period. If any of the Work fails to meet the standards set forth in Section 11.1.1 at any time within the applicable warranty period, then Contractor shall correct such Work to meet the standards of Section 11.1.1, and repair (to such standards) any damage to the Project or other property of Department caused by the failure of the Work to meet the standards set forth in Section 11.1.1, even if the performance of such corrective work or repairs extends beyond the stated warranty period.

11.1.3 Within seven (7) Days of receipt by Contractor of notice specifying a failure of any of the Work to satisfy Contractor's Warranties, Department will consult with Contractor to determine when and how Contractor shall remedy such violation; provided, however, that in case of an emergency requiring immediate curative action, Contractor shall implement such action as it deems necessary and shall notify Department of the urgency of an expedited decision by the close of the following Business Day. Contractor and Department shall agree on such remedy as soon as reasonably practicable. If Contractor does not use diligent efforts to proceed promptly to effectuate such remedy within the agreed time, or should no such agreement be reached within such seven (7)-Day period (or immediately, in the case of emergency conditions), Department, after notice to Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Contractor.

11.1.4 The Department shall furnish any required encroachment permit required in connection with any such corrective or repair Work performed in connection with Warranties. Contractor shall bear

all costs of performing Warranty Work, including additional testing and inspections, and shall reimburse Department its reasonable direct expenses incurred from regulating traffic and protecting the public and third party expenses made necessary thereby within 30 Days after Contractor's receipt of invoices therefor.

11.2 Extension of Warranties

Contractor's Warranties shall apply to all Work re-done pursuant to the terms of this Article 11. The Warranties shall last as to each re-done element of the Work until the later of (a) one year after acceptance by Department of any re-done Work or (b) expiration of the applicable Warranty period as set forth in Section 11.1.2.

11.3 Subcontractor Warranties

11.3.1 Without in any way derogating from Contractor's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, Contractor shall obtain from all Subcontractors and cause to be extended to Department appropriate representations, warranties (for periods at least co-extensive in duration with Contractor's Warranties for such Work), guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be jointly and severally enforceable by Contractor and Department and their respective successors and assigns. Contractor hereby assigns to Department all of Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Contractor from any of its Subcontractors.

11.3.2 Upon receipt from Department of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, covenant, guarantee or obligation, Contractor shall be responsible for enforcing in the name of and on behalf of Department, if so directed, or performing any such representation, warranty, covenant, guarantee or obligation, in addition to Contractor's other obligations hereunder. Contractor's duty to enforce Subcontractor's warranties and obligations under this Section 11.3.2 shall commence at the time such representation, warranty, guarantee or obligation is furnished and shall continue until the expiration of Contractor's Warranty (including extensions for redone Work). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Contractor if such cost is covered by such a Warranty and Contractor shall be required to replace or repair defective or damaged equipment, material or workmanship furnished by Subcontractors.

11.4 Assignment of Warranties

Contractor's Warranties (including warranties for re-done Work) and all Subcontractor warranties shall be assignable by Department without approval by Contractor or any Subcontractor or vendor, which assignment shall be effective upon delivery of notice to Contractor of the assignment.

11.5 Damages for Breach of Warranty

Contractor's liability to Department for damages resulting from any breach of an express warranty (including warranties made by Subcontractors) shall be limited to all those costs reasonably incurred by Department in effecting the remedy described in Section 11.1.2 itself or through a third party, including the costs described in Section 11.1.4. This limitation of liability shall not apply to liabilities incurred by

Contractor arising out of its obligation to indemnify, defend and hold each State Indemnatee harmless from third party Claims under Section 21.1 or to the extent covered by insurance required hereunder.

11.6 Exclusive Remedy

This Article 11 and Section 14.4 set forth Department's exclusive remedies against Contractor, and Department hereby waives all other remedies, regarding defects or deficiencies in the Work, whether patent or latent or arising in contract, tort (including negligence) or pursuant to other legal theory, except (a) Contractor's obligation to indemnify, defend and hold each State Indemnatee harmless from third party Claims under Section 21.1 and (b) defects and deficiencies in the Work resulting from the fraud or deceit of any Contractor Party (excluding Subcontractors). Contractor makes no other warranties, express or implied, relating to the quality of the Work.

11.7 Habitat and Landscaping Maintenance

Contractor shall maintain in a growing condition all newly established plantings, seedings and soddings furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement in accordance with the Standard Specifications throughout an establishment period that shall commence at initial planting and shall end one year after the planting date. Provided, however, Contractor shall be required to replace any such growing plantings destroyed by an event of Force Majeure, but such replacements shall be at Department's cost.

ARTICLE 12. RECORDS

12.1 Maintenance of, Access to and Audit of Records

Contractor shall maintain a complete set of all books and records prepared or employed by Contractor in its management, scheduling, cost accounting and otherwise with respect to the Project. Contractor shall grant to Department such audit rights and allow Department such access to and the right to copy such books and records as Department may request in connection with Work to be performed on a reimbursable cost basis, issuance of Change Orders and the resolution of disputes and such other matters as Department reasonably deems necessary for purposes of verifying compliance with this Contract and applicable law.

12.1.1 Where the payment method for any Work is on a unit-priced basis, such examination and audit rights shall include all books, records and other data of Contractor for the purpose of evaluating the accuracy of Contractor's designations of quantities.

12.1.2 Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If audit indicates Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

12.1.3 For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, Department and its representatives have the right to examine all books, records, documents and other data of Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

12.1.4 Nothing contained in this Contract shall in any way limit the constitutional and statutory powers, duties and rights of elected state officials, including the independent rights of the State Auditor of Public Accounts, in carrying out his or her legal authority.

12.1.5 No audit rights shall extend to the make-up of any lump sum amount or unit price once the parties have agreed upon such amount or price.

12.1.6 Contractor shall require each Subcontractor to comply with the requirements applicable to Contractor set forth in this Section 12.1.

12.2 Retention of Records

Contractor shall maintain all records and documents relating to Work related to any Project Section under this Contract (including copies of all original documents delivered to Department) for five (5) years after the Final Acceptance Date or termination date of this Contract, as applicable, and shall notify Department where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Contractor Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Contractor Claims have

been finally resolved and Contractor shall maintain all documents relating to acquisition of the Project Rights of Way no less than three (3) years after any negotiated conveyance or after issuance of a final judgment with respect to any property acquired by condemnation. Records to be retained include all books and other evidence bearing on Contractor's costs and expenses under the Contract Documents. Contractor shall make these records and documents available for audit and inspection to Department, at Contractor's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to Contractor). If approved by Department, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

12.3 Public Records

Requirements relating to public records are set forth in Section 14.2 of the Comprehensive Agreement.

12.4 Reporting Requirements

12.4.1 Not later than thirty (30) Days after the end of each calendar quarter, Contractor shall prepare and deliver to Department the following reports, in a form reasonably satisfactory to Department:

(a) a written narrative report on the progress of design, permitting, acquisition, Utility Relocations and construction of the Project and Project Right of Way since the immediately preceding report, or, if there was no preceding report, from the inception by Contractor of such Work, describing in reasonable detail all significant activities concerning design, Regulatory Approvals, new contracts and subcontracts with contractors, subcontractors, vendors and suppliers identifying the parties, scope and, for Work thereunder to be paid on a time and materials basis, amount, construction and construction progress and discovery and correction of defects. Such report shall include a discussion of the CPM/Payment Schedule and Contractor's compliance therewith, of any new or continuing delays, material matters which may affect the future performance of Contractor's obligations under the Contract Documents, and the causes thereof and a summary of all new changes to the Plans and Specifications. Such report also shall describe any damage or destruction and restoration work and revenue information (such as but not limited to insurance awards) relating to any such occurrence; and

(b) a written narrative report of any disputes with Contractor or claims, actions or assertions against Contractor, the Project or Project Right of Way by any Governmental Person, any general contractor, any architect or engineer, any subcontractors, vendors or suppliers or any other Person, or of Lien claims or stop notices filed or threatened to be filed by any Person. Such report shall include but not be limited to a description of the nature of the dispute, claim, action, assertion, Lien or notice, the amount in dispute or claimed, copies of any Lien notice, stop notice, complaint, demand or other pertinent documents which Department requires, availability of insurance and insurance defense, and actions taken and contemplated to defend against, settle or remove the dispute, claim, action, assertion, Lien or notice.

12.4.2 Contractor shall report to Department (a) not later than two (2) Business Days after the occurrence thereof, any significant damage or destruction to the Project, and (b) at least two (2) Business Days before commencement thereof, any planned work (other than emergency repairs) to repair or remedy such damage or destruction.

12.4.3 Contractor shall obtain Department's prior written approval of all proposed press releases and other statements concerning the Project before they are made available generally by Contractor to the public or media.

12.4.4 Contractor shall furnish or cause to be furnished to Department copies of all financial audit reports distributed by Contractor other than those limited to internal distribution within Contractor or its members.

12.4.5 Contractor shall furnish or cause to be furnished to Department such other documents, reports and information relating to the Work as Department may reasonably request from time to time.

12.5 NOT USED

12.6 Subcontractor Pricing Documents

Contractor shall require each Subcontractor whose Subcontract price equals or exceeds \$5,000,000 to submit to Contractor a copy of all documentary information used in determining the Subcontract price immediately prior to executing the Subcontract or change orders or amendments thereto. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that the submitted documentary information constitutes all the documentary information used in the determination of its price. Each Subcontract with a Subcontractor whose Subcontract price is less than \$5,000,000 shall require the Subcontractor to preserve all documentary information used in determination of its price and to provide such documentation to Contractor and/or Department in connection with any claim exceeding \$250,000 made by such Subcontractor. Contractor shall deliver copies of all such Subcontractor pricing documents to the Escrow Agent in accordance with Article 8.

12.7 Title to Work Product

Provided Department has made payment to Contractor therefor to the extent required by this Contract, all Work Product shall become the property of Department upon Contractor's preparation or receipt thereof and Contractor shall promptly deliver possession thereof to Department.

12.8 Equipment Warranties

Contractor shall procure equipment for traffic management functions and systems under vendor contracts which do not impair, qualify, limit or disclaim in any manner the implied warranties of merchantability and fitness for the particular purpose intended. Contractor shall make such implied warranties available for the benefit of Department. Contractor shall not itself be liable to Department for any such implied warranties (provided that this limitation shall in no way affect the scope of any of Contractor's warranties hereunder).

ARTICLE 13. CRITICAL PATH METHOD SCHEDULE

13.1 CPM/Payment Schedule

Contractor shall prepare and maintain a CPM/Payment Schedule using the critical path method of scheduling on a system reasonably acceptable to Department. This schedule shall be used to manage the land acquisition, utility relocation, permitting, environmental remediation, design and construction of the Project and as the basis for determining the amount of monthly progress payments to be made to Contractor and shall be in sufficient detail to determine progress, to monitor construction activity and to identify and avoid delays.

13.2 Allocation of Contract Price

Contractor shall allocate the total Contract Price among the activities scheduled on the CPM/Payment Schedule so that each activity has a price that accurately shows the amount payable to Contractor for such activity. The price for each activity shall account for any limitations relating to payment for specific activities contained herein. The CPM/Schedule shall also be consistent with the Maximum Payment Curve attached as an attachment to the CPM/Payment Schedule. For Work that is the subject of a Change Order, the schedule shall be updated to reflect the approved Change Order. The sum of the prices of all activities in the CPM/Payment Schedule for such Work shall equal the total Contract Price for such Work. Once the initial CPM/Payment Schedule for such Work has been approved, no changes to any allocated amount may be made without Department approval.

13.3 Initial CPM/Payment Schedule; Monthly Updates

Attached hereto as Appendix 10 is the initial CPM/Payment Schedule, which sets forth activities and allocated costs for the activities comprising the Scope of Work initially authorized hereunder. Contractor shall update the schedule on a monthly basis. The term "CPM/Payment Schedule" as used herein shall mean the most recent schedule provided hereunder that has been reviewed by the Department; once a modified CPM/Payment Schedule has been reviewed by the Department, it shall replace the previous schedule attached hereto as Appendix 10. For Work that is the subject of a Change Order, an initial CPM/Payment Schedule shall be developed setting forth activities and allocated costs for such activities comprising the Change Order, and shall be modified as set forth herein.

13.4 CPM/Payment Schedule Requirements

Each CPM/Payment Schedule shall be in a paper and electronic medium accompanied by a management level summary, as may be requested by Department. Periodic construction meetings shall be held by Contractor with its consultants and subcontractors to coordinate the Work, update the CPM/Payment Schedule, provide information and resolve potential conflicts. The CPM/Payment Schedule shall, among other things, provide that Final Acceptance of the Project shall be achieved by the Guaranteed Completion Date and Final Acceptance of Segment IV shall be achieved by the date contained in Section 25.6, include a designation of any Project Segments and be subject to Department's reasonable approval. In the event of any Critical Path delay in excess of one month, Contractor shall prepare and provide to Department a recovery plan and revised schedule. In the event any delay in excess of one month as reflected in the approved CPM/Payment Schedule, Contractor shall prepare and provide to the Department a recovery plan and revised schedule. If the delay is due to events not within the control of the Contractor, the Department may elect either to (a) implement the recovery plan, the costs of which shall be paid to the Contractor pursuant to a Change Order; or (b) reject the recovery plan and issue a Change Order extending the Guaranteed Completion Date and/or the date for Final Acceptance of

Segment IV accordingly. If the delay is due to events for which the Contractor is responsible and at fault, the recovery plan shall be implemented at no additional cost to the Department.

ARTICLE 14. COMPENSATION

14.1 Contract Price

14.1.1 Contract Price

As full compensation for the Work, and subject to the limitations contained herein including the appropriation and allocation of funds for the Project and certain representations and agreements relating to financing of the Project set forth in Article IV of the Comprehensive Agreement, Contractor shall be paid the following sums (such sums, as may be adjusted from time to time as provided herein, are together referred to herein as the “Contract Price”):

Phase A	\$30,339,595.00
Phase B	\$ 450,000.00 (consisting of \$20,000 ROW acquisition management costs and \$430,000 land acquisition costs, both of which shall be paid from the Phase B ROW Allowance)
Phase C	\$ 469,142.00
Phase D	\$ 548,820.00

The Contract Price shall be paid in accordance with Section 14.2. The Contract Price shall be increased by the actual cost of the Professional Liability Insurance required to be obtained under Section 22.2, provided that, (i) the cost of such insurance is equal to the lowest of at least three quotes obtained by Contractor from qualified insurers, and (ii) Contractor makes available for review by the Department all applications for such insurance (except any confidential or proprietary information contained therein) and all quotes obtained by Contractor. In the event that the quoted cost is unacceptable to the Department, the parties may mutually agree to change the requirements for such insurance set forth in Section 22.2 or the Department may terminate this Contract in accordance with Article 26. Except as set forth in this Section 14.1.1, the Contract Price shall be increased only in accordance with Article 19.

14.1.2 ROW Allowances

Included within the Contract Price for the Project are the amounts of \$1,326,475 and \$450,000, which shall be referred to as the Phase A ROW Allowance and the Phase B ROW Allowance, respectively, and which shall solely and exclusively fund payments made pursuant to Sections 6.5.1 and 6.5.6 for additional environmental studies and remediation and Sections 6.3.1 and 6.6 for acquisition of Right of Way for Phase A and Phase B of the Project as applicable. In the event the total of such payments out of the Phase A ROW Allowance exceeds \$1,326,475, the Department shall issue a Change Order increasing the Contract Price by an amount equal to the amount by which such total exceeds \$1,326,475. In the event the total of such payments out of the Phase A ROW Allowance is less than \$1,326,475, the Department shall issue a Change Order decreasing the Contract Price by an amount equal to the amount by which \$1,326,475 exceeds the total payments made out of the Phase A ROW Allowance. In the event the total of such payments out of the Phase B ROW Allowance exceeds \$450,000, the Department shall issue a Change Order increasing the Contract Price by an amount equal to the amount by which such total exceeds \$450,000. In the event the total of such payments out of the Phase B ROW Allowance is less than \$450,000, the Department shall issue a Change Order decreasing the Contract Price by an amount equal to the amount by which \$450,000 exceeds the total payments made out of the Phase B ROW Allowance.

14.2 Payments

Payment to Contractor of the Contract Price shall be made as follows:

14.2.1 Source of Payments

Prior to the issuance of the Notice to Proceed, Department shall be obligated to make payments due and owing hereunder solely from the funds appropriated to the Department and identified in the Plan of Finance--Construction Period Cash Flows attached as Exhibit D to the Comprehensive Agreement.

14.2.2 Delivery of Draw Request and Certificate

On or about the 15th Day of each month, Contractor shall submit to Department five (5) copies of a Draw Request and Certificate (the "Request") in the form attached hereto as Appendix 3, with no additions or deletions other than those approved by Department. Each Request shall be executed by a designated representative of Contractor appointed by Contractor to have such authority in accordance with Section 24.1. No Request shall be considered complete unless it (a) describes the status of completion as it relates to the CPM/Payment Schedule, (b) sets forth the related payments which are then due in accordance with the CPM/Payment Schedule, as of the end of the 10th Day of the month, (c) includes the required attachments thereto in form approved by Department, (d) includes a written certificate from Contractor and each Subcontractor to be paid pursuant to the subject Request that all prior invoices have been paid in full except for Retainage and amounts in dispute, (e) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other evidence establishing the number of units delivered and (f) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 19.7. Within ten (10) Days after Department's receipt of the Request, Department will review the Request and all attachments thereto for conformity with all requirements of the Contract Documents, and shall notify Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Request. Contractor may include such disapproved amounts in the next month's Request after correction of the deficiencies noted by Department (all such disapproved amounts shall be deemed in dispute unless otherwise agreed). Approved invoiced amounts shall be paid within thirty (30) Days of the date of submittal of the approved invoice. If payment is not made by Department within thirty (30) days after Department's receipt of the applicable Request, Contractor shall be entitled to interest on the amount due at the variable rate per annum equal to the reference rate (prime rate) announced by Bank of America, NT&SA from time to time, plus one percent (1%).

14.2.3 Maximum Payment Curve

Contractor shall have no right to payment in any amount, which aggregated with all other amounts paid under this Contract exceeds the Maximum Payment Curve applicable to the Work for which any Draw Request is submitted. However, nothing contained in this provision shall prevent Department from issuing a Change Order pursuant to Article 19 increasing the Maximum Payment Curve to accommodate payments on an accelerated basis in the event additional funds are available to the Project earlier than the Department anticipates at time of executing this Contract.

14.2.4 Payment

In no event shall Contractor be entitled to payment for any activity eligible for payment from the Contract Price in excess of the demonstrated percentage of completion of such activity.

14.2.5 Continued Performance During Disputes

Subject to Contractor's right to suspend performing Work to the extent permitted under Section 25.4, failure of Department to authorize payment of any disputed amounts shall not postpone, alleviate, diminish or modify in any respect Contractor's obligation to perform under the Contract Documents, including Contractor's obligation to achieve Final Acceptance and perform all Work in accordance with the Contract Documents, and Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount. Any dispute between Contractor and Department regarding such payment shall be resolved pursuant to Article 27.

14.2.6 Retainage

14.2.6.1 If Contractor's progress for the Project falls behind schedule by greater than 10% based upon the value of the Work reflected in the approved CPM/Payment Schedule, Department may in its sole discretion commence withholding funds ("Retainage") from the current and each future payment to be made to Contractor as described in this Article 14. The Retainage withheld by the Department shall be an amount equal to 5% of the invoiced amount for all Work on the Project (except Project Right of Way Work payable from the ROW Allowance) performed during the current and each future payment period during which the Contractor is behind schedule. After Contractor's progress is no longer behind schedule, or the Department has withheld an amount for Retainage equal to two and one-half percent (2-1/2%) of the Contract Price for the Project (increased by any Change Orders), Department shall cease withholding Retainage from future payments owing to Contractor hereunder, provided that Retainage previously withheld will not be released on future payments except in accordance with Sections 14.2.6.2 and 14.2.6.3.

14.2.6.2 Retainage, if any, withheld in accordance with Section 14.2.6.1 shall be held by the Department unless, within ten (10) Days after the issuance of the Notice to Proceed, the Contractor elects, in writing, for such Retainage to be deposited by the Department into an escrow account and Contractor delivers to the Department an executed escrow agreement substantially in the form attached hereto as Appendix 12. The Retainage shall be held by Department (or remain in escrow) until all events described in Section 14.2.6.3 have occurred. At such time Contractor's requisition to Department under Section 14.2.2 may include a draw (or a request for release from escrow) of all Retainage (including earnings thereon) other than amounts applied to the payment of any Liquidated Damages and other amounts owing by Contractor or which Department deems advisable, in its reasonable discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, reconciliation of all eminent domain cases, any amounts due Department under Section 11.1.4, or the cost of any uncompleted Work. Final payment (or release from escrow) of such Retainage (including earnings thereon) not applied to Liquidated Damages, or to any amounts due Department under Section 11.1.4 shall be made upon (a) Contractor's showing, to Department's reasonable satisfaction, that all such matters have been resolved, including delivery to Department of a certification that there are no outstanding existing or threatened claims, Liens or stop notices of any Subcontractor, Supplier or laborer or claims by third parties, including utility owners, with respect to the Work and all eminent domain cases have been reconciled or (b) Contractor's showing, to Department's satisfaction in Department's sole discretion, that Department is adequately protected from any such unresolved matters.

14.2.6.3 No portion of the Retainage shall be released unless and until all of the following conditions have been met: (a) Liquidated Damages shall not then be payable to Department; (b) Contractor shall have established to Department's reasonable satisfaction that Liquidated Damages are not anticipated to be payable to Department; (c) Contractor shall have applied in writing for such release; and (d) such release shall have been approved in writing by Department.

14.2.6.4 No Retainage shall be withheld from engineering work for any reason. For purposes of this Subsection 14.2.6.4, engineering work shall be deemed to constitute all work not included within the construction cost components of the Contract Price under Section 22.6.

14.2.7 NOT USED

14.2.8 Unincorporated Materials

Department will approve payment for material not yet incorporated in the Work only under the following circumstances:

14.2.8.1 Department will make payment for materials and equipment stored off-Site , subject to the following conditions precedent:

(a) Contractor shall provide Department with at least forty (40) Days prior notice of Contractor's plan to request payment for off-Site stored materials and equipment. Such request shall include a certified description of the off-Site location, a listing of all materials and equipment covered by the request, the individual value of the materials and equipment, the status of the fabrications of the material and/or equipment and the required dates of delivery at the Site. The statement shall be submitted on forms furnished by Department and shall be accompanied by invoices or other documents that will verify the material's cost. Following the initial submission, Contractor shall submit to Department a monthly certified update of the itemized inventory statement. The updated inventory statement shall show additional materials received and stored with invoices or other documents and shall list materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If Contractor fails to submit the monthly certified update within the specified time frame, Department will deduct the full amount of the previous statement from the invoice. At the conclusion of the Project, the cost of material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

(b) Evidence of insurance coverage of the stored material and equipment and related transit, including a loss-payable clause endorsement to Contractor's insurance policy providing payment to Department in the event of loss of the specified stored materials and equipment.

(c) Such other documentation satisfactory to Department to establish Department's title to such material and equipment or otherwise protect Department's interest.

14.2.8.2 Department will review the documentation for completeness and accuracy. If the documentation presented does not satisfy the aforementioned conditions precedent, or if for any other reason Department is not satisfied, in its sole discretion, that Department's interest is fully protected, the request for payment for stored materials shall be denied.

14.2.8.3 Department specifically reserves the right to discontinue payment for material or equipment stored off-Site if such storage is not in compliance with Section 109.08 in Appendix 9 to this Contract.

14.2.8.4 Contractor shall bear all costs of Department associated with inspection of off-Site materials stored outside of the State unless, as described in the approved QA/QC Plan, the Department is required to furnish inspection for these materials.

14.2.8.5 Following payment therefor, all such materials so accepted shall become the property of Department. Contractor at its own expense shall promptly execute, acknowledge and deliver

to Department proper bills of sale or other instruments in writing in a form acceptable to Department conveying and assuring to Department title to such material included in any invoice, free and clear of all Liens. Contractor at its own expense shall conspicuously mark or paint such material as the property of Department, shall not permit such materials to become commingled with non-Department-owned property and shall take such other steps, if any, as Department may require or regard as necessary to vest title to such material in Department free and clear of Liens.

14.2.8.6 Payment for material furnished and delivered as indicated in this Section 14.2.8 will not exceed the amount paid by Contractor as evidenced by a bill of sale supported by paid invoice.

14.2.8.7 Payment for material furnished and delivered as indicated in this Section 14.2.8 shall be in accordance with the following terms and conditions:

14.2.8.7.1 Structural Units

An allowance of 100% of the cost to Contractor for structural steel materials for fabrication may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. An allowance of 100% of the cost to Contractor for superstructure units may be made when they have been fabricated. Prior to the granting of such allowances, the structural steel materials and fabricated units shall have been tested or certified and found acceptable to the QA Manager and shall have been stored in accordance with the requirements specified herein. Allowances will be based on invoices, bills, or the estimated value as approved by Department.

14.2.8.7.2 Other Materials

For reinforcing steel, aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of 100% of the cost to Contractor for materials, may be made when such material is delivered and stockpiled or stored in accordance with the requirements specified herein. However, no allowance will be made for cement, seed, plants, fertilizer, and other perishable material. Prior to the granting of such allowances, the material shall have been tested and found acceptable to the QA Manager. Allowances will be based on invoices, bills, or the estimated value of the material as approved by Department and will be subject to the Retainage provisions of Section 14.2.6.

14.2.8.7.3 Excluded Items

No allowance will be made for fuels, form lumber, falsework, temporary structures, or other work that will not become an integral part of the permanent construction.

14.2.8.7.4 Storage

Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored materials are lost or become damaged, Contractor shall repair or replace them. Material included in an invoice but which is subsequently lost, as determined by Contractor, or which is damaged or unsatisfactory, as determined by Department, shall be deducted from succeeding invoices.

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

14.2.9 Equipment

Department shall not pay for direct costs of equipment used in constructing the Project. Payment for such equipment, whether new, used or rented, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 19.5.2.1(c).

14.2.10 Payment for Work Scheduled to be Performed After Final Acceptance

Payment for habitat and landscape establishment and other Work scheduled to be performed after the Final Acceptance Date of a Project Segment shall be made based on progress.

14.3 NOT USED

14.4 Offset; Reduction; Waiver

14.4.1 Department shall have the right to deduct any amount owed by Contractor to Department under the express terms of the Contract Documents, including Liquidated Damages and any amounts owing under Sections 11.1.3, 14.2.8.7.4 and Article 25, from any amounts owed by Department to Contractor including any progress payments payable under Section 14.2, and Retainage (including earnings thereon) which may be payable by Department to Contractor pursuant to Section 14.2.6.

14.4.2 The failure by Department to deduct any sums owing by Contractor to Department, from any amount owing by Department to Contractor shall not constitute a waiver of the right to recover such sums or to deduct such funds from future amounts owing by Department to Contractor. Permitting or requiring Contractor to continue and finish the Work or any part thereof after the Final Acceptance Date shall not act as a waiver of Department's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to Department.

14.5 Financial Assurances

Subject to certain representations and agreements relating to the financing of the Project set forth in Article IV of the Comprehensive Agreement, if at any time the Contractor is insecure as to the ability of Department to make payments to the Contractor under this Contract in accordance with the terms hereof (including, but not limited to, reimbursement of Contractor's allowable costs in connection with the Project Right of Way Acquisition Work and the Utility Relocation Work from either the Allowance or the Contingency), and from time to time as a condition to Contractor's execution of Change Orders issued in accordance with Article 19 herein, the Contractor shall notify the Department requesting further assurances as to the availability of funds to pay such amounts. Within fifteen (15) Days after receipt of such notice, the Department will provide to the Contractor confirmation as to the availability of funding to make such payments. If such confirmation is not acceptable to the Contractor, the Contractor shall so notify the Department, indicating the reasons why such confirmation is not acceptable. The Department shall, within fifteen (15) days after receipt of such second notice, either (a) provide to the Contractor further assurances reasonably acceptable to the Contractor as to the availability of funding for the Project or (b) designate specific reductions in the Scope of Work which, in the reasonable opinion of the Department and the Contractor, will permit the Department to meet the remainder of its financial obligations under this Contract. If the Department fails to furnish to the Contractor either further assurances or scope reductions, in each case reasonably satisfactory to the Contractor, the Contractor may suspend performance of the Work or refuse to execute a Change Order, as applicable. If after suspension, the Contractor receives either further assurances or scope reductions, in either case reasonably satisfactory to the Contractor, the Contractor shall recommence the Work and, pursuant to Change Order, (a) shall be

paid for demobilization delay and remobilization costs and (b) shall receive an equitable time extension. If after suspension, the Contractor does not receive either further assurances or scope reductions, in either case reasonably satisfactory to the Contractor, the Contractor shall be entitled to terminate this Contract in accordance with the provisions of Article 26.

14.6 Contract Price Commitments

14.6.1 Section 14.1.1 sets forth certain price commitments made by Contractor with respect to the Work on Phases A, B, C, and D. Such price commitments are valid and binding on Contractor provided Notices to Proceed for such Phases are issued by Department to Contractor no later than the applicable dates set forth in Appendix 6.

Should Notice to Proceed for Phase A be issued by the Department after the applicable date set forth in Appendix 6, then the price for Phase A set forth in Section 14.1.1 shall be adjusted as follows: (a) if the Department issues Notice to Proceed for such Work no more than thirty (30) Days after the date set forth in Appendix 6, then no price adjustment shall apply, however, Contractor will be entitled to a time extension to the Guaranteed Completion Date and/or the date for Final Acceptance for Segment IV as contained in Section 25.6 to the extent the delay in issuance of the Notice to Proceed changes the duration of a Critical Path thereof; (b) if the Department issues Notice to Proceed for such Work more than ninety (90) Days after the date set forth in Appendix 6, then prices shall be subject to renegotiation in accordance with Sections 14.6.2 and 14.6.3; and (c) if the Department issues Notice to Proceed for such Work more than ninety (90) Days after the date set forth in Appendix 6, then prices shall be subject to renegotiation in accordance with Section 14.6.4.

Should Notice(s) to Proceed for Phases B, C or D be issued by the Department after the applicable dates set forth in Appendix 6, then the price for the applicable Phase(s) set forth in Section 14.1.1 shall be adjusted as follows: (a) if the Department issues Notice(s) to Proceed for such Work no more than one hundred eighty (180) Days after the date(s) set forth in Appendix 6, then no price adjustment shall apply, however, Contractor will be entitled to a time extension to the Guaranteed Completion Date of the Project and/or affected Segment(s) to the extent the delay in issuance of the Notice(s) to Proceed changes the duration of a Critical Path; and (b) if the Department issues Notice(s) to Proceed for such Work more than one hundred eighty (180) Days after the date(s) set forth in Appendix 6, then prices shall be subject to renegotiation in accordance with Section 14.6.4. However, Section 14.6.1 notwithstanding, in the event the Department fails to issue Notice(s) to Proceed with respect to Phases B, C or D within one hundred eighty (180) Days after the applicable dates set forth in Appendix 6, either the Department or the Contractor may, at its option, terminate this Contract in writing with respect to the affected Phase. Such partial termination shall be deemed effective seven (7) Days after written notice thereof, and shall be treated as if it was a termination for convenience under the provisions of Article 26 hereof.

14.6.2 If index indicates a price increase is warranted, that portion of the Fixed Price Amount attributable to materials and labor used in the construction of the Work shall be adjusted for inflation by multiplying such portion of the Fixed Price Amount by a fraction (1) the numerator of which is the ENR Magazine Building Cost Index for Highway Construction (the "ENR") published on the date closest to the date the Notice to Proceed is issued and (2) the denominator of which is the ENR published on the date closest to the date of execution of this Contract.

14.6.3 The remainder of the Fixed Price Amount shall be adjusted for inflation by multiplying such remainder by a fraction (1) the numerator of which is the Consumer Price Index calculated by the U.S. Department of Labor (the "CPI") published on the date closest to the date the Notice to Proceed is

issued and (2) the denominator of which is the CPI published on the date closest to the date of execution of this Contract.

14.6.4 For all Work authorized by Department pursuant to one or more Request for Change Order and/or Notice to Proceed but which is subject to price adjustment due to delayed release of such Notice(s) to Proceed, Department and Contractor shall negotiate in good faith to determine the appropriate price for such Work. If after forty-five (45) Days of the date the Contractor submits its proposal in response to a Request for Change Order, the parties are unable to reach agreement, either party may terminate this Contract with respect to any Work not authorized by Department and agreed to by Contractor pursuant to Change Order. Such partial termination shall be deemed effective seven (7) Days after written notice thereof, and shall be treated as if it was a termination for convenience under the provisions of Article 26 hereof.

ARTICLE 15. NOT USED

ARTICLE 16. QUALITY ASSURANCE AND QUALITY CONTROL

Contractor shall have full responsibility for quality assurance and quality control for the Project, including provision of and compliance with a Quality Assurance and Control Inspection Program meeting all requirements contained in Attachment B to Appendix 6.

ARTICLE 17. TIME FOR COMPLETION

17.1 Time of Essence

Time is of the essence of this Contract with respect to the Guaranteed Completion Date, the date for Final Acceptance of Segment IV, notice dates, and payment dates.

17.2 Completion Deadlines

17.2.1 Deadlines for Final Acceptance

The CPM/Payment Schedule attached hereto as Appendix 10 sets forth the Guaranteed Completion Date for the Project and the date for Final Acceptance for Segment IV. Contractor shall achieve Final Acceptance of all Work and any other work authorized to be performed pursuant to the terms of Articles 1 and 19, and shall also achieve Final Acceptance of Segment IV on or before the dates set forth therefor in Section 25.6, as such dates may be adjusted as provided herein. Failure to achieve Final Acceptance of the Work by the Guaranteed Completion Date or Final Acceptance of Segment IV by the date set forth therefor in Section 25.6, as adjusted as provided herein may result in the application of Liquidated Damages in accordance with Article 25.6.

17.2.2 No Time Extensions

Except as otherwise specifically provided in Article 19, Department shall have no obligation to extend the Guaranteed Completion Date and/or the date for Final Acceptance of Segment IV and Contractor shall not be relieved of its obligation to achieve Final Acceptance by the Guaranteed Completion Date or Final Acceptance of Segment IV by the date set forth in Section 25.6 for any reason.

ARTICLE 18. ACCEPTANCE OF SEGMENTS OR STRUCTURES; FINAL ACCEPTANCE

18.1 Acceptance of Structures

18.1.1 Contractor may request that Department inspect and accept a completed structure subject to timely completion of Punch List work related thereto prior to completion of the rest of the Project Segment. After receipt of such notices that a structure is ready for inspection and acceptance, Department and Contractor shall conduct a joint inspection to confirm that the structure has been completed in accordance with the Contract Documents. The time for completion of each such inspection will be identified in the CPM/Payment Schedule. Department shall conduct its inspection within one week of receipt of notification from Contractor that a structure is ready for inspection.

18.1.2 If Department finds, upon inspection, that the structure has been completed in conformity with the Contract Documents, it shall issue its written acceptance thereof within five (5) Days of completing the inspection. If a Department inspection reveals that work has not been performed in accordance with the Contract Documents, Department shall give Contractor a detailed description of any deficiencies within five (5) Days of completing the inspection. Contractor shall correct such deficiencies so the work conforms to the Contract Documents and the corrected work shall be subject to inspection by the Department as provided herein.

18.2 Final Acceptance of a Project Segment

18.2.1 Contractor shall provide a written notice of anticipated Final Acceptance of a Project Segment to Department when all of the following conditions to Final Acceptance have occurred:

- (a) Contractor has completed the Project Segment (including all Punch List items, and final cleanup);
- (b) all construction associated with the Project Segment has been performed in accordance with the requirements of the Contract Documents;
- (c) the Project Segment may be operated without damage to the Project or any other property on or off the Site, and without injury to any Person;
- (d) Contractor shall have obtained all Regulatory Approvals required to open the Project Segment for normal use and operation in accordance with Section 10.2.3;
- (e) Department shall have received all deliverables required under the Contract Documents, including Working Drawings, Shop Drawings, as-built drawings of the Project Segment, manufacturers' data, catalogues, and all maintenance manuals for all equipment throughout the Project Segment, right of way record maps, surveys and test data;
- (f) all special tools purchased by Contractor as provided in the Contract Documents shall have been delivered to Department and all replacement spare parts shall have been purchased and delivered to Department free and clear of Liens;
- (g) all of Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities shall have been removed from the Site;

(h) Contractor shall have delivered to Department satisfactory evidence that there are no outstanding Contractor Claims or claims, Liens or stop notices of any Subcontractor, laborer or third party, including utility owners, with respect to the Work, other than any previously submitted unresolved Contractor Claims and any claims, Liens or stop notices of a Subcontractor, laborer or third party, being contested by Contractor (in which event Contractor shall provide a certification listing all such matters with such detail as is requested by Department and, with respect to all Subcontractor and laborer claims, Liens and stop notices and claims of third parties, shall include a representation of Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;

(i) all of Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance of such Project Segment) shall have been satisfied in full or waived; and

(j) Department's Chief of Operations shall have delivered to Contractor a "Certification of Final Acceptance." Such certification shall state that the Work with respect to such Project Segment has been accepted for use by the Department, subject only to the exceptions noted in said certification and set forth in the as-built drawings.

18.2.2 Within twenty-one (21) Days after receipt of the notice of anticipated Final Acceptance pursuant to Section 18.2.1, Department shall advise Contractor in writing of any of the following of which Department then has knowledge: (a) Defects in the Project, and/or (b) deficiencies in the Project relating to any of the items described in Section 18.2.1(a) through (i), and/or (c) deviations of any installed equipment, materials and workmanship from the requirements of the Contract Documents. Contractor shall, at its own cost and expense, correct such Defects, deficiencies and deviations. Within nine (9) Days after receipt of notice from the Contractor that any such Defect, deficiencies or deviations in the Project have been remedied or cured, Department shall notify Contractor that a Defect, deficiency or deviation continues to exist or such Defect, deficiency or deviation shall be deemed to have been remedied or cured.

"Final Acceptance" will be deemed to have occurred when either (i) Department's Chief of Operations has issued a "Certification of Final Acceptance" to Contractor stating that the Work with respect to such Project Segment has been accepted for use by the Department, subject only to the exceptions noted in said certification and set forth in the as-built drawings or (ii) each of the following has occurred: (A) Department's Chief of Operations receives a first notice from Contractor certifying that all conditions to Final Acceptance have occurred, stating that Final Acceptance may be deemed to occur if Department takes no further action and referencing this Section 18.2.2; (B) Department's Chief of Operations receives a second notice from Contractor on or after twenty-one (21) Days after Department's Chief of Operations receipt of Contractor's first notice of Final Acceptance stating that Final Acceptance will be deemed to occur after nine (9) Days from the date of the second notice if Department takes no further action and referencing this Section 18.2.2; and (C) Department has not given notice of any further Defects, deficiencies or deviations within such period.

18.2.3 Neither the occurrence of the Final Acceptance Date of such Project Segment nor delivery of the Certification of Final Acceptance with respect to such Project Segment shall relieve Contractor, any Subcontractor, the Surety or any Guarantor from any continuing obligations under the Contract Documents, including the warranty obligations under Article 11.

18.3 Assignment of Causes of Action

Contractor hereby offers and agrees to assign to Department all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to this Contract. This assignment shall be deemed made and shall become effective at the time final payment is tendered to Contractor, without further acknowledgment by the parties.

ARTICLE 19. CHANGES IN THE WORK

19.1 Acknowledgment and Waiver; Matters Not Eligible for Change Orders

19.1.1 Acknowledgment and Waiver

This Article 19 sets forth the requirements for obtaining all Change Orders under this Contract. Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Article 19 (and acknowledging that the Project Right of Way and certain environmental study and remediation work are subject to the ROW Allowance), and that Department is subject to financing constraints which have resulted in strict limitations on its ability to increase the Contract Price or extend the Final Acceptance Date with respect to such Work. **Contractor hereby waives the right to make any Contractor Claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in this Contract for any reason whatever, except as specifically set forth in this Article 19.**

19.1.2 Matters Not Eligible for Change Orders

Matters which are Contractor's exclusive responsibility include the following:

- (a) errors, omissions, inconsistencies or other defects in the Construction Documents;
- (b) any design changes requested in accordance with this Contract by Department as part of the process of approving the Draft Plans and Specifications for consistency with the requirements of the Contract Documents, including any design changes relating to Project safety (except to the extent that they arise from a change in Laws, Regulations and Ordinances that constitutes a Force Majeure event);
- (c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless changes in the planned sequence of performance of the Work arise from causes which otherwise give rise to a right to a Change Order);
- (d) the action or inaction of Subcontractors (unless arising from causes which otherwise give rise to a right to a Change Order);
- (e) correction of nonconforming Work and review and acceptance thereof by Department (including design submittals rejected in accordance with this Contract);
- (f) obtaining all Regulatory Approvals (except as provided otherwise in Section 10.3) and compliance with the terms and conditions of all Regulatory Approvals;
- (g) failure by Contractor to comply with this Contract;
- (h) time extensions for delays not on a Critical Path;
- (i) price increases for delays not on a Critical Path (unless arising from causes which otherwise give rise to a right to a Change Order);
- (j) delays in issuance of any permit or approval by any entity with jurisdiction over the subject matter of such permit or approval that is required to be obtained by Contractor;

(k) costs covered by proceeds of insurance required hereunder and insurance deductibles; and

(l) delays or failure in satisfying the conditions precedent to commencement of construction Work with respect to any Project Section (other than Department-Caused Delays).

Contractor hereby assumes responsibility and accepts the allocated, sole risk for all matters described in this Section 19.1.2, and acknowledges and agrees that assumption and acceptance by Contractor of responsibility and allocation for all such risks, costs, expenses and delays, and the consequences and costs and expenses resulting there from, is reasonable under the circumstances of this Contract.

19.2 Right to Receive Additional Payment and Extension of Time

19.2.1 Before starting to work on any item which Contractor considers to be outside of the Work required by the Contract Documents, as a condition precedent to its right to receive additional payment therefor or an extension of the Guaranteed Completion Date and/or the date for Final Acceptance of Segment IV in connection therewith, one of the following shall have occurred:

(a) Contractor shall have received a Directive Letter from Department stating that it is issued pursuant to Section 19.3.1;

(b) Contractor shall have received a Change Order for such work signed by Department issued pursuant to Section 19.3 or Section 19.4;

(c) a Directed Change directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by Department, regardless of whether a Directive Letter is issued, has occurred;

(d) Contractor shall have requested a Change Order for such work in accordance with this Article 19 that was disputed by Department, to the extent permitted in accordance with the dispute resolution process set forth in Article 27; or

(e) with respect to Differing Site Conditions, Contractor shall have complied with the requirements of Section 5.1.5.

19.2.2 In addition, to the extent that Contractor undertakes any work that is not part of the Work without one of the preceding, Department may require Contractor to remove or otherwise undo any such work, at Contractor's sole cost and expense.

19.3 Department Directed Changes and Procedures

Department may, at any time and from time to time, without notice to any Surety, authorize and/or require changes in the Work within the general scope of this Contract pursuant to a Directive Letter or a Change Order.

19.3.1 Directive Letter

19.3.1.1 Department may at any time issue a Directive Letter to Contractor in the event of any desired change in the Work or in the event of any dispute regarding the Work required by the Contract Documents. The Directive Letter will state that it is issued under this Section 19.3.1 and will

describe the work in question. Contractor will proceed with the work as and when directed, pending the execution of a formal Change Order (or, if the letter states that the work is within the Work required by the Contract Documents, Contractor will proceed with the work as directed but shall have the right, pursuant to Section 19.4, to request that Department issue a Change Order with respect thereto). In the event that Department refuses to issue a Change Order based on Contractor's request, Contractor shall nevertheless perform all work as and when specified by Directive Letter, and shall have the right to submit the issue to dispute resolution hereunder.

19.3.1.2 The fact that a Directive Letter was issued by Department in and of itself shall not be considered evidence that in fact a Directed Change occurred, provided that the contents of a Directive Letter may be used as evidence by either party as appropriate.

19.3.2 Notice of Proposed Change/Direction

19.3.2.1 If Department desires to issue a Change Order or a Directive Letter or to evaluate whether to initiate such a change or direction, then Department may, at its discretion, issue a Notice of Proposed Change/Direction. Within five (5) Business Days after Contractor's receipt of a Notice of Proposed Change/Direction, Department and Contractor shall arrange an initial consultation (at no charge to Department) to define the proposed scope of work. Within five (5) Business Days following the initial consultation, Department and Contractor shall consult concerning the estimated cost and time impacts. Contractor shall provide to Department such data regarding the estimated cost and time impacts prepared by Contractor if requested by Department.

19.3.2.2 Within a reasonable time following the initial consultation and provision of data as described in Section 19.3.2.1, Department shall notify Contractor whether Department (a) wishes to issue a Change Order or Directive Letter, or (b) no longer wishes to issue a Change Order or Directive Letter.

19.3.2.3 If Department wishes to issue a Change Order or Directive Letter, Contractor shall, within a reasonable time after receipt of the notification described in Section 19.3.2.2, prepare and submit to Department the scope, price and schedule impact, if any, of the requested change or direction, incorporating and fully reflecting all requests made by Department and all applicable information and documentation described in Section 19.4.2.2.1 through 19.4.2.2.4. The cost of developing the requested data shall be included in the Change Order as reimbursable items and will be reimbursed regardless of whether such Change Order is ever finalized or performed. Contractor represents and warrants that such data will (a) personally be examined prior to delivery by an authorized officer of Contractor, (b) clearly detail how the total price and individual components of that price were determined, and (c) include all assumptions, detailed quantity takeoffs, rates of production and progress calculations, labor rates and burdens cost estimates and quotes from Subcontractors and suppliers used by Contractor to arrive at the price.

19.3.2.4 In the event that the parties agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any increase to be made to the Contract Price or extension of the Guaranteed Completion Date and/or the date for Final Acceptance for Segment IV to be made, Department may, in its sole discretion, order Contractor to proceed with the performance of the Work in question notwithstanding such disagreement, by issuing a Directive Letter under Section 19.3.1.

19.3.3 NOT USED

19.4 Eligible Contractor-Initiated Change Orders and Procedures

19.4.1 Eligible Changes

19.4.1.1 Contractor may request a Change Order to extend the Guaranteed Completion Date and/or the date for Final Acceptance of Segment IV only for the following excusable delays changing the duration of a Critical Path so as to delay Final Acceptance beyond the Guaranteed Completion Date or Final Acceptance of Segment IV beyond the date contained in Section 25.6:

- (a) Department-Caused Delays;
- (b) delays which are proximately attributable to Force Majeure events;
- (c) delays which are directly attributable to any Differing Site Condition;
- (d) delays which are directly attributable to a fire or explosion (unless due to the willful act of Contractor).

19.4.1.2 Contractor may request a Change Order to increase the Contract Price, subject to strict compliance with the requirements of this Section 19.4 and subject to certain limitations as specified in Section 19.5, only for increased costs directly attributable to:

- (a) Work in response to a Notice of Proposed Change/Direction;
- (b) Work resulting from Directed Changes for which Department has submitted a Directive Letter;
- (c) Department-Caused Delays (excluding any delays from Directed Changes, which shall be reimbursable as part of the Change Orders for such Directed Changes, and excluding delays by the Department in issuing a Notice to Proceed for any Project Phase unless such delays continue in excess of thirty (30) Days with respect to Phase A or one hundred eighty (180) Days with respect to Phases B, C, or D following the dates specified in Appendix 6);
- (d) Force Majeure events (excluding insurance deductibles);
- (e) Differing Site Conditions, in accordance with the following: (i) if as a result of the Differing Site Condition, except a Differing Site Condition arising from settlement described in (iii) of the definition thereof, the cost of performing the Work increases by \$150,000 or less, Contractor shall absorb all such cost and receive no additional compensation; (ii) if as a result of the Differing Site Condition, except a Differing Site Condition arising from settlement described in (iii) of the definition thereof, the cost of performing the Work increases by more than \$150,000 VDOT shall absorb any additional cost above that amount, (iii) if two or more Differing Site Conditions, except a Differing Site Conditions arising from settlement described in (iii) of the definition thereof, affect the same location, then each Differing Site Condition shall individually be subject to the thresholds set forth in subsections of this paragraph 19.4.1.2. (e), specifically, subsections (i) and (ii)), and (iv) with respect to a Differing Site Condition arising from settlement described in (iii) of the definition thereof, VDOT shall absorb any and all additional cost of performing the Work; and

(f) the increased costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.2.2.5.

19.4.2 Procedures

Contractor must follow the procedure set forth in this Section 19.4.2.

19.4.2.1 RFC Notice

Contractor shall deliver to Department written notice (an “RFC Notice”) stating that an event or situation has occurred within the scope of Section 19.4.1.1 or 19.4.1.2 which Contractor believes is eligible for a Change Order. The first notice shall be labeled “RFC No. 1” and subsequent notices shall be numbered sequentially.

19.4.2.1.1 Each RFC Notice shall be delivered as promptly as possible after the occurrence of such event or situation. In the event that any RFC Notice is delivered later than ten (10) Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Contractor shall be deemed to have waived the right to collect any and all costs incurred during the period after ten (10) Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described in the RFC Notice and prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek an extension of the Guaranteed Completion Date and/or of the date for Final Acceptance of Segment IV contained in Section 25.6 with respect to any delay in any Critical Path which accrued during such period. Furthermore, in the event that any RFC Notice concerns any condition or material described in Section 5.1.5, Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that Department is not afforded the opportunity to inspect such material or condition before it is disturbed. Contractor’s failure to provide an RFC Notice within thirty (30) Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Contractor from any relief, unless Contractor can show that (a) Department was not materially prejudiced by the lack of notice, or (b) Department's designated representative specified in accordance with Section 24.1 had actual knowledge, prior to the expiration of the thirty (30)-Day period, of the event or situation and that Contractor believed it was entitled to a Change Order with respect thereto.

19.4.2.1.2 The RFC Notice shall: (a) state the facts underlying the Request for Change Order, the reasons why Contractor believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each Department representative knowledgeable of the facts underlying the Request for Change Order, (c) identify any documents and the substance of any oral communication involved in the facts underlying the Request for Change Order, (d) state the basis for a claim of necessary accelerated schedule performance, if applicable, (e) state the basis for a claim that the work is not required by this Contract, if applicable, (f) identify particular elements of Contract performance for which additional compensation may be sought under this Article 19 and (g) identify any potential Critical Path impacts.

19.4.2.1.3 The written notification described in Section 5.1.5.1 may also serve as a RFC Notice provided it meets the requirements for RFC Notices.

19.4.2.1.4 Within thirty (30) Days after receipt of a RFC Notice, Department will respond in writing to Contractor to: (a) confirm that a change has occurred; (b) deny that a change has occurred; or (c) advise Contractor that the necessary information has not been submitted to decide which of the above alternatives applies, and indicate the needed information for further review.

19.4.2.1.5 Any adjustments made to this Contract shall not include increased costs or time extensions for delay resulting from Contractor's failure to timely provide requested additional information under this Section 19.4.2.1.

19.4.2.2 Delivery of Request for Change Order

Contractor shall deliver all Requests for Change Orders under this Section 19.4 to Department within thirty (30) Days after delivery of the RFC Notice, or such longer period of time as may be allowed in writing by Department. Department may require design and construction costs to be covered by separate Requests for Change Order. If Contractor fails to deliver a Request for Change Order within the appropriate time period, Contractor shall be required to provide a new RFC Notice before it may submit a Request for Change Order.

19.4.2.2.1 Information Regarding Effect of Change

Each Request for Change Order shall include as attachments a detailed cost estimate relating thereto setting forth all consequences of the event, situation or proposed change giving rise to the proposed Change Order, and including (a) if Contractor claims that such event, situation or change requires a modification to the Work, the proposed modification of the Contract Price and payment allocations set forth in the CPM/Payment Schedule (if any) occasioned by such change and all facts justifying such modification in a format acceptable to Department, and (b) if Contractor claims that such event, situation or change affects a Critical Path, an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, with a narrative report, in form satisfactory to Department, which compares the proposed new schedule to the current approved schedule.

19.4.2.2.2 Justification

Each Request for Change Order initiated by Contractor hereunder shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Article 19 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 19.7.1.1) which establish the necessity and amount of such proposed change.

19.4.2.2.3 Contractor Representation

Each Request for Change Order shall contain a written representation by Contractor that the amount of time and/or compensation set forth therein includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change.

19.4.2.2.4 Cost Proposal

Each Request for Change Order shall include a detailed cost proposal identifying all categories of costs, supported by documentation satisfactory to Department (a) showing all impacts on the Contract from Work additions, deletions and modifications shown in the Change Order being priced and (b) setting out the proposed costs in such a way that a fair evaluation can be made. Contractor shall submit a detailed estimate of the cost of the change to Department. This estimate must include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs), contingencies and profit. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Contractor shall obtain quotes (with breakdowns showing cost of labor,

materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Contractor's estimate. Contractor represents and warrants that the cost proposal will (a) personally be examined prior to delivery by an authorized officer of Contractor, (b) clearly detail how the total price and individual components of that price were determined, and (c) include all assumptions, detailed quantity takeoffs, rates of production and progress calculations, labor rates and burdens, cost estimates, and quotes from Subcontractors and suppliers used by Contractor to arrive at the price.

19.4.2.2.5 Structural or Capacity Reductions as a Result of a Discretionary Directed Change

Requests for Change Order proposing structural or capacity reductions as a result of a Discretionary Directed Change, but no other Requests for Change Order, may consider the effect on Contractor's ability to comply with its Warranties.

19.4.2.3 Incomplete Requests for Change Orders

19.4.2.3.1 If any requirements set forth in Section 19.4.2.2 cannot be met due to the nature of the occurrence, Contractor shall provide an incomplete Request for Change Order which fills in all information capable of being ascertained and which (a) includes a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to Department stating why such requirements cannot be met, (b) provides such information regarding projected impact on the Critical Path as is reasonably available, and (c) in all events includes sufficient detail to ascertain the basis for the proposed Change Order and for any ascertainable amounts with respect thereto.

19.4.2.3.2 Contractor shall furnish, when requested by Department, such further information and details as may be required to determine the facts or contentions involved. Contractor agrees that it shall give Department access to any and all of Contractor's books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that Department can investigate the basis for such proposed Change Order. Contractor shall provide Department with an update to each outstanding incomplete Request for Change Order if any change in the data (either singularly or cumulatively) causes a price or schedule change by more than 10% of such Request for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to Department, excess time expenditures to date and excess time anticipated for completion of the activities for which the time extension is claimed. Department may reject the Request for Change Order at any point in the process. Once a complete Request for Change Order is provided, Department's failure to respond thereto within twenty-one (21) Days of delivery of the request shall be deemed a rejection of such request. Although Department intends for Department to review incomplete Requests for Change Order for the purposes described in Section 19.4.2.4, Department shall have no obligation to review the back-up associated with any Request for Change Order until a complete Request for Change Order is provided.

19.4.2.4 Importance of Timely Response

Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and Requests for Change Order and updates thereto are of vital importance to Department. Department is relying on Contractor to evaluate promptly, upon the occurrence of any event or situation, whether the event or situation will affect the CPM/Payment Schedule and, if so, whether Contractor believes a time extension and/or claim on the Contingency is required hereunder. If an event or situation occurs which may affect the Contract Price, the Guaranteed Completion Date or the date for Final Acceptance of Segment IV contained in Section 25.6, Department will evaluate the situation and determine whether it wishes to make any changes to the

definition of the Project so as to bring it within Department's funding and time restraints. The following matters (among others) shall be considered in determining whether Department has been prejudiced by Contractor's failure to provide notice in a timely fashion: the effect of the delay on alternatives available to Department (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten (10) Days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence) and the impact of the delay on Department's ability to obtain and review objective information contemporaneously with the event.

19.4.2.5 Review of Subcontractor Claims

Prior to submission by Contractor of any Request for Change Order which is based in whole or in part on any facts alleged in a submittal by any Subcontractor to Contractor, Contractor shall have reviewed all such Subcontractor claims and determined in good faith whether the claims are justified as to both entitlement and amount, and Contractor's Request for Change Order shall include only those items which Contractor has determined are so justified and which otherwise meet all requirements hereunder for Contractor-initiated Change Orders. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of Contractor's analysis of all Subcontractor claims components and shall include a certification signed by Contractor's Project Manager stating that Contractor has reviewed and approved any audit data included in the request. Any Request for Change Order involving Subcontractor Work which is not accompanied by such an analysis and certification shall be considered incomplete.

19.5 Pricing

19.5.1 Limitations

19.5.1.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude: (a) costs caused by the breach of contract or fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible; (b) costs which could reasonably be avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment) and (c) costs for remediation of any nonconforming Work. Any Change Order providing for an increase in the Contract Price shall take into account any related reduction in Contractor's costs resulting from the Change Order.

19.5.1.2 Limitation on Delay Costs

Any increase in the Contract Price due to delays eligible for Change Orders under Section 19.4.1.2 shall be limited to overhead costs arising from such delays and direct costs resulting from such delays, provided that if the delay does not impact a Critical Path activity, the increase in the Contract Price due to such delay shall be limited to the actual costs of the affected workers and equipment that cannot be mitigated. Before Contractor may obtain any increase in the Contract Price to compensate for additional or extended overhead or direct costs resulting from delay, Contractor shall be required to demonstrate to Department's satisfaction that (a) the change in the Work or other event or situation which is the subject of the Request for Change Order has caused or will result in an identifiable and measurable disruption of the Work, (b) the delay or cost was not due to any breach of contract or fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible, and could not reasonably have

been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment), (c) the delay for which compensation is sought is not concurrently caused by a matter or circumstance for which Contractor is responsible and (d) Contractor has suffered or will suffer actual overhead and direct costs due to such delay, each of which overhead and direct costs shall be documented in a manner satisfactory to Department.

19.5.2 Pricing Methodologies

Department and Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate a reasonable cost for each Change Order. If the parties agree that Contractor is entitled to additional compensation or additional time for the work which is the subject of a Change Order, but cannot agree as to the amount, then unless, given the nature of such change, Department and Contractor agree that a time and materials approach is not practicable, Contractor shall be entitled to receive payment as provided in Sections 19.5.2.1, 19.5.2.2 and 19.5.2.3, subject to Department's right to not issue a Change Order or to refuse to pay incurred costs which Department deems unreasonable. If the parties agree that a time and materials approach is not practicable, Department shall reduce the amount of the price increase or time extension as Department deems appropriate and Department shall execute and deliver a Change Order reflecting such reductions to Contractor, within a reasonable period after receipt of a request by Contractor to do so.

19.5.2.1 Subject to Sections 19.5.2.2 and 19.5.2.3, compensation for time and material Change Orders shall be limited to such of the following direct costs, whether incurred by Contractor or a first-tier construction Subcontractor, which are actually and reasonably incurred as a direct and sole result of the event or matter giving rise to the change and no others:

- (a) the cost of labor, including social security, old age survivors and disability insurance, unemployment insurance, fringe benefits required by agreement or custom and workers' compensation insurance;
- (b) the cost of materials, supplies and equipment, including the cost of transportation, taxes and duties, whether incorporated in the Project or consumed;
- (c) rental or depreciation costs of plant, buildings, machinery, equipment and hand tools, whether Contractor owned or rented from others;
- (d) permit fees and sales and use or similar taxes related to such changes;
- (e) costs directly attributable to the charges of consultants or lower tier Subcontractors directly attributable to performance of the change; and
- (f) Subsistence and travel expenses for personnel.

19.5.2.2 Direct costs allowable under Section 19.5.2.1 shall either be marked-up by 15% for overhead and profit in the event of non-subcontracted Work, or shall be marked up by 22.5% for cumulative overhead and profit of Contractor and Subcontractors in the event of subcontracted Work.

19.5.2.3 The following items are included in the Change Order mark-up for overhead and profit:

- (a) Salary and expenses of executive officers, supervising officers or technical or engineering employees;
- (b) Contractor's Project Manager;
- (c) Clerical or stenographic employees;
- (d) Drafting room accessories such as paper, tracing cloth, blue printing, etc.;
- (e) Any and all field and home office overhead and operating expenses whatsoever;
- (f) All bond and insurance premiums;
- (g) Attorneys' fees and costs;
- (h) All other indirect costs;
- (i) Costs of furnishing the reports described in Section 19.7; and
- (j) Profit.

19.6 Limitation on Time Extensions

Any extension of the Guaranteed Completion Date or of the date for Final Acceptance of Segment IV contained in Section 25.6 allowed hereunder shall exclude any delay to the extent that it (a) was due to the fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible, or (b) could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work. Contractor shall be required to demonstrate to Department's satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order seeking a change in the Guaranteed Completion Date or of the date for Final Acceptance of Segment IV contained in Section 25.6 has caused or will result in an identifiable and measurable disruption of the Work so as to delay completion thereof and change the duration of a Critical Path which was not due to any such fault or negligence and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work.

19.7 Change Order Records

Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and the costs of other operations. Contractor shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, but specifically excluding negotiated and issued Change Orders, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path activity with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the CPM/Payment Schedule is in dispute. Such data shall be provided to Department and any authorized representative of such Persons reviewing any Contractor Claim or dispute regarding compensation for such Work as provided in Section 12.1.

19.7.1 Daily Work Reports and Data Collection

19.7.1.1 Contractor shall collect and preserve concurrent time and materials data and records in written form for (a) all time and materials Work and (b) all Work performed which Contractor believes constitutes extra work, pending issuance of a Change Order or resolution of any dispute in accordance with Article 27. At reasonable times as requested by Department, Contractor shall provide Department with a copy of each such item; provided, however, that the provision of such information shall not constitute a RFC Notice under Section 19.4.2.1.

19.7.1.2 From the records and data described in Section 19.7.1.1, Contractor shall furnish Department completed daily work reports for each Day's Work to which Section 19.7.1.1 applies. The daily time and material Work reports shall be detailed as follows:

(a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom direct reimbursement is requested.

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Quantities of materials, prices, and extensions.

(d) Transportation of materials.

(e) For construction labor, the cost of property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, bonds, and social security tax.

19.7.2 Supplier's Invoices

Material charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time and material Work reports, or if not available, they shall be submitted with subsequent daily time and material Work reports.

19.7.3 Execution of Reports

All time and materials reports shall be signed by Contractor's Project Manager.

19.8 Disputes

The failure of Department and Contractor to agree to any Change Order under this Article 19 (including agreement as to the amount of compensation allowed under Section 19.5.2 and any disputed amount of the increase in the Contract Price or extension of the Guaranteed Completion Date or the date for Final Acceptance of Segment IV contained in Section 25.6 in connection with a Change Order) shall be a dispute to be resolved in accordance with Article 27. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims of any nature arising from or relating to the Work covered by the Change Order.

ARTICLE 20. SUSPENSION OF ALL OR PART OF WORK

20.1 Suspension for Convenience

Department shall have the right to order Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time not to exceed twenty-four (24) hours twice in any twelve (12)-month period, as Department may determine to be appropriate for the convenience of Department, which shall not be considered a Department-Caused Delay. Any additional suspensions for convenience, including any suspension for convenience in excess of twenty-four (24) hours, which results in a delay to the Critical Path shall require Department's signature and will be considered a Department-Caused Delay.

20.2 Suspension for Other Reasons

20.2.1 Department has the authority to suspend the Work wholly or in part, for such period as Department deems necessary because of the failure on the part of Contractor to carry out orders given, or to perform any requirements of the Contract Documents. Contractor shall promptly comply with the written order of Department to suspend the Work wholly or in part. The suspended Work shall be resumed when appropriate corrective action has been taken.

20.2.2 Contractor shall not be entitled to any increase in the Contract Price or extension of the Guaranteed Completion Date or of the date for Final Acceptance of Segment IV contained in Section 25.6 in connection with any suspension under this Section 20.2, including for the work described in Section 20.3.

20.3 Project Safety

In the event of a suspension of Work under this Article 20, Contractor shall undertake all work necessary to ensure Project safety, including providing a safe, smooth, and unobstructed passageway through the construction area for use by public traffic during the period of such suspension.

**ARTICLE 21. INDEMNITY; HAZARDOUS SUBSTANCE LIABILITY;
INDEMNIFICATION PROCEDURES**

21.1 Indemnifications by Contractor

(a) Except as otherwise expressly provided in subsection (b) below, Contractor shall indemnify, protect, defend, hold harmless and release each State Indemnitee from and against any and all third party Claims arising out of the following:

(i) any error or negligent act or omission of any Contractor Party, provided that the indemnity under this subsection (a)(i) concerning Claims not related to Project Right of Way acquisition, Utility Relocations, procurement and documentation shall be limited to such Claims arising out of death, bodily injury or property damage suffered by third parties;

(ii) any violation by any Contractor Party of Laws, Regulations and Ordinances in connection with or relating to the Project or the Work;

(iii) any mechanic's, materialman's or design professional's lien on Department's right, title and interest in and to any Project Right of Way or other property arising out of the actual or alleged furnishing of labor, materials or services to or for the Project or any portion thereof by or on behalf of or at the request of any Contractor Party and due to Contractor's failure or alleged failure to pay to others any amount due or alleged to be due, provided that there has been no default in payment to Contractor under this Contract;

(iv) any failure of any Contractor Party to pay any sales, use or other taxes due or alleged to be due in connection with the Work or the purchase, supply or use of any materials, services or equipment;

(v) any Hazardous Substances originally introduced to or brought onto any Project Right of Way or other Department property by any Contractor Party;

(vi) the presence, spreading, migration, release, remediation, storing, transportation or disposal of Pre-Existing Hazardous Substances not discovered during site acquisition work due to failure of any Contractor Party to conduct investigations according to the procedures and provisions required by this Contract;

(vii) failure of any Contractor Party to handle, store, transport, monitor, remediate or dispose of, in compliance with Laws, Regulations and Ordinances in effect at the time of the activity in question, Pre-Existing Hazardous Substances which are or become known or apparent to any Contractor Party through site investigation or during the course of construction;

(viii) exacerbation, due to the negligence, recklessness or willful misconduct or failure to provide proper engineering controls of any Contractor Party, of the release, spreading, migration or toxicity of Hazardous Substances which are or become known or apparent to or reasonably suspected by any Contractor Party through site investigation or during the course of construction;

(ix) infringement by any Contractor Party (excluding third party equipment and software vendors) of any actually or allegedly patented, copyrighted, trademarked, service-marked or other proprietary materials, equipment, devices or processes; and

(x) fraud or intentional misrepresentation by any Contractor Party.

(b) Contractor's indemnities exclude the portion of liability on a Claim that is attributable (i) to the culpability of a State Indemnitee or (ii) to a deficiency in a required Department design or construction standard which either (A) is unknown to Contractor or (B) although known to Contractor, is communicated in writing to Department and which requirement is not waived by Department. If the culpability of a State Indemnitee or such deficiency in a Department design or construction standard has contributed to a loss, Contractor shall not be obligated to indemnify State Indemnitees for the proportionate share of such Claim caused thereby.

(c) For purposes of this Section 21.1, a "third party" means any person or entity other than a State Indemnitee, except that a third party includes (i) any State employee, agent and contractor or his or her heir or representative who asserts a Claim arising out of death, bodily injury or property damage against a State Indemnitee and which is not covered by State's worker's compensation program, and (ii) any State department or agency other than Department which in the exercise of its authority imposes upon Department Hazardous Substance remediation requirements or costs which are within the scope of an indemnity set forth in this Section 21.1.

21.2 No Indemnity Regarding Pre-Existing Hazardous Substances

Except to the extent provided in Sections 21.1(a)(vi), (vii), and (viii), the parties agree that neither shall have any obligation to indemnify the other or any third-party beneficiary or assignee with respect to any Claim relating to Pre-Existing Hazardous Substances.

21.3 Defense and Indemnification Procedures

(a) If Department receives notice of or otherwise has actual knowledge of a Claim which it believes is within the scope of Contractor's indemnification under Section 21.1, it shall by writing as soon as practicable (i) inform Contractor of such Claim; (ii) send to Contractor a copy of all written materials Department has received asserting such Claim and (iii) notify Contractor that either (A) the defense of such Claim is being tendered to Contractor or (B) Department has elected to conduct its own defense for a reason set forth in subsection (e) below.

(b) If the insurer under any applicable insurance policy accepts tender of defense, Contractor and Department shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then subsections (c), (d), (e) and (f) below shall apply.

(c) If the defense is tendered to Contractor, it shall within forty-five (45) Days of said tender deliver to Department a written notice stating that Contractor (i) accepts the tender of defense and confirms that the Claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter, (ii) accepts the tender of defense but with a "reservation of rights" in whole or in part or (iii) rejects the tender of defense if it reasonably determines it is not required to indemnify against the Claim under Section 21.1. If such notice is not delivered within such forty-five (45) Days, the tender of defense shall be deemed rejected.

(d) If Contractor gives notice under subsection (c)(i) above, Contractor shall have the right to select legal counsel for the State Indemnitees, subject to reasonable approval of the State Attorney General, and Contractor shall otherwise control the defense of such Claim, including settlement, and bear the fees and costs of defending and settling such Claim. During such defense: (A) Contractor shall at Contractor's expense, fully and regularly inform Department of the progress of the defense and of any

settlement discussions; and (B) Department shall, at Contractor's expense for all of Department's third party expenses, fully cooperate in said defense, provide to Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Department and maintain the confidentiality of all communications between it and Contractor concerning such defense.

(e) Department shall be entitled to select its own legal counsel and otherwise control the defense of such Claim if: (i) the defense is tendered to Contractor and it refuses the tender of defense, or fails to accept such tender within forty-five (45) Days, or reserves any right to deny or disclaim such full indemnification thereafter; or (ii) Department, at the time it gives notice of the Claim or at any time thereafter, reasonably determines that (A) a conflict exists between it and the Contractor which prevents or potentially prevents Contractor from presenting a full and effective defense or (B) Contractor is otherwise not providing an effective defense in connection with the Claim and Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense. Department may assume its own defense pursuant to subsection (e)(ii) above by delivering to Contractor written notice of such election and the reasons therefor. A refusal of, or failure to accept, a tender of defense may be treated by Department as a Claim against Contractor subject to resolution pursuant to Article 27.

(f) If Department is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and Claim for which it is entitled to indemnification hereunder shall be reimbursed by Contractor on a current basis. In the event Department is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the Claim with the Contractor's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of the Contractor's indemnity.

ARTICLE 22. INSURANCE AND BONDING

22.1 General and Auto Liability Insurance

22.1.1 For so long as any Work is being undertaken pursuant to this Contract and the Comprehensive Agreement, including all warranty periods, Contractor shall cause to be procured and kept in force by each contractor and subcontractor performing Work on the Project, adequate policy or policies of commercial general liability insurance (form number CGOO 0111 88 1SC 1988, 1991 or successor form), including premises/operations and products/completed operations. Such insurance policy shall contain coverage for bodily injury, broad form property damage, personal injury, blanket contractual liability (either by its original form or by endorsement) and liability insurance (either by its original form or by endorsement), providing coverage for claims related to the Work or Project Right of Way acquisitions and related construction and staging areas.

22.1.2 Such insurance policy shall provide minimum coverage of one million dollars (\$1,000,000) combined single limit of liability for bodily injury, property damage and personal injury per occurrence, with a general aggregate limit of two million dollars (\$2,000,000) per policy period. The amount of the deductible applicable to such policy or policies shall be subject to Department's reasonable approval. The required coverages may be obtained through a combination of primary and excess insurance policies.

22.1.3 Contractor shall cause to be maintained by each contractor and subcontractor performing Work on the Project a policy or policies of insurance specifically for the providing liability coverage for claims of bodily injury and property damage arising from the use of motor vehicles by or on behalf of Contractor. Such insurance policy shall provide minimum coverage of one million dollars (\$1,000,000) combined single limit of liability for bodily injury and property damage per accident.

22.2 Professional Liability Insurance

Contractor shall cause to be procured by each entity rendering design for the Project, and shall keep or cause to be kept in force, a policy or policies for professional liability or errors and omissions coverage. Such insurance shall contain "claims made" coverage of no less than \$5 million per occurrence and in the aggregate. The insurance shall include a deductible not greater than \$350,000 for each claim. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all services performed by each entity rendering design for the Project. These requirements shall be continued in effect for three (3) years after the work is completed by the insured respecting the Project.

22.3 NOT USED

22.4 Workers' Compensation Insurance

22.4.1 At all times required by law Contractor shall cause to be procured by each contractor or subcontractor performing Work on the Project and shall cause to be maintained in full force and effect insurance coverage for all employees suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Satisfaction of these requirements shall include:

(a) full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such program is mandatory in any jurisdiction;

(b) purchase of workers' compensation and occupational disease insurance providing benefits to employees in full compliance with all applicable Laws, Ordinance and Regulations, but only to the extent such coverage is not provided under a mandatory government program as in subsection (a) above; and/or

(c) maintenance and demonstration prior to commencement of any work of a legally permitted and Commonwealth of Virginia approved program of self-insurance for workers' compensation and occupational disease.

22.4.2 Except to the extent prohibited by law, the program for Contractor's compliance with workers' compensation and occupational disease Laws, Regulations and Ordinances set forth in Section 22.4.1 shall provide for a full waiver of rights of subrogation against any State Indemnitee.

22.4.3 If Contractor fails to effect and maintain a program of compliance with applicable worker's compensation and occupational disease Laws, Regulations and Ordinances and a State Indemnitee incurs fines or is required by law to provide benefits to such employees, or to obtain coverage for such employees, Contractor shall indemnify the State Indemnitee for such fines, payment of benefits to Contractor or Subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount Contractor owes to the State Indemnitee pursuant to the indemnity may be deducted from any payments Department owes Contractor pursuant to this Contract.

22.4.4 In addition to complying with the provisions for workers' compensation above, Contractor shall at all times required by law, cause to be maintained by each contractor and subcontractor performing Work on the Project coverage for employers liability with a policy limit of \$500,000 per accident and in the aggregate per policy period.

22.5 Other Insurance Covenants

22.5.1 Each insurance policy provided for this Contract shall:

(i) be in form and substance acceptable to the Virginia State Corporation Commission, Bureau of Insurance and the Department;

(ii) be issued by insurers authorized to do business in Virginia and having an A. M. Best rating of not less than A- or its equivalent Standard & Poor's, Moody's Investors Service or Duff & Phelps Credit Rating or as approved by the Commonwealth.

(iii) if primary, shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and errors and omissions policies). All policies written on a "claims made" basis shall be renewed or include a tail period of at least three (3) years after expiration of the policy period;

(iv) provide that no deductibles or self-insured retentions shall be applied against the State or Department;

(v) provide that no policy can be canceled, suspended, lapsed or materially modified without at least thirty (30) Days prior written notice by registered or certified mail to the Department;

(vi) with respect to the insurance policies described in Sections 22.1 (both primary and excess);

(A) provide that the coverage thereof is primary and non-contributory coverage with respect to all named or additional insureds to the extent of the liability assumed by the Contractor under the Contract; and

(B) provide on endorsement forms acceptable to the Department that the Commonwealth of Virginia, the Department and all officials and employees are named as additional insureds as to any insured loss or liability arising out of or related in any way to the Project or Project Right of Way except with respect to the insurance under Section 22.2.

(vii) contain no provisions or exclusions inconsistent with this Contract.

22.5.2 Contractor shall deliver, or cause to be delivered, to the Department prior to the commencement of construction a binder or certificate of insurance from the agent, broker or insurer demonstrating the identity of all insurers, named and additional insureds, type of coverage, endorsements, policy limits and deductibles, subrogation waiver and other essential terms and statement of non-cancellation consistent with Section 22.5.1(v) of the Code of Virginia. Upon request of the Commonwealth of Virginia, Contractor shall provide copies of applicable policies.

(A) Each binder or certificate with respect to project-specific insurance shall have attached to it a copy of the declaration sheet of each policy of insurance with the name of the contract and contract number specifically identified and referenced on it;

(B) No later than thirty (30) Days prior to the expiration of any insurance policy;

A binder or certificate must be submitted demonstrating renewal or continuation of the policy; and

(C) All binders or certificates of insurance shall be in a form acceptable to the Department.

22.5.3 Contractor shall cause to be procured insurance meeting or exceeding all the terms and conditions required by Article 22 herein. Should an adverse insurance market prohibit the purchase of any policy of insurance meeting or exceeding the terms and conditions required by Article 22 herein, the Contractor shall have the agent, broker or insurer provide evidence to the Department of such lack of availability by submitting written evidence of all markets approached and their response. If such insurance is not available and cannot be obtained through the use of higher deductibles and retention, alternative approaches may be permitted with the approval of the Department.

22.5.4 Contractor shall observe and comply with the lawful requirements of all insurance policies. Contractor also shall perform and satisfy the commercially reasonable requirements of insurance companies writing such types of insurance policies so that at all times companies of good standing and meeting the requirements of Section 22.5.1(ii) shall be willing to write or to continue such coverage.

22.5.5 Any insurance coverage required in this Article 22 may be effected by a policy or policies of blanket insurance, provided that (i) the Project, Project Right of Way and related construction and staging areas are specifically identified therein, by endorsement or otherwise, as included in the

coverage provided; (ii) the amount of the total insurance allocated to the Project, Project Right of Way and related construction and staging areas shall be such as to furnish protection equivalent to that which would be afforded by separate insurance policies in the amounts herein required; and (iii) in all other respects any such blanket policy or policies shall comply with all other provisions of this Article 22.

22.5.6 Department makes no representation that the limits of liability specified for the insurance policies to be carried pursuant to this Article 22 are adequate to protect Contractor against its undertakings under this Contract or any other Project Agreement or preclude Department from taking any actions as are available to it under this Contract or otherwise at law. Department shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against Contractor or any other person arising out of or by reason of failure of Contractor to provide and keep in force the insurance policies required by this Article 22; but Department shall instead be entitled to recover the full amount of damages available.

22.5.7 If the insurance carriers for any insurance policy described in this Article 22 deny coverage to Contractor or Department with respect to any Contractor Claims reported to such carriers, Contractor and Department shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage.

22.6 Performance and Payment Bonds

22.6.1 Prior to commencement of construction of any part of the Work, Contractor shall deliver to Department a Performance Bond and a Payment Bond, each in the amount of the construction cost component of the Contract Price for the portion of the Work authorized by Notice to Proceed and in the forms attached hereto as Appendices 4 and 5. Each Bond shall remain in full force and effect until Final Acceptance of such portion of the Work. As and when additional portions of the Work are authorized pursuant to the provisions of Articles 1 and 19, prior to commencement of construction of such additional Work, Contractor shall deliver to Department amendments to such Bonds increasing the amounts thereof by the construction cost components of the Contract Price of the additional Work. Actions against the payment and performance bonds will be in accordance with the requirements of Sections 2.2-4340 and 2.2-4341 of the Code of Virginia, 2002 edition, and nothing contained herein shall be construed as limiting or otherwise reducing the applicable statutes of limitations applicable to enforcement of bonds provided in accordance with this section.

22.6.2 The Payment and Performance Bonds shall be executed by the Contractor and a surety company authorized to do business in the State in accordance with the laws of the State and the rules and regulations of the State Corporation Commission. In order to be considered properly executed, the bonds shall include authorized signatures and titles.

22.6.3 In lieu of Payment or Performance Bonds, Contractor may furnish a certified check or cash escrow, under mutual escrow instruction approved by the Department in writing in the face amount required for each of the bonds, which will be held for the full period as applicable for each bond.

22.6.4 Upon Final Acceptance issued by the Department with respect to any Project Segment pursuant to Section 18.2, the Department shall grant a reduction in the penal sum of Contractor's Performance Bond in an amount equal to the percentage arrived at by dividing the construction cost component of the Contract Price attributed to such Segment by the construction cost component of the Contract Price attributed to the entire Project.

22.7 Not Used

ARTICLE 23. CONTRACTING PRACTICES

23.1 Obligation to Refrain from Discrimination

Contractor shall comply with Section 9.2 of the Comprehensive Agreement.

23.2 Disadvantaged Business Enterprises

Department has adopted a Disadvantaged Business Enterprises ("DBE") program (which consists of both minority-owned firms and women-owned firms). Contractor acknowledges that the Department has adopted an overall statewide DBE participation goal of 10.5%. Even though the Project has no specific DBE goal stipulated or required, the Contractor shall diligently seek to comply with the aforementioned overall DBE participation goal, use good faith efforts to allow DBE's the opportunity to participate as contractors and subcontractors in the design and construction of the Project.

23.3 Disadvantaged Business Enterprise Employment and Contracting Procedures

Contractor acknowledges and agrees that it is the policy of Department to promote and ensure economic advancement of minorities and women through employment. Contractor shall employ or select employees possessing the necessary skill, expertise, cost level and efficiency for the performance of the Work.

23.4 Subcontracts

23.4.1 Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide that, pursuant to terms in form and substance satisfactory to Department, (a) the rights (but not the obligations) of Contractor under such instrument are assigned to Department and their respective successors and assigns (contingent only upon written acceptance of the assignment from the assignee(s) or its (their) successor(s) or assign(s) following default by Contractor or, subject to Section 26.2.3, termination or expiration of this Contract), and (b) all warranties, guarantees and indemnifications (express and implied) of such Subcontractor shall inure to the benefit of Department and its successors and assigns.

23.4.2 Notwithstanding any Subcontract or agreement with any Subcontractor, Contractor shall be fully responsible for all of the Work (except as may be expressly provided to the contrary herein). Department shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind them.

23.4.3 Contractor shall, each month and from time to time upon request, provide Department with a list of all Subcontractors, shall allow Department access to all Subcontracts and shall deliver to Department, within ten (10) Days after receipt of a request from Department, copies of all provisions in Subcontracts as may be requested that evidence compliance with the terms of this Contract. However, Department's access to Subcontracts under this Section 23.4.3 shall be restricted to the purpose of insuring the Contractor's compliance with the terms of this Contract and Contractor shall, in its sole discretion, redact or otherwise omit from Subcontracts made available for the Department's inspection any and all commercial terms. This Section 23.4.3 is not intended to restrict the Department's rights under Article 8.

ARTICLE 24. REPRESENTATIVES

24.1 Designation of Representatives; Cooperation with Representatives

24.1.1 Department and Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Appendix 8 hereto provides the initial designations. Such individuals shall constitute Authorized Department Representatives and Authorized Contractor Representatives, respectively. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 16.3 of the Comprehensive Agreement. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to enter into binding agreements.

24.1.2 Contractor shall cooperate with Department and all representatives of Department designated as described above.

ARTICLE 25. DEFAULT

25.1 Default of Contractor

25.1.1 The term "Event of Default" shall mean the occurrence of any one or more of the following events or conditions, following notice and opportunity to cure (if applicable) as specified in Section 25.1.2 and an election by Department to declare that an Event of Default has occurred in writing and given to Contractor and Surety:

- (a) Contractor fails either (i) to promptly begin the Work under the Contract Documents or (ii) to prosecute the Work in accordance with the CPM/Payment Schedule; or
- (b) Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work; or
- (c) Contractor discontinues the prosecution of the Work (exclusive of Work stoppage (i) due to termination by Department, (ii) due to and during the continuance of a Force Majeure event, the performance of any Reimbursable Site Work or a suspension by Department or (iii) to the extent permitted under Section 25.4); or
- (d) Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from Department to do so or (if applicable) after cessation of the event preventing performance; or
- (e) Contractor shall have become insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors; or
- (e) Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced (i) by Contractor (but not necessarily in the same proceeding or concurrently) or (ii) against Contractor (but not necessarily in the same proceeding or concurrently) in good faith or shall remain undismissed and unstayed for a period of ninety (90) Days; or
- (f) Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument or other document delivered by Contractor pursuant to the Contract Documents shall have been materially false or misleading when made; or
- (g) Contractor breaches any material agreement contained in the Contract Documents;
or
- (h) Contractor shall be in default under the Comprehensive Agreement; or
- (i) Contractor shall have assigned or transferred the Contract Documents or any right or interest therein without Department's prior written consent, and any transfer of the right or practical ability to control the policies or decisions of Contractor, whether due to transfer of partnership or membership interests, shares, beneficial interests or otherwise shall constitute an assignment or transfer prohibited under this subsection (j) without Department's prior written consent; or

(j) Contractor shall have failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or shall have materially failed to comply with any Laws, Regulations and Ordinances or failed reasonably to comply with the instructions of Department consistent with the Contract Documents.

25.1.2 Contractor and Surety shall be entitled to ten (10) Days notice and opportunity to cure any breach described in (a) through (d) and (h) through (j) of Section 25.1.1 above (excluding any such breach which by its nature cannot be cured); provided that (a) if such breach is capable of cure but by its nature cannot be cured within ten (10) Days, such additional period of time shall be allowed as may be reasonably necessary to cure the breach, provided Contractor or Surety commences such cure within such ten (10)-Day period and thereafter diligently prosecutes such cure to completion; (b) in the case of an emergency Department shall have the right to shorten the ten (10)-Day cure period by so specifying in the notice of breach; (c) no cure period shall in any event extend beyond the date on which the maximum amount of Liquidated Damages under Section 25.6 has accrued, and (d) no cure period shall extend the Final Acceptance Date, nor shall any cure period excuse, delay or extend Contractor's obligations to pay Liquidated Damages hereunder.

25.2 Remedies for Contractor Event of Default

25.2.1 Upon the occurrence of an Event of Default, Department's obligation to make payments to Contractor hereunder shall be suspended unless and until the Event of Default is cured.

25.2.2 Upon the occurrence of an Event of Default, Department may notify Contractor to discontinue all or part of the Work and may terminate this Contract. In such event, Department may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and may (a) direct the Surety to complete such portion of the Work or complete this Contract, (b) enter into an agreement for the completion of such portion of the Work or the completion of this Contract according to the terms and provisions thereof with another contractor (should the Surety fail to comply with its obligations), the Surety or (c) use such other methods as it deems necessary for the completion of such portion of the Work or the completion of this Contract, including completion of the Work by Department. In the event that this Contract is terminated, Sections 26.2.3, 26.2.4, 26.2.5, 26.2.6, 26.2.7, 26.2.8 and 26.2.9 shall apply and Contractor shall immediately deliver to Department all completed and partially completed Work Product (including that not yet paid for due to offset claims of Department). In the event that this Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience.

25.2.3 Contractor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a breach or default by Contractor or by Department's declaration of an Event of Default, or by actions taken by Department under this Section 25.2.

25.2.4 All costs and charges incurred by Department, together with the cost of completing the Work, will be deducted from any moneys due or that may become due Contractor, the Surety, subject to Department's good faith efforts to mitigate damages. Subject to Sections 25.3.1 and 25.3.2, if such expense exceeds the sum which would be available from such moneys, then Contractor and the Surety shall be jointly and severally liable and shall pay to Department the amount of such excess.

25.2.5 Each right and remedy of Department hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein, and the exercise or beginning of the exercise by Department of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by the State of any or all other such rights or remedies.

25.3 Certain Limitations on Department Remedies

25.3.1 Subject to the limitations in Section 25.7, Contractor's liability to Department for damages resulting from breach of this Contract shall be limited to Liquidated Damages provided in Section 25.6 and all those costs reasonably incurred by Department or any party acting on Department's behalf in completing or correcting the Work and repairing any damage to the Project or other property of any State Indemnitee caused thereby. This limitation of liability shall not apply to liabilities incurred by Contractor arising out of its obligation to indemnify, defend and hold harmless each State Indemnitee from third party Claims under Section 21.1 or to the extent covered by insurance required hereunder.

25.3.2 If the Event of Default consists solely of Contractor's actual or projected failure to achieve Final Acceptance by the Guaranteed Completion Date or Final Acceptance of Segment IV by the date contained in Section 25.6, Department shall have no right to terminate this Contract under Section 25.2.2 until such time, if any, as the accumulated and/or projected Liquidated Damages set forth in the Section Supplement exceed or would exceed the maximum amount of Liquidated Damages set forth in such Section Supplement, whereupon Department shall be free to terminate this Contract under Section 25.2.2 and exercise other available remedies under Section 25.2.

25.3.3 Where this Contract provides an expressly stated remedy, such expressly stated remedy shall be exclusive of any inconsistent, additive or alternative extra-contractual remedies which might otherwise have been available at law or equity, except for (a) any common law or statutory right to indemnity or contribution regarding liability of potentially responsible parties for Pre-Existing Hazardous Substances, where the liability is not otherwise the subject of an indemnity pursuant to Section 21.2, (b) any claim or cause of action for fraud or intentional misrepresentation and (c) any subject matter on which no express contractual remedy is provided. The parties may resort to any remedy available at law or equity with respect to the foregoing exceptions.

25.4 NOT USED

25.5 Limitation on Contractor Remedies

Except as otherwise provided in Section 25.4, and in all events subject to Section 13.6 of the Comprehensive Agreement, in the event of any alleged breach of this Contract by Department, Contractor shall provide Department written notice describing the alleged breach and thirty (30) Days opportunity to cure the same, as a condition precedent to exercising any remedies to which Contractor is entitled at law or in equity with respect thereto.

25.6 Liquidated Damages

Contractor and Department have agreed to liquidate damages incurred by Department with respect to any delay in achieving Final Acceptance by the Guaranteed Completion Date or Final Acceptance of Segment IV by the date contained in Section 25.6, as such dates may be adjusted pursuant to the terms of this Contract (collectively, the "Liquidated Damages"). Contractor acknowledges and agrees that the Liquidated Damages are intended to constitute compensation solely for Contractor's failure to meet the completion deadlines, and shall not excuse Contractor from liability for any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. If an Event of Default consists solely of Contractor's failure to achieve Final Acceptance by the Guaranteed Completion Date or failure to achieve Final Acceptance of Segment IV by the date contained in this Section 25.6, as such dates may be adjusted pursuant to the terms of this Contract, then the damages recoverable by Department shall be limited as provided in Article 25.3.2. Contractor has agreed to achieve Final Acceptance of the Project, including each Project Segment, by December 31,

2006. Contractor shall pay the Department liquidated damages in the amount of \$5,200 for each Day after December 31, 2006, by which it fails to achieve Final Acceptance of Segment I of the Project; \$3,500.00 for each Day after December 31, 2006, by which it fails to achieve Final Acceptance of Segment II of the Project; and \$1,325.00 for each Day after December 31, 2006, by which it fails to achieve Final Acceptance of Segment III of the Project. Contractor has agreed to achieve Final Acceptance of Segment IV of the Project by December 31, 2003. Contractor shall pay the Department liquidated damages in the amount of \$70 for each Day after December 31, 2003, by which it fails to achieve Final Acceptance of Segment IV of the Project.

25.7 Consequential Damages

Except as expressly provided in this Contract to the contrary, neither party shall be liable to the other for indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory. The foregoing limitation shall not, however, in any manner:

- (a) prejudice Department's right to recover Liquidated Damages from Contractor as provided herein;
- (b) limit Contractor's liability for any type of damage arising out of Contractor's obligation to indemnify, defend and hold each State Indemnitee harmless from third party Claims under Section 21.1 and elsewhere in this Contract;
- (c) limit Contractor's liability for any type of damage to the extent covered by insurance required hereunder;
- (d) limit Contractor's liability for any type of damage to the extent required to be covered by third party warranties required to be obtained by Contractor hereunder if Contractor fails to obtain such warranties; and
- (e) limit Contractor's right to a Change Order for delays or other events as provided in Section 19.4.1.2 that otherwise meet the requirements of Article 19, including, without limitation, Section 19.5.1 and 19.5.2.

ARTICLE 26. TERMINATION FOR CONVENIENCE

26.1 Notice of Termination

Department may terminate this Contract and the performance of the Work by Contractor at any time prior to the date of Final Acceptance if Department determines, in its sole discretion, that a termination is in its best interest. Department shall notify Contractor of the decision to terminate by delivering to Contractor a written Notice of Termination specifying the extent of termination and its effective date. Termination of this Contract shall not relieve the Surety of its obligation for any just claims arising out of or relating to the Work.

26.2 Contractor's Responsibilities After Receipt of Notice of Termination

After receipt of a Notice of Termination, and except as directed by Department, Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 26:

26.2.1 Stop Work as specified in the notice;

26.2.2 Enter into no further Subcontracts and place no further orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;

26.2.3 Terminate all Subcontracts to the extent they relate to the Work terminated except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

26.2.4 Assign to Department or its designee in the manner, at the times, and to the extent directed by Department, all of the right, title, and interest of Contractor under the Subcontracts so terminated, in which case Department will have the right, in its sole discretion, to accept performance, settle or pay any or all claims under or arising out of the termination of such Subcontracts;

26.2.5 Settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of Department, to the extent it may require, which approval or ratification shall be final;

26.2.6 Transfer and deliver to Department or its designee, as directed by Department, (a) possession and control of the Project, and (b) all right, title and interest of Contractor in and to (i) the Work in process, completed Work, supplies and other materials produced or acquired for the Work terminated, and (ii) the Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, information and other Work Product that would have been required to be furnished to Department if the Work had been completed;

26.2.7 Complete performance in accordance with the Contract Documents of all Work not terminated;

26.2.8 Take all action that may be necessary, or that Department may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Contractor and in which Department has or may acquire an interest; and

26.2.9 As authorized by Department, use its best efforts to sell at reasonable prices any property of the types referred to in Section 26.2.6; provided, however, that Contractor (a) shall not take any such action with respect to any items for which title has previously transferred to Department, (b) is not required to extend credit to any purchaser, and (c) may acquire the property itself, under the conditions prescribed and at prices approved by Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Department under the Contract Documents or paid in any other manner directed by Department.

26.3 Inventory

Contractor shall submit to Department a list of termination inventory not previously disposed of and excluding items authorized for disposition by Department; and within thirty (30) Days of receipt of the list, Contractor shall deliver such inventory to Department and Department shall accept title to such inventory as appropriate.

26.4 Settlement Proposal

After termination, Contractor shall submit a final termination settlement proposal to Department in the form and with the certification prescribed by Department. Contractor shall submit the proposal promptly, but no later than sixty (60) Days from the effective date of termination unless Contractor has requested a time extension in writing within such sixty (60)-Day period and Department has agreed in writing to allow such an extension.

26.5 Amount of Termination Settlement

Contractor and Department may agree, as provided in Section 26.4, upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the termination of Work pursuant to this Article 26. Such negotiated settlement may include an allowance for profit solely on Work which has been completed as of the termination date. In addition, Contractor shall be paid its reasonable costs of termination of Subcontracts and otherwise winding down the terminated Work. Such agreed amount or amounts payable for the terminated Work, exclusive of costs described in the prior sentence, shall not exceed the total Contract Price as reduced by the Contract Price of Work not terminated. Upon determination of the settlement amount this Contract will be amended accordingly, and Contractor will be paid the agreed amount as described in this Section 26.5. Nothing in Section 26.6, prescribing the amount to be paid to Contractor in the event that Contractor and Department fail to agree upon the whole amount to be paid to Contractor by reason of the termination of Work pursuant to this Article 26, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Contractor pursuant to this Section 26.5. Department's execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to compliance of the completed Work with all applicable Contract requirements, any of its rights under the Performance Bonds or any of its rights against Subcontractors except to the extent expressly addressed in such settlement agreement. Upon determination of the amount of the termination payment, this Contract shall be amended to reflect the agreed termination payment, Contractor shall be paid the agreed amount, subject to the limitations contained herein on Department's obligations to make payments, and the Contract Price shall be adjusted to deduct the portion thereof which is allocable to the terminated Work.

26.6 No Agreement as to Amount of Claim

In the event of failure of Contractor and Department to agree upon the amount to be paid Contractor by reason of the termination of Work pursuant to this Article 26, the amount payable

(exclusive of interest charges) shall be determined in accordance with the dispute resolution procedures of this Contract.

26.7 Reduction in Amount of Claim

The amount otherwise due Contractor under this Article 26 shall be reduced by (a) the amount of any claim which Department may have against Contractor in connection with this Contract provided that Department has delivered to Contractor written notice thereof setting forth the specific grounds therefor and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things acquired by Contractor or sold, pursuant to the provisions of this Article 26, and not otherwise recovered by or credited to Department.

26.8 Payment

Department may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Contractor in connection with the terminated portion of this Contract, whenever in the opinion of Department the aggregate of such payments shall be within the amount to which Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 26, such excess shall be payable by Contractor to Department upon demand together with interest at a variable rate per annum equal to the reference rate announced by Bank of America, NT&SA from time to time, plus 1%.

26.9 Inclusion in Subcontracts

Contractor shall insert in all Subcontracts that the Subcontractor shall stop Work on the date of and to the extent specified in a Notice of Termination from Department and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. Contractor shall communicate, immediately upon receipt thereof, any Notice of Termination issued by Department to all affected Subcontractors.

26.10 No Consequential Damages

In the event of a termination for convenience under this Article 26, Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed. Under no circumstances shall Contractor or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination for convenience under this Article 26. The payment to Contractor determined in accordance with this Article 26 constitutes Contractor's exclusive remedy for a termination hereunder.

26.11 No Waiver

Anything contained in this Contract to the contrary notwithstanding, a termination under this Article 26 shall not waive any right or claim to damages which Department may have with respect to Work which has achieved Guaranteed Completion prior to the date of termination, and Department may pursue any cause of action which it may have by law or under this Contract on account of such completed Work. The Contractor makes no warranties with respect to Work which has not achieved Guaranteed Completion prior to the date of termination.

26.12 Dispute Resolution

The failure of the parties to agree on amounts due under Article 26, shall be a dispute to be resolved in accordance with Article 27.

26.13 Contractor Right to Terminate

26.13.1 Department Events of Default.

The term “Department Event of Default” shall mean the occurrence of any one or more of the following events or conditions, following notice and opportunity to cure (if applicable) and an election by Contractor to declare that a Department Event of Default has occurred in writing and given to Department:

26.13.1.1 if the Work is stopped for a period of ninety (90) Days through no act or fault of the Contractor due to (a) issuance of an order of a court or other public authority having jurisdiction; or (b) an act of government, such as a declaration of national emergency, making material unavailable; or (c) the occurrence of a Force Majeure event;

26.13.1.2 if the Work is stopped for a period of thirty (30) Days through no act or fault of the Contractor because the Department has not made payment of undisputed amounts set forth in a Draw Request within the time stated in the Contract Documents; or

26.13.1.3 if the Work is stopped for a period of thirty (30) Days through no act or fault of the Contractor because the Department is unable to give the assurances regarding financial ability required by Article 14.5 hereof.

26.13.2 Remedies of the Contractor upon an Department Event of Default

If a Department Event of Default exists and is continuing, the Contractor may, upon seven (7) Days additional written notice to the Department, terminate the Contract and recover from the Department payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment and all other services rendered, including reasonable overhead and profit. To the extent the parties cannot agree on the payment to be made to Contractor under this Article 26.13.2, such disagreement shall be a dispute to be resolved in accordance with Article 27.

ARTICLE 27. DISPUTE RESOLUTION

27.1 Dispute Review Board.

Any matter arising under this Contract may be brought to the Dispute Review Board established in accordance with the terms and conditions of Appendix 13 for non-binding resolution.

27.2 Submittal of Claims.

Disputes not resolved pursuant to Article 27.1 shall be resolved solely in accordance with Section 105.16 of the Standard Specifications attached hereto as Appendix 9. At all times during the term hereof, including during the course of and notwithstanding the existence of any dispute, (a) Contractor shall perform as directed by Department, in a diligent manner and without delay, shall abide by Department's decision or order, and shall comply with all applicable provisions of the Contract Documents and (b) Department shall perform its obligations under this Contract in a diligent manner and without delay. It is understood and acknowledged by Contractor and Department that upon Final Acceptance of a Project Segment, that portion of the Work shall be treated as a separate contract for purposes of Section 105.16 of the Standard Specifications.

ARTICLE 28. MISCELLANEOUS PROVISIONS

28.1 Incorporation of Miscellaneous Provisions in Comprehensive Agreement

The following provisions in the Comprehensive Agreement are applicable to the Contract Documents, provided that all references therein to the “Agreement” shall instead be deemed references to the Contract Documents unless the context requires otherwise:

Section 16.1 (Assignment)

Section 16.2 (No Gift or Dedication)

Section 16.3 (Notices)

Section 16.4 (Binding Effect)

Section 16.5 (Relationship of Parties)

Section 16.6 (No Third Party Beneficiaries)

Section 16.7 (Waiver)

Section 16.9 (Governing Law and Venue)

Section 16.11 (Survival)

Section 16.13(a) through (e) (Construction and Interpretation of Agreement)

Section 16.14 (Counterparts)

28.2 Entire Agreement; Amendment

28.2.1 THIS CONTRACT AND THE OTHER PROJECT AGREEMENTS CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR OR CONTEMPORANEOUS VERBAL OR WRITTEN AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS CONTRACT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE. NO VERBAL AGREEMENT OR IMPLIED COVENANT SHALL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

28.2.2 This Contract and the other Project Agreements attempt to set forth in full all requirements applicable under the PPTA as to the study, planning, design, acquisition, development, construction, operation, maintenance, repair, management and financing of the Project and attempt to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Contract and the other Project Agreements, the parties agree to carry out their respective responsibilities in the spirit of cooperation

contemplated by the PPTA, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

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

28.3 Explanations; Omissions, Misdescriptions, Inclusions without Limitation

Should it appear that the Work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Contract Documents, Contractor shall apply to Department in writing for such further written explanations as may be necessary and shall conform to the explanation provided. Contractor shall promptly notify Department of all errors, omissions, inconsistencies or other defects (including inaccuracies and inconsistencies) which it may discover in the Contract Documents, provide written recommendations regarding changes or corrections to resolve any such error, omission or defect, and obtain Department's approval before proceeding with the design Work affected thereby. Omission from the Scope of Work or the misdescription of details of Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Scope of Work, without entitlement to a Change Order hereunder. The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation."

28.4 Computation of Periods

If the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice "within" a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Day which is a Business Day. However, the Guaranteed Completion Date and/or the date for Final Acceptance of Segment IV contained in Section 25.6 shall not be extended thereby. The requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be performed as specified, even though the date in question may fall on a non-Business Day.

28.5 Approvals

In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

28.6 NOT USED

28.7 Correspondence

Contractor shall copy Department on all written correspondence pertaining to this Contract between Contractor and any representative of the media or elected public official.

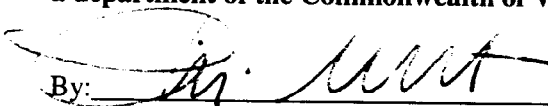
28.8 Standard Specifications

Cross-references to provisions of the Standard Specifications which are not applicable to this Contract because they have been superseded by other provisions of the Contract Documents shall be deemed references to the Contract Document provisions which have superseded the referenced Standard Specifications provisions.

Signatures on Following Page

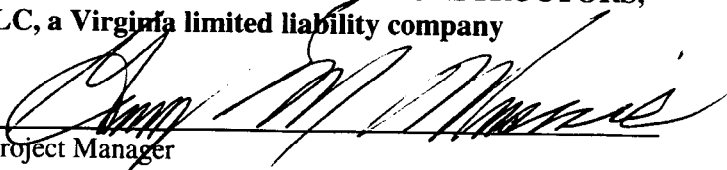
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

**VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia**

By: 

Commonwealth Transportation Commissioner

**JAMESTOWN 2007 CORRIDOR CONSTRUCTORS,
LLC, a Virginia limited liability company**

By: 

Project Manager

APPENDIX 1
DEFINITIONS

APPENDIX 1 OF THE DESIGN-BUILD CONTRACT

Definitions

Agreement Date, for purposes of the Comprehensive Agreement, means the date written on the cover page of the Comprehensive Agreement, and for purposes of the Design-Build Contract, means the date written on the cover page of the Design-Build Contract.

Authorized Contractor Representative means any person designated to act on behalf of the Contractor by a certificate signed by its Management Committee or Project Manager and filed with Department.

Authorized Department Representative means any person designated to act on behalf of Department by a certificate signed by the Commissioner and filed with the Contractor.

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

Change Order means a written amendment to the terms and conditions of the Contract Documents issued in accordance with Article 19 of the Design-Build Contract.

Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses, including any expenses of the Department resulting from a violation by any Contractor Party of Laws, Regulations and Ordinances in connection with or relating to the Project or the Work.

Code of Virginia means the Code of Virginia (1950, as amended).

Commissioner means the Commonwealth Transportation Commissioner or any successor in function.

Comprehensive Agreement means the Comprehensive Agreement to Design and Construct Jamestown Corridor Improvements between the Contractor and the Department dated as of October 21, 2002 and all exhibits thereto, as supplemented or amended from time to time.

Conformity means compliance with the most stringent customary manufacturing and construction tolerances where working tolerances are not

specified. Where working tolerances are specified, conformity means compliance with the most stringent of such tolerances.

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

Construction Segment means each or any segment of a Project which the Department and the Contractor designate pursuant to Article 13 of the Design-Build Contract for the purpose of scheduling construction.

Construction Traffic Management Plan means the plan for traffic management submitted and approved in accordance with Section 9.1 of the Design-Build Contract.

Contract Documents means the Design-Build Contract, including all appendices, the Scope of Work, the Preliminary Engineering, the Standard Specifications and the Plans and Specifications, including all amendments to any of the foregoing and all Change Orders issued.

Contractor means Jamestown 2007 Corridor Constructors, LLC, a Virginia limited liability company.

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

Contractor Default shall have the meaning set forth in Section 13.1 of the Comprehensive Agreement.

Contractor Party means and includes Contractor, any Related Party (other than the Department), subcontractor (other than the Department) at any tier or any representative of Contractor or any Related Party.

Contract Price shall have the meaning set forth in Section 14.1.1 of the Design-Build Contract.

CPM/Payment Schedule means the most current schedule for the Project approved by Department as described in Article 13 of the Design-Build Contract.

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

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

Days means calendar days, unless otherwise designated.

Defect means, with respect to each element or aspect of the Work for which acceptable tolerances are specified in the Contract Documents, any such element or aspect not conforming to such specified tolerances, and with respect to each element or aspect of the Work for which acceptable tolerances are not specified in the Contract Documents, any such element or aspect not conforming to industry standards applicable thereto as of the time such element or aspect of the Work is undertaken; provided that in all instances "Defect" includes any element or aspect of the Work not conforming to the Design-Build Contract, Plans and Specifications, Laws, Regulations and Ordinances or Regulatory Approvals.

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

Department-Caused Delays means delays, to the extent that they affect a Critical Path and which the Contractor could not have reasonably mitigated (without additional cost to Contractor), arising from the following matters and no others: (a) a suspension order pursuant to Section 20.1 of the Design-Build Contract to the extent the same is treated as a Department-Caused Delay thereunder, (b) Directed Changes, (c) failure of Department to provide responses to submittals and matters for which response by such Person is required, within the time periods indicated in the Contract Documents, (d) uncovering, removing and restoring Work, to the extent provided in Section 5.2.2.5 of the Design-Build Contract, (e) any improper failure to act by Department within a reasonable time after delivery of notice by Contractor to Department requesting such action, or (f) failure by the Department to issue Notice to Proceed for any Project Phase on or before the dates specified in Appendix 6 Scope of Work. Any court order to suspend Work shall not be considered a Department-Caused Delay (although it may qualify as a Force Majeure event) despite the fact that Department may specifically direct Contractor to comply with the court order.

Department Default shall have the meaning set forth in Section 13.4 of the Comprehensive Agreement.

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

Design-Build Contract means the Design-Build Contract between the Department and the Contractor dated as of October 21, 2002 a copy of which is

attached to the Comprehensive Agreement as Exhibit C, and any and all amendments and supplements thereto.

Differing Site Condition means, subject to the limitations in the next paragraph, any permanent condition on, within, under or of the Project Right of Way differing materially from those identified in the Preliminary Engineering and not apparent from a reasonable visual inspection.

With respect to the following conditions, Differing Site Condition means: (i) with respect to unknown existing Utilities, only those utilities not identified in Attachment E to Appendix 6 of the Design Build Contract; (ii) with respect to unknown subsurface man-made structures and obstructions, all such structures and obstructions not identified in the Preliminary Engineering referred in Appendix 2; (iii) with respect to additional settlement of fills occurring after being monitored for 120 days at the following locations:

- Segment I – Between stations 83+60 and 85+00,
- Segment I – Between stations 86+60 and 86+80,
- Segment I – Between stations 89+00 and 90+00,
- Segment I – Between stations 93+40 and 93+80,
- Segment II – Between stations 11+70 and 12+60,
- Segment II – Between stations 13+25 and 13+80,
- Segment II – Between stations 14+75 and 15+90,
- Segment II – Between stations 16+28 and 16+50,
- Segment II – Between stations 17+05 and 17+25,
- Segment II – Between stations 18+10 and 18+45,
- Segment II – Between stations 19+34 and 19+70 and
- Segment II – Between stations 26+00 and 26+60;

and (iv) with respect to miscellaneous underground conditions, unusual underground water conditions that affect wells or other sources of water supplies. A Differing Site Condition shall not be deemed to exist, and Contractor shall have no claim, with respect to the general nature, stability and/or character of excavation materials encountered on the Project Site, including excavation of bridge piers and abutments and foundation design changes resulting therefrom. A Differing Site Condition shall be deemed to include all manifestations of the same condition.^{1/}

1/ For example, if a given geologic formation or unknown cavern or mine is continuous and affects the Project Right of Way in more than one location, all such locations are together part of the same "condition." Conversely, if, for example, a location is affected by a geologic fault and a nearby location is affected by a rock formation, each would be a

Directed Change means any change in the Work (including changes in the standards applicable to the Work) which Department has directed Contractor to perform by Directive Letter pursuant to Section 19.3.1 of the Design-Build Contract or by Change Order under Section 19.3.2 of the Design-Build Contract. The term shall also include changes in the Work which are directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by Department. The fact that Department has delivered a Directive Letter does not necessarily mean that a change in the Work has occurred.

Directive Letter means each letter issued by Department pursuant to Section 19.3.1 of the Design-Build Contract.

Dispute means a controversy, matter in question, or difference of opinion that remains unresolved following good faith negotiations between representatives of Department and Contractor. Disputes may include such matters as Change Orders, interpretation of the Contract, Contract Documents, costs, time for performance and Differing Site Conditions. Disputes eligible for submission to the Dispute Review Board shall not include insurance requirements and compliance, claims on bonds, enforcement of Warranties and indemnities, exercise of remedies and rights to termination.

Dispute Review Board means the Dispute Review Board established pursuant to Section 27.1 and Appendix 13 of the Design-Build Contract.

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

Draw Request means a draw request from Contractor on the Draw Request and Certificate form attached as Appendix 3 to the Design-Build Contract.

Engineer of Record means the firm or entity ultimately responsible to insure compliance of the Project engineering design with generally accepted professional engineering principles.

Environmental Inspector means the individual or entity responsible for insuring compliance by the Contractor with applicable environmental laws, regulations and permits and who shall serve as a resource in securing

separate "condition." Similarly, each and every discrete archeological site would be a separate "condition."

environmental permits and providing expert advice with respect to environmental matters on the Project.

Environmental Laws means all Laws, Regulations and Ordinances now or hereafter in effect during the term of Contract relating to the environment or to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater and air) including, but not limited to, the statutes listed in the definition of Hazardous Substances; the National Environmental Policy Act, as amended, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. §§ 1801 et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.

Event of Default, for purposes of the Design-Build Contract, shall have the meaning set forth in Section 25.1 of the Design-Build Contract.

Final Acceptance means the occurrence of the events described in subsections (a) through (j) inclusive of Section 18.2.1 of the Design-Build Contract.

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

Fiscal Year means the consecutive 12-month period beginning July 1 and ending June 30, or any other consecutive 12-month fiscal period used by Department for financial accounting purposes.

Fixed Price Amount means the Fixed Price Amount described in Section 14.1.1 of the Design-Build Contract.

Force Majeure means any of the following events (provided such events are beyond the control of Contractor and are not due to an act or omission of Contractor) which materially and adversely affects Contractor's obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by Contractor:

- (a) any tidal wave, hurricane force wind, flood, tornado or earthquake;
- (b) any epidemic, blockade, rebellion, war, riot or act of sabotage, terrorism or civil commotion;

(c) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence, except as excluded under subsection (iii) below;

(d) any unreasonable delay by a utility owner in connection with a Utility Relocation;

(e) any change in or new enactment of any written Laws, Regulations and Ordinances, or change in the judicial or administrative interpretation of, or adoption of any new Laws, Regulations and Ordinances which is materially inconsistent with Laws, Regulations and Ordinances in effect on the Agreement Date (subject to the exclusions set forth below);

(f) any suspension of the Work to the extent permitted under Section 25.4 of the Design-Build Contract; and

(g) any court order which restrains, enjoins, challenges or delays performance of the Work or the granting or renewal of any Regulatory Approval, including any order delaying completion of condemnation proceedings or relocation beyond the time periods provided by law.

The term "Force Majeure" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered force majeure:

(i) fire or other physical destruction or damage, including lightning, explosion, drought, rain, storm or action of the elements or other acts of God not listed in subsection (a) above;

(ii) except as provided in subsection (b) above, explosion, malicious or other acts or similar occurrence;

(iii) strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence particular to a Contractor Party or the Project except any such event affecting a Suppliers' work solely at locations other than the Project site;

(iv) the presence at, near or on the Site of any Hazardous Substance;

(v) the presence at, near or on the Site of any archaeological, paleontological, historical or cultural resource or endangered species;

(vi) Differing Site Conditions;

(vii) the suspension, termination, interruption, denial or failure to obtain or non-renewal of any permit, license, consent, authorization or

approval which is necessary for the performance of the Work or the operation or maintenance of the Project, except for any such matter resulting from a lawsuit by any utility that unreasonably delays a Utility Relocation;

(viii) a change in any Laws, Regulations and Ordinances (such as increase in tax rates) which causes an increase in amounts payable by Contractor for deliverables but which does not change the obligations to be performed by Contractor hereunder, provided however that this exclusion shall not apply with respect to any increase in the state sales tax enacted by the General Assembly or by local or regional referendum;

(ix) any lawsuit relating to any Regulatory Approval which is Contractor's risk under Article 10 of the Design-Build Contract, except as provided in subsection (e) above;

(x) Directed Changes;

(xi) any cost risk (including cost of delay) for which coverage is to be provided through insurance required hereunder; and

(xii) all other matters not caused by Department or beyond the control of Department and not listed in subsections (a) through (g) above.

Guaranteed Completion Date shall have the meaning set forth in Section 17.2.1 of the Design-Build Contract.

Hazardous Substance means (a) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136 et seq., Virginia Waste Management Act, §10.1-1400 et seq., Code of Virginia (1950) as amended, all as amended or as may be amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum or crude oil or products thereof other than petroleum and petroleum products which are contained within regularly operated motor vehicles, (d) asbestos containing materials and (e) radioactive wastes and substances. Hazardous Substance shall not be deemed to include consolidated and unconsolidated sulfidic geological materials.

Implementation Guidelines means the Implementation Guidelines under the PPTA originally adopted by the Commissioner on July 1, 1995 (as revised effective April 1, 2001) governing the selection of solicited and unsolicited proposals for negotiation under the PPTA, as such Implementation Guidelines may be further revised, amended or supplemented.

Inspection means the act of viewing or looking carefully at construction, manufacturing and design and maintenance practices, processes and products, including document control and Shop Drawing review, to ensure the practices, processes and products comply with the quality requirements contained in the Contract Documents.

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

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

Liquidated Damages shall have the meaning set forth in Section 25.6 of the Design-Build Contract.

Maximum Payment Curve means the "Maximum Payment Curve" attached as Attachment A to the approved CPM/Payment. The Maximum Payment Curve shall reflect the amount of funds reasonably expected by the Department to be available for payment of Project costs in accordance with the Plan of Finance. The Maximum Payment Curve shall not include proceeds from the issuance of bonds until such bonds have been issued.

Member of Members shall mean, individually or collectively (as the context may require), Bryant Contracting, Inc., Curtis Contracting, Inc., and/or Jack L. Massie Contractor, Inc., and any successor entity that may own a membership interest or any other equity interest in the Contractor from time-to-time.

NEPA means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended and as it may be amended from time to time.

Notice to Proceed means the authorization specified in Section 4.1.1 and 4.1.2, respectively, of the Design-Build Contract and in Article 4 of the Comprehensive Agreement given to Contractor to proceed with design and construction for the Project.

Notice of Proposed Change/Direction means a notice issued by Department concerning a possible Change Order, as specified in Section 19.3.2 of the Design-Build Contract.

Notice of Termination means a notice issued by Department to terminate the Design-Build Contract and the performance of the Work by Contractor pursuant to Article 26 of the Design-Build Contract.

Payment Bond means the payment bond described in Section 22.6 of the Design-Build Contract.

Performance Bond means each performance bond to be provided by a Subcontractor as described in Section 22.6 of the Design-Build Contract.

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

Phase, when followed by the capital letter **A**, **B**, **C**, or **D**, or **Project Phase** means a phase of the Jamestown Corridor Improvements Project as described in Appendix 6 Scope of Work.

Phase A ROW Allowance means the allowance established pursuant to Section 14.1.2 which shall exclusively fund payments applicable to Phase A of the Project made in accordance with Sections 6.5.1 and 6.5.6 of the Design-Build Contract.

Phase B ROW Allowance means the allowance established pursuant to Section 14.1.2 which shall exclusively fund payments applicable to Phase B of the Project made in accordance with Sections 6.5.1 and 6.5.6 of the Design-Build Contract.

Phase I Environmental Investigation means a study that meets the requirements of 42 U.S.C. Section 9601 (35) (B), as amended and at a minimum, meets the requirements of ASTM Standard 1527-00.

Phase II Environmental Investigation means a study that meets the requirements of 42 U.S.C. Section 9601 (35) (B), as amended and at a minimum, meets the requirements of ASTM Standard 1903-97.

Plan of Finance means the Plan of Finance for the Project set forth in Article IV of the Comprehensive Agreement and on Exhibit D attached thereto.

Plans and Specifications means the 100% completed maps, plans, drawings and specifications for different components of the Work as approved by

Department's Chief Engineer of Programming and Development and bearing the seal of a Virginia licensed engineer.

PPTA means the Public-Private Transportation Act of 1995, which is codified as Title 56, Chapter 22, Section 56-556 et seq., Code of Virginia, as amended from time to time.

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

Preliminary Engineering means the engineering work undertaken by the Department and accepted by the Contractor pursuant to Section 1.4 of the Design Build Contract and which is contained on drawings referred to in Appendix 2 thereof.

Project means (a) all improvements constituting the Jamestown Corridor Improvements as generally described in the Scope of Work, and (b) all other improvements and other Work Product to be provided by Contractor as a condition to Final Acceptance in accordance with the Contract Documents, including all replacement wetlands and other off-site improvements required by applicable Law, Regulations and Ordinances and Regulatory Approvals.

Project Agreement means any of the Comprehensive Agreement, the Contract Documents and any other contracts entered into in accordance with the Plan of Finance; and the term "Project Agreements" means all such agreements and documents in the aggregate.

Project Manager shall have the meaning set forth in Section 2.2.3 of the Design-Build Contract.

Project Purposes means and is limited to the developing, permitting, design, financing, acquisition, construction, installation, equipping, maintenance and repair of the Project. Project Purposes exclude, however, any activities associated with Reserved Rights.

Project Right of Way means all real property (which term is inclusive of all estates and interests in real property) which is necessary for ownership and operation of the Project by Department. The term specifically includes all property within the access control line for the Project. The term specifically excludes any temporary easements or other real property interests which Contractor deems necessary or advisable in connection with construction of the Project and/or Utility Relocations.

Punch List means the list of minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety or operability of the Project which is required to be completed prior to Final Acceptance.

Qualifying Transportation Facility shall have the meaning assigned to such term in Section 56-557 of the PPTA.

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

Quality Assurance Manager means the individual, who may be an employee of Contractor who reports directly to the Project Manager, responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program as described in Attachment B attached to the Scope of Work.

Quality Assurance Team shall mean all individuals or entities involved in executing the Quality Assurance and Control Inspection Program.

Quality Assurance and Control Inspection Program means the program described in Attachment B attached to the Scope of Work.

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

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

Related Party means:

- (a) any person or entity that is a stockholder of Contractor that owns, directly or through one or more intermediate entities a 10% or greater equity interest in Jamestown Corridor Constructors, LLC (each a “substantial owner”);
- (b) any entity in which a substantial owner owns directly or through one or more intermediate entities a 10% or greater equity interest; or
- (c) any entity effectively controlled by a substantial owner.

Reserved Rights means all rights reserved to the Department under Section 15.1 of the Comprehensive Agreement.

Responsible Public Entity shall have the meaning assigned to such term in Section 56-557 of the PPTA and, for purposes of the Comprehensive Agreement, means Department.

Retainage shall have the meaning set forth in Section 14.2.6.1 of the Design-Build Contract.

RFC Notice shall have the meaning set forth in Section 19.4.2.1 of the Design-Build Contract.

Right of Way Acquisition Plan means the Right of Way Acquisition Plan for a Project Segment prepared by Contractor and approved by Department in accordance with Section 6.2 of the Design-Build Contract and Attachment C to Appendix 6 of the Design-Build Contract, including the modifications to Department's Right of Way Manual of Instructions included in Appendix 11 to the Design-Build Contract.

Right of Way Plans means the Project Right of Way plans for a Project Segment prepared by Contractor in accordance with Attachment C to Appendix 6 the Design-Build Contract and approved by Department in accordance with Section 6.2 of the Design-Build Contract.

Safety Program means Contractor's approved safety program meeting the requirements set forth in Section 5.1.2 of the Design-Build Contract.

Scope of Work means the scope of work for construction of the Project attached to the Design-Build Contract as Appendix 6.

Segment, when followed by the roman numerical designation I, II, III, IV or V, or **Project Segment**, means a segment of the Jamestown Corridor

Improvements Project as described in the Scope of Work attached as Appendix 6 to the Design-Build Contract.

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

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

Standard Specifications means the Virginia Department of Transportation Road and Bridge Specifications dated 2002 as noted, provided that the document attached to the Design-Build Contract as Appendix 9 shall be substituted for Division I thereof.

State means the Commonwealth of Virginia.

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

State Indemnitee means and includes Department, the Commissioner, the CTB, the State and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them.

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

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

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

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

Term, for purposes of the Comprehensive Agreement, means the time period commencing on the Agreement Date and expiring on December 31, 2007, unless earlier terminated in accordance with Article XII of the Comprehensive Agreement.

Transaction Screen Process means a study that, at a minimum, meets the requirements of ASTM Standard 1528-00.

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

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

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

Warranties means the warranties made by Contractor in Article 11 of the Design-Build Contract.

Work means all of the administrative, design, engineering, permitting, real property acquisition support services, Utility Relocation, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation, reporting, record keeping and other duties and services to be furnished and provided by Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance except for those efforts which such Contract Documents specify will be performed by Persons other than a Contractor Party.

Working Drawings means drawings required to show details associated with the Contractor's means and methods or the process it intends to utilize to construct portions of the Project, but which will not be part of the permanent construction, e.g., formwork, shoring, etc.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of any Contractor Party and in any way related to the Project or Project Right of Way, including but not limited to Shop Drawings, Working Drawings, Draft Plans and Specifications, Plans and Specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, the Right of Way Plan, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all documents described in Section 6.4.2 of the Design-Build Contract), engineers' and inspectors' diaries and reports, utility relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Regulatory Approvals, Change Orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which Contractor and Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 14.2 of the Comprehensive Agreement and which is not conceived or first reduced to practice for Project Purposes, such as but not limited to the escrowed pricing documents and other proprietary financial and pricing information of Contractor.

APPENDIX 2

PRELIMINARY ENGINEERING

APPENDIX 2 OF THE DESIGN-BUILD CONTRACT

Preliminary Engineering

The Preliminary Engineering provided by the Department to the Contractor and which forms the basis of the Contract Price includes the following documents:

I. Drawings

Sheet#	Date	Sheet#	Date	Sheet#	Date	Sheet#	Date
--------	------	--------	------	--------	------	--------	------

SEGMENT I- Route 199 (Phase I) (VDOT PROJECT NO. 0199-047-110-C501)

THE FOLLOWING DRAWINGS WERE RECEIVED AND STAMP DATED 9-20-02

1	4-5-02	1A	*	1B	*	1C	*
1D	*	1E	*	1F	*	1G	*
1H	*	1I	*	1J	*	1K	*
1L	*	1M	*	1N	*	1O	*
1P	*	1Q	*	1R	*	1S	*
2	*	2A	*	2B	*	2C	*
2D	4-11-02	2E	*	2F	*	2G	4-11-02
2H	4-11-02	2I	*	2J	4-11-02	2K	*
2L	*	2M	*	2N	*	2O	*
2P	*	2Q	*	2R	*	2S	*
2T	*	2U	*	2V	*	2V	*
2W	*	3	*	3A	*	4	*
4B	4-11-02	4A	*	5	*	5A	*
6	*	6A	*	6B	4-9-02	7	*
7A	*	8	*	8A	*	9	*
9A	*	10	*	10A*		10B	*
11	4-4-02	11(1)	4-4-02	12(1)		12(2)	*
12(9)	*	12(11)	*	13(1)	*	13(2)	*
13(3)	*	13(4)	*	13(5)	*	13(6)	*
13(7)	*	13(8)	*	13(9)	*	13(10)	*
13(11)	*	13(12)	4-11-02	13(13)	*	13(14)	*
13(15)	*	13(16)	*	13(17)	*	13(18)	*
13(19)	*	13(20)	*				

SEGMENT II – Route 199 (Phase I) (VDOT PROJECT NO. 0199-047-110-C502)

THE FOLLOWING DRAWINGS WERE RECEIVED AND STAMP DATED 9-20-02

1	No *Date	1A	*	1B	*	1C	*
1E	*	1F	*	1G	*	1H	*
1I	*	2	*	2A	*	2C	*

3	*	3A	*	4	*	4A	*
5	*	5A	*	6	*	6A	*
7	*	7A	*	8	*	8A	*

SEGMENT III – Route 199 & Route 31 Intersection Improvements (VDOT PROJECT NO. 0199-965-104-C501)

THE FOLLOWING DRAWINGS WERE RECEIVED AND STAMP DATED 9-20-02

1	6-20-02	1A	4-22-02	1B	6-20-02	1C	4-22-02
1D	4-22-02	1D-1	5-21-02	1D-2	5-28-02	1E	5-29-02
2	9-12-02	2A	5-29-02	2B	5-28-02	3	8-20-02
3A	5-9-02	4	8-20-02	4A	4-22-02	4B	8-2-02
4C	4-22-02	4D	4-22-02	4E	9-12-02	5	8-2-02
5A	4-22-02	5B	5-28-02	5C	7-23-02		

SEGMENT IV – Route 359 Improvements (VDOT PROJECT NO. 0359-047-101-C501)

THE FOLLOWING DRAWINGS WERE RECEIVED AND STAMP DATED 9-20-02

1	9-19-02	1A	*	1B	*	1C	*
1D	*	1E	*	1F	*	1G	*
1H	*	1I	*	1J	*	1K	*
1L	*	1M	*	1N	*	2	*
2A	*	2B	*	2C	*	2D	*
2E	*	2F	*	2G	*	2H	*
2I	*	3	*	3A	*	4	*
4A	*	5	*	5A	*	5B	*
5C	*	5D	*				

THE FOLLOWING DRAWINGS WERE RECEIVED AND STAMP DATED 7-26-02

6 7-24-02

Segment V- Landscape

THE FOLLOWING DRAWINGS WERE RECEIVED AND STAMP DATED 9-20-02 SEGMENT I DRAWINGS

14(1)	14(2)	14(3)	14(4)
14(5)	14(6)	14(7)	14(8)
14(9)			

THE FOLLOWING DRAWINGS WERE RECEIVED ON 8-12-02 SEGMENT II DRAWINGS

B28401 Preliminary 1, 2 no date Landscape 8-12-02

THE FOLLOWING DRAWING RECEIVED ON 8-12-02 SEGMENT III DRAWINGS

Landscape 8-12-02

THE FOLLOWING DRAWINGS WERE RECEIVED AND STAMP DATED 7-26-02 SEGMENT IV DRAWINGS

7(1)	7-24-02	7(2)	7-24-02		
7(3)	7-24-02	7(4)	7-24-02	7(5)	7-24-02
				7(6)	7-24-02

II. Environmental Documents

SEGMENT I - Route 199 (Phase I) (VDOT PROJECT NO. 0199-047-110-C501) PPMS 18972

Environmental Documents Completed by VDOT:

- ❑ VDOT has completed a National Environmental Policy Act (NEPA) Environmental Assessment document (approved March 25, 1980 and reevaluated with subsequent FHWA approval of the reevaluation on January 25, 2000) for this segment.

Environmental Permits Obtained by VDOT:

- Corps of Engineers pre-construction reporting Nationwide Permit 14 (NWP 14) which expires in 5 years (Permit # 01-4156).
- Corp of Engineers Letter of Permission 1, which expires in 5 years (Permit # 01-4156).
- Department of Environmental Quality Virginia Water Protection Permit WP3 which expires in 5 years (Permit # WP3-01-4156).
- Department of Environmental Quality Virginia Pollutant Discharge elimination systems (VPDES) which expires June 2004 (Permit # VAR450671).

Actions:

- The Department will transfer the NWP 14, LOP1, VPDES, and VWPP to Jamestown Corridor Constructors, LLC.
- The Jamestown Corridor Constructors, LLC will have to apply for the new VPDES permit after November 1, 2002 under the new permit regulations.

SEGMENT II - Route 199 (Phase I) (VDOT PROJECT NO. 0199-047-110-C502) PPMS 18973

Environmental Documents Completed by VDOT:

- ❑ VDOT has completed a National Environmental Policy Act (NEPA) Environmental Assessment document (approved March 25, 1980 and reevaluated with subsequent FHWA approval of the reevaluation on January 25, 2000) for this segment.
- ❑ Mitigation package currently under review by the Attorney General's Office for unavoidable wetlands encroachments

Environmental Permits Obtained by VDOT:

- Corp of Engineers Letter of Permission 1, which expires in 5 years (Permit # 02-4308).
- Department of Environmental Quality Virginia Water Protection Permit WP3, which expires in 5 years (Permit # 02-4308).
- Virginia Marine Resource Commission Virginia General Permit 1 for College Creek only (Permit # 02-4308) (Non-transferable).
- Department of Environmental Quality Virginia Pollutant Discharge elimination systems (VPDES), which expires June 2004 (Permit # VAR450724).

Actions:

- The Department will finish securing these permits.
- The Department will transfer the LOP1, VPDES, and VWPP to Jamestown Corridor Constructors, LLC.

- The Jamestown Corridor Constructors, LLC will have to apply for the new VPDES permit after November 1, 2002 under the new permit regulations.
- Jamestown Corridor Constructors, LLC will have to apply for a standard Virginia Marine Resources Permit because the VGP1 is non-transferable.

SEGMENT III - Route 199 & Route 31 Intersection Improvements (VDOT PROJECT NO. 0199-965-104-C501) PPMS 18975

Environmental Documents Completed by VDOT:

- ❑ VDOT has completed a National Environmental Policy Act (NEPA) Categorical Exclusion document (distributed to FHWA August 16, 2000) for this segment.

Environmental Permits Obtained by VDOT:

- ❑ No permits are required for this segment.

Actions:

- Jamestown Corridor Constructors, LLC will have to apply for the new VPDES permit after November 1, 2002 under the new permit regulations that requires a VPDES permit for land disturbing activities greater than 1 acre, if this project will disturb 1 acre or greater for its construction.

SEGMENT IV - Route 359 Improvements (VDOT PROJECT NO. 0359-047-101-C501) PPMS 50035

Environmental Documents Completed by VDOT:

- ❑ Only state funds are planned to be used for this segment; therefore, VDOT is not required to complete a National Environmental Policy Act (NEPA) document for this segment. The National Park Service has completed a National Environmental Policy Act (NEPA) Environmental Assessment and has signed the associated FONSI on July 31, 2002.

Environmental Permits Obtained by VDOT:

- ❑ Corps of Engineers non-reporting Nationwide Permit 14.

Actions:

- The Department will transfer the NWP 14 to Jamestown Corridor Constructors, LLC.
- The Contractor will have to apply for a new permit if the work in the authorized jurisdictional areas is not complete by November 2003. Jamestown Corridor Constructors, LLC will have to apply for the New State Programmatic General Permit, which will replace NWP 14 in non-tidal waters on November 1, 2002 and the Department of Environmental Quality's Virginia Water Protection Permit WP3.
- Jamestown Corridor Constructors, LLC will have to apply for the new VPDES permit after November 1, 2002 under the new permit regulations that requires a VPDES permit for land disturbing activities greater than 1 acre, if this project will disturb 1 acre or greater for its construction.

APPENDIX 3
FORM OF DRAW REQUEST AND CERTIFICATE

DRAW REQUEST AND CERTIFICATE

DRAW REQUEST NO.: _____

CERTIFICATE NO.: _____

DATE: _____

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Project Manager, Jamestown Corridor Improvements

Ladies and Gentlemen:

JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, LLC (“Contractor”), submits this Draw Request and Certificate (the Request) pursuant to Section 14.2.2 of the Design-Build Contract dated as of September 23, 2002 (the “Design-Build Contract”) by and between CONTRACTOR and the Virginia Department of Transportation (Department). All capitalized terms used in this Request and not defined herein have the respective meaning to such terms in Appendix I of the Design-Build Contract or otherwise given in the Design-Build Contract. Section numbers shown in this Request are the Section numbers of the Design-Build Contract unless expressly stated otherwise.

The undersigned manager of CONTRACTOR has discussed all matters pertinent to this Request with appropriate managers, agents and employees of CONTRACTOR and its Subcontractors, and other parties to ensure the accuracy of this Request, and has made such other examinations and investigations as are necessary for purposes of ascertaining the truth of the statements contained in this Request.

On the basis of the foregoing, the undersigned hereby (1) requests payment in the amounts on Attachment 1 hereto as set forth in Article 14 of the Design-Build Contract and (2) certifies, warrants and represents on behalf of CONTRACTOR as follows:

A. Amount of Request

See Attachment 1 for the Request amount and the supporting documentation.

B. Payment and Payees

1. Amount due on the Project itemized in Attachment 1 are now due and payable or are due and payable not more than 30 Days after the Date of this Request in accordance with Article 14 of the Design-Build Contract.
2. The Work for which payment is requested under this Request has been performed and delivered; and the payments to CONTRACTOR and its

Subcontractors requested in this Request include only the values and charges for which CONTRACTOR is entitled to payment at this time under the terms and conditions of the Design-Build Contract.

3. The aggregate amount of all previous draws, if any, paid to CONTRACTOR or its Subcontractors have been applied only to the payment of the value of the Project heretofore incurred as specified in the Design-Build Contract.

C. Status of Contract and Contract Performance

1. The Project is being built in accordance with the Scope of Work and the Contract Documents, and in compliance with all Laws, Regulations and Ordinances in effect at the time of performance of the relevant Work.
2. CONTRACTOR has obtained all Subcontractor's and manufacturer's representations, warranties, guaranties and obligations required to be obtained by CONTRACTOR under Article 11 of the Design-Build Contract with respect to all Work performed and materials procured to date under the Design-Build Contract.
3. All insurance policies and coverages required under Article 22 of the Design-Build Contract are in full force and effect.
4. No event of Default under the Design-Build Contract and no CONTRACTOR Default under the Comprehensive Agreement exists on the date of this request or shall occur as a result of the making of the draw to which this Request relates.
5. All representations and warranties of CONTRACTOR contained in the Design-Build Contract or Comprehensive Agreement in effect on the date hereof are true and correct in all material respects on and as of the date hereof (except for such representations or warranties that by their terms relate solely to a specific prior date) with the same effect as if made on and as of the date hereof.
6. The Design-build Contract and Comprehensive Agreement executed on or prior to the date hereof and to which CONTRACTOR is a party is in full force and effect as of the date hereof (or, in the case of the first Request, will be in effect on the date of the draw thereunder), each without amendment or modification except in accordance with the terms thereof and of the Design-Build Contract.

D. Documentation and Conditions of Request

1. This Request is accompanied by all documents required to be delivered by CONTRACTOR pursuant to Article 14 of the Design-Build Contract.
2. The information in all documents and supporting papers prepared by CONTRACTOR, and, to the best knowledge of CONTRACTOR, its Subcontractors, and submitted to the Department in connection with this Request is true, correct and complete.

E. Authority; Continuation of Certification

1. The undersigned has the authority to deliver this Request on behalf of CONTRACTOR.
2. The Department may assume that the matters certified herein remain true from and after the date hereof through the date of the draw to which this Request relates unless the undersigned shall have delivered to Department a certificate as to any change in any of such matters, which the undersigned hereby agrees to give promptly after obtaining knowledge thereof.

IN WITNESS WHEREOF, the undersigned has caused this Request to be executed by its duly authorized officer on the date first written.

JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, LLC

By: _____

Name: _____

Title: _____

Verified and Recommended by Department on Site Representative:

Name: _____

Title: _____

**APPROVED FOR PAYMENT IN ACCORDANCE
WITH PAYMENT INSTRUCTIONS HEREIN:**

Name: _____

Title: **Chief of Operations**

VDOT Project # _____
Period Thru _____

Attachment 1

The total for this Request is \$ _____

APPENDIX 4
FORM OF PAYMENT BOND

PAYMENT BOND
Jamestown Corridor Improvements

Know all men by these presents, that we, Jamestown 2007 Corridor Constructors, LLC. , a Virginia limited liability company (hereinafter called the "Principal") and _____ (hereinafter called the "Surety"), are held and firmly bound unto the Virginia Department of Transportation, a department of the Commonwealth of Virginia (hereinafter called the "Owner") (the "Obligee"), in the full and just sum of \$_____ lawful money of the United States of America, to be paid to the Obligee, its successor and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally and firmly by these presents:

Whereas, the Principal has entered into a certain Design-Build Contract dated as of October 21, 2002, with the Owner (the "Contract"), which Contract is incorporated by reference herein; and

Whereas, it is one of the conditions of the Contract that these presents shall be executed.

Now, therefore, the condition of this obligation is such that if the Principal shall promptly pay all just claims for labor and material (including public utility services and reasonable rental of equipment when such equipment is actually used at the site) performed for or supplied to the Principal or any subcontractor in the prosecution of the work contracted for, then this obligation is to be void; otherwise, to be and remain in full force and virtue in law.

No alteration, modification or supplement to the terms of the Contract or any subcontract or the nature or the work to be performed thereunder, including any extension of time for performance, shall in any way affect the obligations of the Surety. The Surety waives notice of any alteration, modification, supplement or extension of time.

The Principal and Surety shall not be liable under this bond to the Obligee in the aggregate in excess of the penal sum stated above.

Witness, the signature of the Principal and the signature of the Surety and their corporate seals duly attached hereunto affixed this _____, 20__.

Jamestown 2007 Corridor Constructors, LLC,
a Virginia limited liability company

(Surety Company)

By: _____
(SEAL) (SEAL)

By: _____

Title: _____

Title: _____

(Address)

(Address)

[Add appropriate acknowledgments]

APPENDIX 5
FORM OF PERFORMANCE BOND

PERFORMANCE BOND

The Owner, Virginia Department of Transportation, (the "Owner") and the Principal, Jamestown 2007 Corridor Constructors, LLC, a Virginia limited liability company, the "Principal"), in its capacity as Design-BUILDER, have entered into a Contract (the "Contract") dated _____ 2002 for the Jamestown Corridor Improvements (the "Project"). The Contract is incorporated by reference into this Performance Bond (the "Bond").

By virtue of this Bond, the Principal and _____ as Surety ("Surety"), are bound to the Owner as Obligee ("Obligee") in the maximum amount of _____ Dollars (\$ _____) (the "Penal Sum"). The Principal and Surety hereby bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.

1. **GENERAL CONDITIONS** It is the condition of this Bond that if the Principal performs the work called for pursuant to the terms of the Contract, the Surety's obligations under this Bond are null and void. Otherwise, the Surety's obligations shall remain in full force and effect. The Surety waives any requirement to be notified of alterations or extensions of time made by the Owner in the Contract. The Owner shall not invoke the provisions of the Bond unless the Owner has performed its obligations pursuant to the Contract. Upon the Obligee's formal declaration of default and termination of the Principal's right to complete the Contract, the Owner shall make the Contract Balance (the total amount payable by the Owner to the Principal pursuant to the Contract less amounts properly paid by the Owner to the Principal) available to the Surety for completion of the construction work. The Owner shall not offset or deduct any costs or damages arising from any design services provided pursuant to the Contract from the Contract Balance. The amount of this Bond shall be reduced by and to the extent of any payment made by the Surety pursuant to its obligations contained within this Bond.

2. **SURETY OBLIGATIONS** If the Principal is in default pursuant to the Contract and the Owner has declared the Principal in default and formally terminated the Principal's right to complete the contract, the Surety may elect to remedy the default as follows:

- a. Complete the construction work of the Contract, with the consent of the Owner, through the Principal or otherwise; or
- b. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract. The Surety shall make available as the construction work progresses sufficient funds to pay the cost of completion of the construction work less the contract balance up to the Penal Sum; or
- c. Waive its right to complete the construction work and reimburse the Owner the amount of its reasonable costs, not to exceed the Penal Sum, to complete the construction work less the contract balance; or

d. Deny liability in whole or in part and notify the Owner citing reasons therefor.

3. NO LIABILITY FOR DESIGN/PERSONAL INJURY/PROPERTY DAMAGE

In accordance with Article 2 of the Bond, the Surety shall be liable for all construction costs of the Work, up to the Penal Sum, but shall not be liable for any costs or damages arising from any design services provided pursuant to the Contract. In addition, the obligation of this Bond shall not include liability for loss, cost, damage, fines, penalties or expense (including attorney's fees) from personal injury (including death), or from property damage, or from any criminal or tortuous act arising out of the performance, default or completion of the Project.

4. DISPUTE RESOLUTION All disputes pursuant to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two years after default of the Principal or Final Acceptance of the Work, whichever occurs first. If this provision is prohibited by law, the minimum period of limitation available to sureties in the jurisdiction shall be applicable.

This Bond is entered into as of _____.

SURETY _____ (seal) PRINCIPAL _____ (seal)

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

(Attach Power of Attorney)

Witness: _____
(Additional signatures, if any, appear on attached page)

Witness: _____

APPENDIX 6
SCOPE OF WORK

APPENDIX 6 OF THE DESIGN-BUILD CONTRACT

Project Scope of Work

Introduction

The purpose of this document is to describe the scope of work (“Scope of Work” or “Scope”) under the Design-Build Contract and applicable standards to be provided by Jamestown Corridor Constructors, LLC in the design and construction of Jamestown Corridor Improvements (“Project”) as proposed under the authority of the Virginia Public-Private Transportation Act of 1995. The Project shall generally begin just west of the intersection of Route 199 with Route 60 and proceed in a westerly direction on Route 199 to the intersection of Route 199 and Route 31 as well as the relocation of Route 359 near the Jamestown Settlement and Route 31 in James City County. This Project involves widening Route 199 from two lanes to four lanes in two specific Segments each approximately one mile in length, including a bridge structure over College Creek, intersection and signal improvements at Route 199 and Route 31 and the relocation and construction of Route 359. In addition, landscape and architectural improvements shall be provided along the Route 199 and Route 31 Corridor from just west of the intersection of route 199 with route 60 to the Jamestown Settlement.

Standards

Work required under this Contract shall be performed in accordance with criteria contained in the following documents, which are incorporated by reference to this project Scope of Work.

AASHTO A Policy on Geometric Design at Highways and Streets, 2001 Edition.
AASHTO Guide for Design at Pavement Structures (Rigid Pavement and Flexible Pavement)
AASHTO Standard Specifications for Highway Bridges, Sixteenth Edition, 1996 with Department modifications.
ASSHTO Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signal, 1999 Edition.
American with Disabilities Act Accessibility Guideline for State and Local Government Facilities
American Water Works Association Standards
Transportation Research Board Highway Capacity Manual, Third Edition, 1994
USDOT Manual on Uniform Traffic Control Reviews, 1988 Edition
VDOT Drainage Manual, 1980 Edition
Virginia Structure Management Handbook, First Edition, 1999

VDOT Road and Bridge Specifications, January 2002, as amended by the Special Provisions and Special Provisions Copies Notes attached as Attachment D, hereto¹
VDOT Road and Bridge Standards, Volume I and II, 2001 Edition²
VDOT Road Design Manual Volume I, 1996 Edition
VDOT Structure and Bridge Division Manual, Volumes IV and V
Virginia Erosion and Sediment Control Handbook, Third Edition, 1992
Virginia Work Area Protection Manual, January 1, 1996 Edition
VDOT Post Construction Manual, 1997 Edition
VDOT Construction Manual, 1996 Version
VDOT Hauling Permit Manual, 1996 Edition
VDOT Manual at Instruction Materials Division, 2001 Version
VDOT Phase Inspection, 2001 Edition
VDOT CADD Manual 2002 Edition
ANSI/AASHTO/AWS Bridge Welding Code D1.5
VDOT Location and Design Division Survey Manual, 2000 Edition
VDOT Manual of Instructions Right of Way Division, Volume I and II Utilities Manual

Project Description

The Project shall be constructed in five Project Segments as shown on the General Layout included in Attachment A hereto, and described as follows:

Segment I – Widen 2.68 kilometers of Route 199 and improve signalized intersection with Mounts Bay Road / Quarterpath Road. This Segment begins approximately 3.18 kilometers west of Route 60 and extends in an easterly direction to approximately 0.5 kilometers west of Route 60.

Segment II – Widen 1.6 kilometers of Route 199, including a new parallel bridge over College Creek. This Segment begins approximately 1.0 kilometer east of Route 31 and extends in an easterly direction to approximately 2.8 kilometers east of Route 31.

Segment III – Improvements to Route 199 / Route 31 intersection, including left and right turn lanes and signal upgrade.

Segment IV – Realignment .8 kilometers of Route 359 entrance to Jamestown Settlement/Island.

Segment V – Landscaping improvements along Route 199 and Route 359.

¹ The 2001 Road and Bridge Standards and 2002 Road and Bridge Specifications are the standards to be used to administer Project Segments of both metric and imperial units and measurement. Both standards are in imperial units of measurement. Where projects are designed in metric units of measurement, the Contractor shall employ a hard conversion of metric dimensions and tolerances to all such references in these standards and as otherwise required throughout the Contract Documents.

Segment I

- The general description of the work shall be in accordance with the plans stamped received 9-20-02 and which are identified in Appendix 2 of the Design-Build Contract, except as otherwise described in the Scope of Work contained herein.
- The new mainline typical section shall feature two 3.6 meter wide travel lanes in each direction, separated by 0.9 meter paved shoulder and a variable width depressed grass median. Both lanes shall have a crown grade. The typical outside shoulder shall be 3.9 meters wide in cut and fill sections where guardrail is not required, of which 2.4 meters shall be paved. In fill sections where guardrail is required the shoulder width will be 4.8 meters wide of which 3.0 meters shall be paved.
- Between Stations 83+25.48 and 88+87.91 the typical section shall include a paved median with standard MB-12A or MB-13.
- UD-4 underdrain shall be placed on the outside edge of pavement of new WBL and UD-3 underdrain shall be placed under the median barrier.
- All new cut and fill slopes shall be 2:1.
- All excess earthwork materials shall be removed from the Project limits and disposed in an approved facility and in accordance with all federal, state, and local requirements unless deemed suitable for use or waste within the Project right of way.
- Roadway cut (less root mat) and storm water management basin excavation suitable for use as fill on Project may be used.
- Geotextile (Embankment Stabilization) shall be used on all fills with heights in excess of 1.5 meters.
- Vinyl coated chain link fence shall be installed around the Storm Water Management Basins.
- Traffic signals shall meet all standards incorporated by reference to this Scope of Work and include Opticom for fire and rescue.
- All excavation and the suitability thereof shall be the responsibility of the Contractor.
- All new guardrail shall be weathering steel and installed according to current standards incorporated by reference to this Scope of Work.
- All Embankments and the stabilization thereof shall be the responsibility of Contractor.
- Signing shall be installed according to all standards and requirements incorporated by reference to this Scope of Work.
- Included in Scope of Work is 20 meters of sheet piling at Tutters Creek.

- At the following locations, prior to constructing the fill slopes provide 0.61 meters of #3 stone, wrapped in geotextile fabric from two meters into the toe of existing fill slope and day-lighted at the toe of the new slope:

Station to Station

83+60	85+00
86+60	86+80
89+00	90+00
93+40	93+80

- The following items of work are excluded from the Scope of Work of Segment I**

- Flexible pavement planing and overlay of the existing road (future EBL)
- Providing new weathering steel guardrail and asphalt curb with backup material on the existing road (future EBL)
- Providing storm structures and outlet pipes associated with guardrail replacement on the existing road (future EBL)
- Providing two meters of undercut and backfill with #3 stone wrapped in a geotextile fabric at the following locations:

Station to Station

83+60	85+00
86+60	86+80
89+00	90+00
93+40	93+80

Segment II

Roadway

- The general description of the work shall be in accordance with the plans stamped received 9-20-02 and which are identified in Appendix 2 of the Design-Build Contract, except as otherwise described in the Scope of Work contained herein.
- The new mainline typical section shall feature two 3.6 meter wide travel lanes in each direction, separated by 0.9 meter paved shoulder and a variable width depressed grass median. The new eastbound lanes shall have a super-elevated grade of two percent (2%) from the median to outside edge of pavement and a five percent (5%) grade across the outside shoulders. The typical outside shoulder shall be 3.9 meters wide in cut and fill sections where guardrail is not required, of which 2.4 meters shall be paved. In fill sections where guardrail is required the shoulder width shall be 4.8 meters wide of which 3.0 meters shall be paved.
- UD-4 underdrain shall be placed on the outside edge of pavement of new EBL.
- All new cut and fill slopes shall be 2:1.

- All excess earthwork materials shall be removed from the Project limits and disposed in an approved facility and in accordance with all federal, state, and local requirements unless otherwise deemed suitable for use or waste within the Project right of way.
- Roadway cut (less root mat) suitable for use as fill on Project may be used.
- Geotextile (Embankment Stabilization) shall be used on all fills with heights in excess of 1.5 meters.
- All excavation and the suitability thereof shall be the responsibility of the Contractor.
- All new guardrail shall be weathering steel and installed according to current standards incorporated by reference in this Scope of Work.
- All Embankments and the stabilization thereof shall be the responsibility of Contractor.
- Signing shall be installed in accordance with standards and requirements incorporated by reference to this Scope of Work.
- Contractor and Department have determined in advance that Storm Water Management basins shall not be required in this Segment.
- At the following locations, prior to constructing the fill slopes provide 0.61 meters of #3 stone, wrapped in geotextile fabric from two meters into the toe of existing fill slope and day-lighted at the toe of the new slope:

Station to Station		Station to Station	
11+35	12+80	16+30	16+50
13+05	14+15	18+10	18+45
14+70	16+15	19+35	19+65
15+60	15+95	26+00	26+80

Bridge

- Parallel bridge carrying EBL Route 199 over College Creek in accordance with Preliminary Bridge Plans dated August 1, 2002, referred to in Appendix 2.
- Bridge length shall be 256 meters.
- Bridge width shall be 12.75 meters with two 3.6-meter travel lanes.
- Pre-stressed concrete beams or bulb tees shall be used.
- Kansas Corral type parapet walls shall be used.
- Construction access shall be from the south side of the proposed bridge.

- Department acknowledges that additional right of way may be required to accommodate temporary or permanent relocation of approximately 90 meters of 300 mm James City Service Authority water main for proposed temporary work bridge and, notwithstanding language in Section 6.6 of the Design-Build Contract to the contrary, costs for such right of way, if needed, will be covered by the ROW Allowance. However, cost for relocation or reconstruction of temporary waterline for construction access is included in Contract Price.

- **The following items of work are excluded from the scope of work of Segment II**

- Flexible pavement planing and overlay of the existing road (future WBL).
- Providing new weathering steel guardrail and asphalt curb with backup material on the existing road (future WBL).
- Providing storm structures and outlet pipes associated with guardrail replacement on the existing road (future WBL).
- Providing two meters of undercut and backfill with #3 stone wrapped in a geotextile fabric at the following locations:

Station to Station		Station to Station	
11+35	12+80	16+30	16+50
13+05	14+15	18+10	18+45
14+70	16+15	19+35	19+65
15+60	15+95	26+00	26+80

- Installing at station 12+00 a jack and bore of two 1350 mm pipes parallel to the existing box culvert and the replacement of existing headwalls.
- The replacement of headwalls or the installation of flared end sections on the storm pipes extending to the north side of the existing route 199.
- Installing at station 14+80 a jack and bore of a 1200 mm pipe parallel to the existing 1200mm pipe.
- Providing temporary sheet pile at the following locations:

<u>Station to Station</u>		<u>Station to Station</u>	
15+60	15+95	18+10	18+45
16+30	16+50	19+35	19+65

- Providing a conduit bank under the bridge from station 21+70 to 24+25.
- Installing permanent sheet piling at the fills in the following locations:

<u>Station to Station</u>		<u>Station to Station</u>	
11+35	12+80	14+70	16+15
13+05	14+14	26+00	26+80

- Installing timber bearing piles at the box culvert extension at station 12+00.

Segment III

- The general description of the work shall be in accordance with the plans stamped received 9-20-02 and which are identified in Appendix 2 of the Design-Build Contract, except as otherwise described in the Scope of Work contained herein.
- Intersection improvements shall feature the addition of 12-foot left and right turn lanes on Route 199 eastbound and westbound and the addition of a 11-foot left turn lane on Route 31 northbound. The existing curb and gutter in all quadrants of this intersection shall be modified as shown on plans identified in Appendix 2.
- All excess earthwork materials shall be removed from the Project limits and disposed in an approved facility and in accordance with all federal, state, and local requirements unless otherwise deemed suitable for use or waste within the Project right of way.
- Traffic signals shall meet all standards incorporated by reference to this Scope of Work and include Opticom for fire and rescue.
- Signing shall be installed according to all standards and requirements incorporated by reference to this Scope of Work.
- Standard MS-1A median strips and SI-3 infills with standard hydraulic cement concrete.
- A segmental block retaining wall will be provided in the location designated to receive a standard RW-3 retaining wall with brick face.
- **The following items of work are excluded from the scope of work of Segment III.**
 - Installing new fencing.
 - Cement Treated Aggregate Base Stone.
 - Flexible pavement planing of the existing pavement.
 - Asphalt overlay of the existing pavement.
 - Replacing pavement marking on the existing pavement.
 - Installing raised pavement markers on the existing pavement.
 - Installing a retaining wall Std. RW-3 with brick face treatment.
 - Providing a stamped concrete of color in the MS-1A median strips and the SI-3 infills.

Segment IV

- The general description of the work shall be in accordance with the plans stamped received 9-20-02 and which are identified in Appendix 2 of the Design-Build Contract, except as otherwise described in the Scope of Work contained herein.
- Scope of Work shall not include a left turn lane on Route 31 onto Route 359.
- The new mainline typical section shall feature a curb and gutter section with two 13-foot lanes and a 10-foot multi-use lane located 2 feet behind the left curb. There is also an added 13-foot right turn lane on Route 31 northbound and a 10-foot multi-use lane located 2 feet behind the curb. Tie-ins with Routes 614 and F-664 are also included.
- All excess earthwork materials shall be removed from the Project limits and disposed in an approved facility and in accordance with all federal, state, and local requirements unless otherwise deemed suitable for use or waste within the Project right of way.
- Cut and fill slopes shall be 2:1 except the area of the mound where the slopes are variable and flat to insure the mound is completely removed.
- Scope of Work to include administrative cost and an allowance for property cost as outlined in Articles 6 and 14 of the Design Build Contract. Phase B will include the cost for the right of way purchase of the Vermillion property in Segment IV.
- The purchase of the Vermillion property will become a part of the Scope of Work upon receipt of the Notice to Proceed with Phase B.
- The work to be performed on the United States of America property (The National Park Service) from station 10+00 to 13+25 will become a part of the Scope of Work of Segment IV upon receipt of the Notice to Proceed with Phase C.
- **The following item of work is excluded from the scope of work of Segment IV**
 - The removal of 1 foot of unsuitable material backfilled with Select Material type II minimum CBR-20, except at wooded areas and the entrance to the marina.

Segment V

- The general description of the work shall be in accordance with the plans stamped received 7-26-02 and which are identified in Appendix 2 of the Design-Build Contract, except as otherwise described in the Scope of Work contained herein.
- Segment V features landscaping and beautification at various locations along the Route 199 and Route 31 corridors.
- All excess earthwork materials shall be removed from the Project limits and disposed in an approved facility and in accordance with all federal, state, and

local requirements unless otherwise deemed suitable for fill or waste within the Project right of way.

Pavement Design

- **Segment I and II – Mainline**

- Asphalt Concrete type SM-9.5D @ 90 kg per m squared
- Asphalt Concrete Type IM-19.0A or D @ 120 kg per m squared
- 152.4 mm Base Course Asphalt type BM-25.0
- 76.2 mm Stabilized Open Graded Material.
- 152.4 mm Cement Treated Aggregate Base Mat'l Type 1 No. 21A Pugmill mixed with 4% cement by weight

- **Segment I – Quarter Path Road**

- Asphalt Concrete type SM-9.5D @ 90 kg per m squared
- Asphalt Concrete Type IM-19.0A or D @ 120 kg per m squared
- 152.4 mm Base Course Asphalt type BM-25.0
- 152.4 mm Cement Treated Aggregate Base Mat'l Type 1 No. 21A Pugmill mixed with 4% cement by weight

Segment I and II (outside shoulder)

- 152.4 mm Cement Treated Aggregate Base Mat'l Type 1 No. 21A Pug mill mix with 4% cement by weight.
- 317.5 mm and variable Aggregate Base Material Ty. 1 No. 21B
- Asphalt Concrete Type IM-19.0A or D @ 120 kg per square meter
- Asphalt Concrete Type SM-9.5D @ 90 kg per square meter

Segment I (inside shoulder at median barrier above UD-3)

- 101.6 to 203.3 and variable Aggregate Base Material Ty. No. 21B
- Asphalt Concrete Type IM-19.0A or D @ 120 kg per square meter
- Asphalt Concrete Type SM-9.5D @ 90 kg per square meter

- **Segment III**

- Asphalt Concrete Surface Course type SM-9.5D @ 165 lbs per SY. YD.
- Asphalt Concrete Intermediate Course type IM-19.0A or D @ 2" Depth
- Asphalt Concrete Base Course type BM-25.0 @ 12" Depth
- Geotextile Subgrade Stabilization Fabric

- **Segment IV Route 359 Station 10+12.67 to 13+25**

- Exposed Aggregate Reinforced Portland Cement Concrete Pavement (8")
- Aggregate Base Mat'l. Ty.1 No. 21B (4" & Var.)

- **Segment IV Route 359 Station 13+25 to 26+60.22**
- Asphalt Concrete Surface Course type SM-9.5D @ 220 lbs per SY. YD. (2")
- Asphalt Concrete Base Course type BM-25.0 @ 330 lbs per SY. YD. (3")
- Aggregate Base Material Cement Treated Aggregate (for subbase) type 1, size no. 21-A Pugmill mixed at 4% cement by weight (6")

- **Segment IV Route F-664**
- Asphalt Concrete Surface Course type SM-9.5D @ 220 lbs per SY. YD. (2")
- Asphalt Concrete Base Course type BM-25.0 @ 330 lbs per SY. YD. (3")
- Aggregate Base Material Cement Treated Aggregate (for subbase) type 1, size no. 21-A Pugmill mixed at 4% cement by weight (6")

- **Segment IV Route 614**
- Asphalt Concrete Surface Course type SM-9.5D @ 220 lbs. per SQ. YD.
- Aggregate Base material type 1 No. 21B (8")

Environmental Regulations and Permits

Department has obtained or is in the process of obtaining all necessary permits and clearances. On Segments where it has been determined that wetlands mitigation is required Department is responsible for satisfying all wetlands mitigation requirements.

All permits and clearances obtained by Department will be transferred to Jamestown Corridor Constructors as stipulated in Appendix 2 of the Design Build Contract as the responsible party until completion of all of the construction work. The Department will retain the responsibility for managing wetland compensation associated with the Project water quality permits. Jamestown Corridor Constructors shall be fully responsible for environmental monitoring during construction.

Jamestown Corridor Constructors shall be responsible for obtaining any permit modifications, payment of fees and any wetland or stream compensation that is required due to additional wetland and stream impacts not authorized by the permits transferred to it.

Jamestown Corridor Constructors shall be fully responsible for environmental monitoring during construction and monitoring for obtaining any permit modifications, payment of fees and any wetland or stream compensation that is required due to additional wetland and stream impacts not authorized by the permits transferred to them.

Similar to all VDOT projects, VDOT will consider all PPTA and Design/Build projects as VDOT (state agency) projects and ensure compliance of these projects with DCR approved standards and specifications.

Jamestown Corridor Constructors' erosion and sediment control plan shall be prepared and implemented in compliance with the Erosion and Sediment Control Law, the Erosion and Sediment Control Regulations, and Department's annual erosion and sediment control standards and specifications approved by the Department of Conservation and Recreation. If Jamestown Corridor Constructors deviate from the standards and specifications stipulated herein, the Contractor shall be required to obtain from the Department of Conservation and Recreation approval of the new standards and specifications.

Jamestown Corridor Constructors' design of this project shall be in compliance with the Virginia Stormwater Management Law, the Stormwater Management Regulations, and the annual stormwater management standards, and specifications approved by the Department of Conservation and Recreation. If Jamestown Corridor Constructors deviate from the standards and specifications stipulated herein, the Contractor shall be required to obtain from the Department of Conservation and Recreation approval of the new standards and specifications.

In accordance with Article 4 of the Design-Build Contract, if Jamestown Corridor Constructors deviates from the project standards and specifications in the Contract Documents, the Contractor shall be required to obtain all Regulatory Approvals and satisfy all conditions of such Regulatory Approvals prior to commencement of any work outside the contract Standards and Specifications.

Right of Way and Utilities

The Jamestown Corridor Constructors shall be responsible for acquiring any additional Project right of way and relocating existing utilities, as specified in Articles 6 and 7 of the Design-Build Contract and the plans that are identified in Appendix 2 of the Design Build Contract. The Jamestown Corridor Constructors shall be responsible for all utility adjustments resulting from construction easements, borrow sites, waste sites, and staging areas or any deviation or modification of the existing design.

The Scope of Work shall include right of way administrative costs. Right of way landowner payments are to be paid from the ROW Allowance in accordance with Article 6 of the Design-Build Contract. Landowner payment variances from the allowance shall be paid by Department or credited to Department depending upon actual costs incurred.

The Scope shall include utility relocation administrative costs and the cost of paying for the relocation of the utility facilities when necessary. Department shall notify all utilities that Jamestown Corridor Constructors shall act as agent on behalf of Department and shall use Department procedures to relocate those privately owned utilities located within the right of way by permit. The cost of relocating those existing utilities shall be in accordance with the existing agreement between the utility and Department.

Should a private utility company challenge Department's right to have utilities relocated at the utility owner's cost when under permit, and prevail, the cost associated with such change shall not be in the Scope for this Project and shall be paid as a changed condition.

The Scope shall include the relocation of public utilities located within the existing right of way by permit in accordance with Article 7 of the Design-Build Contract.

Standard Department procedures shall be followed for the appraisal, negotiations and purchase of necessary property for each Project Segment.

Maintenance of Traffic

Maintenance of traffic for each Project Segment shall conform to the Construction Traffic Management Plan for such Project Segment which shall be submitted by the Jamestown Corridor Constructors and approved by the Department in accordance with Article 9 of the Design-Build Contract. Variances to the plan shall be requested at least one week prior to the need for approval by the Chief of Operations or his designated representative. No temporary lane restrictions shall take place between 12:00 noon on the Friday preceding and 12:00 noon the Tuesday following Memorial Day and Labor Day; or July 4 and Christmas day if these holidays occur on Saturday or Sunday. No lane restrictions shall take place between 12:00 noon Wednesday preceding and 12:00 noon the Monday following Thanksgiving Day. No other lane restrictions shall apply to the Work on the Project. All activities related to the Project that have an impact on the traveling public shall be performed in accordance with the approved Construction Traffic Management Plan. Jamestown Corridor Constructors shall provide temporary signage used during the construction of the Project that conforms to the Manual of Uniform Traffic control Devices.

Coordination with other Department construction efforts in the area shall be coordinated through the Hampton Roads District. At the sole discretion of the Department, the Jamestown Corridor Improvements Project shall have preferences for lane closures required for the Project over separate contractors for concurrent construction projects in the Project area. Before the start of construction of any Project Segment, the Construction Traffic Management Plan for that Project Segment shall be developed by the Jamestown Corridor Constructors, and approved by the Chief of Operations or his designated representative.

The Construction Traffic Management Plan shall set forth standards and procedures for designating construction for each Project Segment and shall initially identify stage construction each Project Segment.

Signage

Permanent signs shall be a part of the Scope of Work under the Design-Build Contract for Segments I, II, and III to be furnished by the Contractor and shall include directional

and enforcement signs. The Sign plans shall be approved by the Director of Operations or his designated representative.

The historic signage and permanent signs within Segment IV (Rt. 359) shall be relocated and furnished and installed by others and are not included in the Scope of this Design-Build Contract.

Construction Schedule

Construction of the Project and each Project Segment shall be in accordance with the approved CPM/Payment Schedule attached hereto as Appendix 10 .

Quality Assurance and Control

Quality Control and Quality Assurance shall be in accordance with the Quality Assurance and Control Inspection Program attached hereto as Attachment B.

Project Phasing

The Work will be performed in four Project Phases as follows:

- Phase A – consisting of Segments, I, II, and III and Segment IV between Stations 13+25 and 26+60.22;
- Phase B – consisting of all Work necessary to acquire the Vermillion property in accordance with Article 6;
- Phase C – The portion of Segment IV between Stations 10+00 and 13+25 within the National Park Service property; and
- Phase D – Segment V.

The Department will issue a Phase Notice to Proceed for each Project Phase on or before the following dates:

- Phase A – October 21, 2002;
- Phase B – November 1, 2002;
- Phase C – December 15, 2002; and
- Phase D – July 15, 2003.

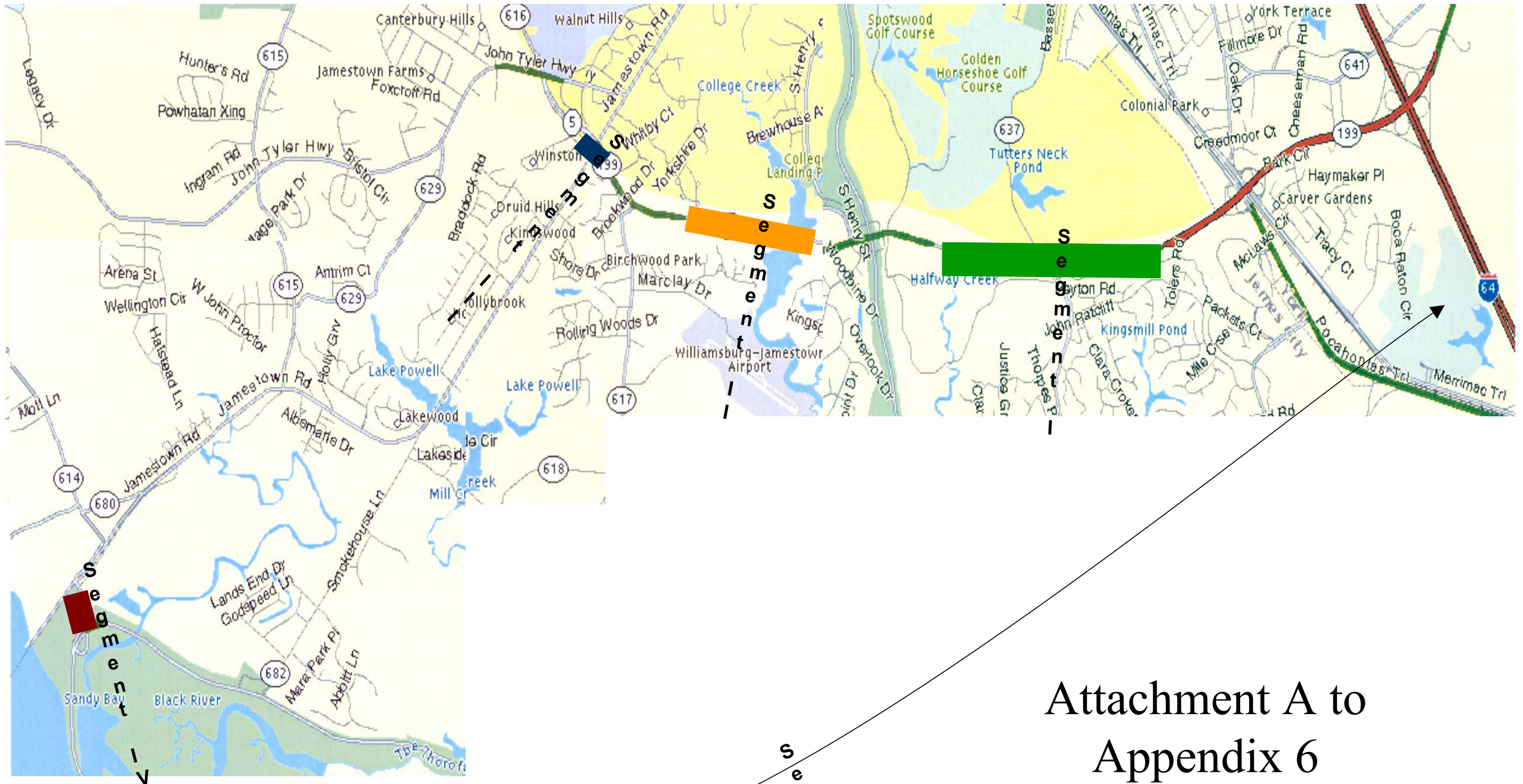
Plan Preparation and Plan Development

Plan preparation and plan development shall be in accordance with Attachment C.

Attachments:

- A – General Layout
- B – Quality Assurance and Control Inspection Program
- C – Plan Preparation and Plan Development

- D – Special Provisions and Special Provision Copied Notes to the Relevant VDOT Road
& Bridge Specifications.
- E – Utility Inventory



Attachment A to
Appendix 6
General Layout
Jamestown Corridor Improvements
Design-Build Contract

ATTACHMENT B TO APPENDIX 6 OF THE DESIGN-BUILD CONTRACT

Quality Assurance and Control Inspection Program

INTRODUCTION

The QA MANAGER (QAM) will be responsible for providing Quality Assurance and Control Inspection to monitor the Jamestown Corridor Improvements construction activities for conformance with the approved Drawings, Specifications and related documents.

The Virginia Department of Transportation (VDOT) may provide quality assurance inspection during the life of the project, to verify conformance with VDOT's obligations under Design-Build Contract. The Corps of Engineers (COE), county and the various utility companies affected by the Jamestown Corridor Improvements also occasionally provide spot inspection to review construction compliance with their respective contractual or legal requirements.

Subject to the Design-Build Contract, VDOT Standards and Specifications, including any project supplemental specifications specifically identified in The Contract Documents between VDOT and Jamestown 2007 Corridor Constructors, LLC (Jamestown 2007) shall at all times govern the construction of this project. The QAM, in conjunction with the Engineer, shall be the interpreter of these requirements unless otherwise directed by VDOT. The QAM, in conjunction with the Engineer of Record, shall certify that all construction has been placed in accordance with the approved plans and specifications.

To protect the interest of VDOT as specified in the Design-Build Contract, a Quality Assurance and Control Inspection Program (QA/CIP) will be implemented to address and define inspection and reporting responsibilities. This Program is defined on the following pages and reflects the unique relationships among the parties involved in this Project.

ORGANIZATION AND RESPONSIBILITIES

The QAM will be responsible for monitoring the construction activities for Contractor compliance to the QA/CIP and to provide the necessary documentation and coordination of all construction, inspection and on site testing of construction materials and construction. The QAM or his representative will be responsible for submission of a Source of Materials Letter (C-25) to the Department for assignment of inspection and testing to be accomplished off site. Actual QA/CIP manpower requirements will be determined by the QAM based upon the levels of construction activities undertaken by the Contractor and to adequately and properly monitor the work to be certified as required by the Design-Build Contract and the Project's approved schedule.

The QAM will have overall responsibility to coordinate the utilization of any and all Independent Materials Testing Agencies' Inspectors for on site testing and inspection. The QAM will coordinate with Jamestown 2007's Project Manager (PM) as to the Project's schedule and the inspection staff required to adequately and properly monitor these activities for certification of compliance to VDOT.

The QAM will inform the PM and VDOT's District Construction Engineer (or his designated representative) when the quality of Jamestown 2007's production forces (PRODUCTION) work is unsatisfactory. The QAM will notify Jamestown 2007 if corrective measures are not implemented in a timely manner. Jamestown 2007's PM will make all decisions regarding removal of defective work or reduction of payment. The QAM shall keep VDOT's District Construction Engineer (or his designated representative) informed of all such actions.

The VDOT Quality Assurance inspectors will be afforded the opportunity to perform any inspection activities including but not limited to those listed below:

- Review locations where pipe and culvert are to be installed - temporary or permanent
- Inspect pipe and culvert foundations before bedding material is placed
- Review pipe and culvert invert elevations
- Inspect bridge foundations prior to placement of concrete
- Review rebar and form work prior to concrete placement
- Monitor bridge deck and bridge substructure concrete placement
- Review significant plan changes
- Attend scheduling meetings
- Have access to all Project inspection documentation
- Review failed material tests with Jamestown 2007 and the QAM
- Coordinate all discrepancies with Jamestown 2007 PM and the QAM
- Provide overview inspection of off-site asphalt and concrete plants furnishing VDOT approved materials
- Monitor traffic control devices and traffic safety

The QAM will use Independent Materials Testing Agencies that will furnish technicians, equipment and facilities to perform on site tests of fabricated and non-fabricated materials used in the construction of this Project. The QAM will be responsible for coordinating the proper inspection coverage and documentation of materials certifications. Independent Materials Testing Agencies' staff shall be VDOT certified in the areas that they will be involved. Troxler certification may be an acceptable alternative for nuclear density inspection of compacted soils and asphaltic concrete.

The QAM will maintain daily logs of all construction activities and will perform, although not limited to, the following to observe and record the conformance with plans and specifications:

- Review material test results
- Coordinate inspection of bearing material for foundations with the geotechnical firm selected by Jamestown 2007.
- Check form work and reinforcing bar placement for concrete structures.
- Monitor structural steel placement

- Monitor concrete curing procedures
- Inspect bridge deck screed machines, including operation and depth of slab settings
- Monitor deck and substructure concrete placement
- Review maintenance and protection of installed traffic control devices

This list is not intended to be inclusive of all activities that may be required of the QA Manager. The QAM will also perform the following tasks, monitor and review the testing activities of all Independent Materials Testing Agencies to assure conformance with the contract documents.

- Compaction testing of engineered fills including embankment, backfills, and pipe trenches
- On-site concrete testing consisting of slump, air entrainment, temperature, and the making of concrete test cylinders.
- Compaction testing of base courses and asphalt pavement
- Continuous inspection of utility installations within the Jamestown Corridor Improvements Right-of-Way
- Blow count recordation for driving of piles
- Witness pressure and leak tests
- Field bolt torque inspection
- Check structural steel field-coat paint thickness

Off site testing of aggregates, asphalt, concrete, structural steel, prestressed concrete, precast concrete, metal pipe, polyethylene pipe, paint, glass beads, reflective materials, curing compounds, epoxies, etc., will be tested and monitored by the Department in accordance with existing test programs. Materials that do not show evidence of test on delivery to the project shall be sampled and submitted to the Department for testing.

The QAM will coordinate and receive all test results and reports from the Department or Department furnished inspectors for the following services from the off-site laboratories and plant inspectors:

- Laboratory testing of concrete cylinders
- Shop inspection of fabricated structural steel
- Monitoring of concrete, asphalt and crusher plants
- Certifications from F.O.B. job site provided materials

The QAM will maintain a complete set of test reports, source of materials letters, certifications, and other evidence of test completed on site. The storage site shall be secure from fire and theft. The records are to be maintained for a minimum of 5 years from the date of final payment.

INSPECTION AND ADMINISTRATION

1. INSPECTION PROGRAM

A. General

All inspections shall either be performed by, or at the direction of the QAM. The QAM s will determine whether the materials and work are in compliance with the approved drawings, specifications, and applicable VDOT standards as outlined in the Design-Build Contract.

B. Control Testing

All on site control testing will be performed by an approved independent materials testing agency. Inspection activity will be scheduled and coordinated by the QAM

The QAM shall:

1. Provide scheduling and coordination of all testing and re-testing to maintain the level of testing for VDOT approval and certifications.
2. Receive and check material certifications and samples for conformance
3. Inspect delivered materials and equipment.
4. Inspect work in progress and in place
5. Witness field testing of construction materials
6. Make control tests to support the methods or equipment of any independent testing agency
7. Verify that the results of tests conform to contract requirements
8. Immediately notify Jamestown 2007's PM if materials or workmanship do not comply with the specifications. A copy of the Non-Conformance report shall be forwarded to VDOT in accordance with Paragraph 2.A hereof. Jamestown 2007 PM and VDOT will be notified in writing when these deficiencies are not corrected in a timely and appropriate manner.

C. Reporting

All inspection requirements will be documented in writing. Complete and accurate reports of all Quality Control Tests will be maintained by the QAM. Among the items to be shown on the report are:

1. Description of work
2. Type of test and specification reference
3. Agency and Inspector performing the test and location, time, date and equipment used.
4. Sample source and date secured
5. Results of tests
6. Recommendation as to acceptance or rejection
7. Signature of responsible person controlling the testing work
8. Approval or rejection by the QAM

D. Scheduling and Coordination

The QAM, along with necessary representatives of the Quality Assurance Team, will attend bi-weekly Jamestown 2007 construction job meetings with subcontractors and field superintendents to discuss safety, schedule, and outstanding issues.

E. Job Meetings

Communication is critical to this project's success. Therefore an onsite, bi-weekly Quality Assurance meeting will be held with Jamestown 2007 staff, subcontractors and VDOT. Each day the QAM shall discuss the day's proposed activities with Production.

QAM will disseminate meeting information to the QA/CIP Team.

F. Progress of Work

Jamestown 2007 will make a video Cassette Recording or take photographs showing the progress of construction. Each recording or photograph will normally show the date and time. The tapes and photographs made by Jamestown 2007 and/or the Subcontractor will be for their use in reviewing Project status for the administration of contract payments. As applicable, this photographic record of the progress shall accompany the monthly report to VDOT.

G. Environmental Monitoring Program

Jamestown 2007 shall employ an Environmental Inspector to ensure compliance with applicable laws and regulations, and serve as a resource in securing permits and as a source of expert advise. The duties shall include but are not limited to:

- Liaison between Jamestown 2007 and Production, and VDOT and regulatory agency personnel to coordinate and solve environmental, and design-engineering issues.
- Implements contract special provisions and provides on-time technical guidance on the implementation of permit conditions within each phase of the project to analyze and evaluate water quality impacts, construction design and technical data associated with the project.
- Anticipates problems and concerns the environmental regulatory agencies may raise during the construction of the project.
- Facilitates the resolution of engineering, biological, water quality, and wetland-related issues as they arise during project construction. Arranges and conducts meetings with federal and state agencies to solicit comments on project implementation.
- Develops biological, chemical and physical sampling procedures to support regulatory approvals and the Environmental Monitoring Program.
- Project coordinator and expert on the implementation of the requirements from the Erosion and Sediment Control Law, Storm water Management Law, Virginia Pollution Discharge Elimination System (VPDES) permits, Virginia Water Protection permits, VMRC permits and Corps of Engineers permits.
- Has performed by qualified personnel, the scientific field investigations, data collections and wetlands delineation to assess and ensure the implementation of permit conditions during construction activities so that reporting deadlines are met.
- Provide Quality Assurance/Quality Control for the implementation of the permit conditions in accordance and in compliance with current state and federal environmental regulations.
- Prepares, and coordinates permit applications to acquire permit modifications for the project and to acquire permits for support activities.

2. ADMINISTRATIVE FUNCTIONS

A. Conformity with Plans and Specifications

All work performed and all materials furnished shall be in conformity with the Contract requirements.

The QAM has the authority to enforce requirements of the Contract Document, and reference document, when deficient materials or unsatisfactory finished products fail to conform to Contract Documents and Reference Documents. The QAM, in accordance with his assignment, shall monitor, and inspect Production work as it progresses. Work that is not acceptable will be brought to the immediate attention of Production who will have the deficiency corrected before it is covered. All deficiencies (herein referred to as a Non-Conformance), including those pertaining to rules, regulations and permit requirements, will be documented by the QAM. A Non-Conformance report (NCR), referenced by a unique number, will be forwarded to Jamestown 2007 PM and VDOT within 24 hours of discovery of the Non-Conformance. NCR's can be initiated by the QAM, VDOT, Jamestown 2007 and its subcontractors, and any agency issuing a permit for the prosecution of this work. In order to maintain Project continuity, all NCRs will be submitted to and coordinated by the QAM for resolution. Production may submit through Jamestown 2007 to the QAM a proposed method of correction for approval. Jamestown 2007 will require Production to remove, replace or correct inferior materials and workmanship. Responsibility for the expense for these corrections will be resolved by Jamestown 2007. Such cost shall be resolved at no additional cost to the Department. . Each item will be placed in a computer database so as to create an ongoing punch list. This punch list will be provided on a monthly basis to the Jamestown 2007 PM and VDOT. The objective is to resolve NCRs within 30 Days.

If in certain cases, materials or finished products are found to be not in strict conformity with the Contract requirements, but the removal of these materials will cause serious schedule and possible project completion impacts, the QAM and the Jamestown 2007 design manager, with the concurrence of VDOT, will make a final determination as to whether the work can be accepted.

In the event that it is accepted, the QAM will document the basis of acceptance. Jamestown 2007 and VDOT will be responsible for any decisions as to an appropriate adjustment in the Contract Price or other specific requirements or adjustments that may be appropriate.

The QAM shall have the authority to suspend the work, wholly or in part, by written order for such period as deemed necessary because of any condition considered to be unfavorable for the suitable prosecution of the work; or failure on the part of Production to perform any provision of the NCR. A NCR recommending suspension of work can be initiated by any of the parties noted above but must be furnished to the QAM for coordination and concurrence within 24 hours of discovery. VDOT can instruct Jamestown 2007 to suspend the work.

ATTACHMENT C TO APPENDIX 6 OF THE DESIGN-BUILD CONTRACT

Plan Preparation and Development

PLAN PREPARATION

Drafting Standards

All drafting must be done in such a manner that when reduced to one-half of the original size the drawings will be perfectly legible and useful for construction. Lettering should be a minimum of one eighth (1/8) inch in height and full-size roadway plan sheets should be prepared at a minimum scale of 1"=50'. The roadway and structure plans shall be prepared using on standard size sheets, the size of which shall be thirty-six (36) inches by twenty-two (22) inches, with a one-half (1/2) inch border, except on the left edge where the border will be two (2-1/2) inches wide. The plans shall be prepared in ink on materials approved by VDOT. The approved sheets shall be furnished by Jamestown 2007 Corridor Constructors, LLC with appropriate signature and seal blocks on the title sheets indicating approval for acquisition of right of way and construction.

Electronic Files

Plans shall also be submitted in electronic format using Microstation CADD software. VDOT will furnish electronic files of all applicable standard detail sheets upon request by Jamestown 2007 Corridor Constructors, LLC. Standard detail sheets are available in electronic format using CADD Microstation. The files will use standard VDOT cell libraries, level structures, linetypes, text fonts, and naming conventions as described in the most recent version of the VDOT CADD manual. Files furnished to Jamestown 2007 Corridor Constructors, LLC in electronic format shall be returned to VDOT and removed from Jamestown 2007 Corridor Constructors, LLC and its designer's computer equipment upon completion of this contract.

Bridge Plans

Each sheet of the contract plans shall be completely dimensioned, and all elevations necessary for construction purposes shall be shown. In steel construction, complete details shall be furnished showing all sizes and overall dimensions of members, number and arrangement of all fasteners at joints, type and size of welds, except that they need not be dimensioned as completely as shop plans. This work shall be performed to the same degree of refinement as that performed by VDOT in its current work as will be shown upon request by specimen drawings.

All bridges for this project shall be designed for AASHTO HS 25 Loading or a Modified Alternate Military Loading (using the Load Factor (strength) Method).

Dead load deflections shall be computed and shown on the drawings, and in addition a camber diagram should be shown. The deflections are those anticipated to occur in the beam upon placement of the concrete deck, diaphragms, curbs and parapets. The camber for pre-stressed beams should be shown on the plans giving the expected net camber, which should be the amount of rise that should occur at midspan when stress transfer is made and the member is freely resting on storage supports. Sequence of concrete placement operations for continuous beams or girder construction shall be given, and all erection stresses shall be computed where necessary for design. A summary table of moments, shears, reactions and stresses for primary load carrying members shall be included in the plans.

Quantities for contract plans shall be computed using Imperial (or U.S. Customary) and accurately computed and listed separately for each unit of the superstructure and substructure and, in the case of large units, for its component parts. Concrete shall be computed to a precision of the nearest cubic yard where the amount exceeds one thousand (1,000) cubic yards and to the nearest one-tenth (0.1) cubic yard below this amount. Reinforcing steel shall be computed to the nearest ten (10) pounds on the basis of theoretical weight, and a complete reinforcing steel schedule showing all lengths and bends shall be furnished by Jamestown 2007 Corridor Constructors, LLC. Structural steel shall be computed to a precision of one hundred (100) pounds. Other items shall be computed to a precision as instructed by VDOT.

PLAN DEVELOPMENT

Plans will be developed in several stages. The following sections describe the minimum requirements for each stage, the deliverables and major meetings associated with each development stage.

ROAD DESIGN

PFI and PH plans

All segments have been developed *beyond these two milestones*.

FIELD INSPECTION PLANS

The third plan milestone is Field Inspection Plans. These include responses to comments from Public Hearing Plans and refinement to approximately 60% completion.

ROAD DESIGN

Road Design

- Complete horizontal and vertical alignments.
- Complete cross sections and plot proposed right of way lines and utilities where appropriate.

Hydraulic Design

- Final stormwater management.

- Hydraulic design including ditches inlets, and other features that impact right of way.
- Final designs to include drainage structures effecting utilities, stormwater management ponds.
- Place ditches, pipes, and inlets on cross section for right of way considerations.
- Design of temporary/permanent stream effects (relocation, restoration, and enhancement) for right of way consideration.
- Provide scour analysis to include potential scour depth and recommendations for scour countermeasures.

Retaining Structure Design

- Provide retaining wall design for standard structure or standard structure with slight modification.

Sound Barrier Design and Agreement (If Required)

- Perform final sound barrier design

E&S Control Design

- Final design for E&S plan/phasing.

ENVIRONMENTAL

Streams/Wetland Compensation & Mitigation

- Finalize water quality permits and compensation.

Hazardous Materials Assessment

- Hazardous material site status determination for contaminated property acquisition with avoidance/minimization recommendations.

Roadside Development Plan

- Complete roadside development plan

GEOTECHNICAL ISSUES

Soil Report

- Prepare final soils report including pavement design, slope requirements and acid bearing material recommendation.

Major/Minor Structure Foundation Analysis & Report

- Complete Minor Structure Foundation analysis and report.
- Additional bridge foundation analysis if required.

BRIDGE DESIGN

Bridge Design (Stage I Bridge Plans)

- Final Stage I plans to include foundation recommendations.

TRAFFIC CONTROL

Traffic Control Device

- Control Device concept layout and location plans and general maintenance of traffic phasing.
- Signal plans for pedestrian crossing.

RIGHT OF WAY AND UTILITIES

In-Plan Utility Design

- First submittal of plan sheets showing existing and proposed utility locations and easement agreements with commitments from utility owners.

Utility Easement Determination

- Provide input regarding schedule, construction cost and assessment of right of way related project needs.
- Provide input regarding schedule, construction cost, and assessment of utility related project needs.

DELIVERABLES

Field Inspection Plans

Final Stormwater Management Plans

Final Erosion & Sediment Control Plans

Final Soils Report

Final Minor Structure Foundation Analysis & Report

Final Stage I Bridge Plans

MAJOR MEETINGS

Field Inspection

RIGHT OF WAY PLANS

The fourth plan milestone is Right of Way Plans. These include responses to comments from Field Inspection Plans and refinement to approximately 65% completion. This phase will include the development of plans to a level that allows the completion of all acquisition of right of way and easements.

ROAD DESIGN

Road Design

- Incorporate field inspection comments into plans

RIGHT OF WAY AND UTILITIES

In-Plan Utility Design

- Final utility relocation plans

Utility Easement Acquisition

- Update plans to show all utility easements

ENVIRONMENTAL

- VDOT approval of Haz Mat Remediation Plans
- Incorporate Environmental Commitments into Plans

DELIVERABLES

- Right of Way Plans

MAJOR MEETINGS

- None

CONSTRUCTION PLANS

This plan milestone includes plans that may be submitted as soon as sufficient information is available to develop Construction plans for certain portions or elements of the project. These plans will be issued for construction following approval by the Chief Engineer. The roadway or bridge plans may be submitted to VDOT in logical subsections (such as from bridge to bridge) and consisting of work packages such as 1) clearing and grubbing along with erosion and siltation control, 2) grading and drainage, 3) paving, and 4) traffic control. Individual bridge plans may be submitted to VDOT in logical components such as 1) foundation, 2) remaining substructure, and 3) superstructure.

RECORD (AS-BUILT) PLANS

The final plan milestone is Record (As-Built) Plans. These plans will show all adjustments and revisions to the Construction Plans made during construction and serve as a permanent record of the actual location of all constructed elements. These plans will be provided in both hard copy and electronic formats.

DELIVERABLES

- Hard Copy paper plans
- Electronic plans on CD or other approved media

October 21, 2002

**ATTACHMENT D TO
APPENDIX 6
OF THE
DESIGN-BUILD CONTRACT**

Index to Special Provisions and Special Provision Copied Notes

- An electronic version in publication format or in individual provision file format is available on the VDOT internal network located on the Construction Division's public server at :
<\\0501COCONST\Public\Specifications\2002 SPEC BOOK REV – July 2002\PUBLICATION\>
- These Revisions are also available on the VDOT website at:
<http://www.vdot.state.va.us/conbbs/resource.htm>
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NOTES

GENERAL NOTES:

- Special Provision Copied Notes in this publication are designated with "(SPCN)" after the date. This designation shall also be used for all Special Provision Copied Notes including the corresponding index in all contracts beginning with the July 2002 Advertisement. This designation shall also include any project specific Special Provision Copied Notes included in the contract.

c105d.doc	(0900)	SECTION 105.06 - COOPERATION OF CONTRACTOR 11-4-99 (SPCN) ALL PROJECTS
c106e.doc	(0801)	SECTION 106.03 - LOCAL MATERIAL SOURCES (PITS AND QUARRIES) 1-31-01 (SPCN) USE WITH SPECIAL PROVISION 106B
c202b.doc	(1298)	SECTION 202 FINE AGGREGATE 2-2-98 ^c (SPCN) PROJECTS WITH FINE AGGREGATES
c202c.doc	(0201)	SECTION 202 - FINE AGGREGATE 6-15-00 (SPCN) PROJECTS WITH FINE AGGREGATES
c203.doc	(0201)	SECTION 203 - COARSE AGGREGATE 6-14-00 (SPCN) PROJECTS WITH COARSE AGGREGATES
c205.doc	(0900)	SECTION 205.02 - MATERIALS 1-6-00 (SPCN) PROJECTS HAVING CRUSHER RUN AGGREGATE
c210a.doc	(0197)	ASPHALT CEMENTS 9-5-96 (SPCN) PROJECTS HAVING ASPHALT CEMENT
c214a.doc	(1297)	SECTION 214.02(a) BLENDED HYDRAULIC CEMENT 12-10-96 (SPCN) ALL PROJECTS HAVING HYDRAULIC CEMENT CONCRETE (ALL CONCRETE ITEMS INCLUDING PIPE)
c217b.doc	(1297)	SECTION 217 – HYDRAULIC CEMENT CONCRETE 12-10-96 (SPCN) ALL PROJECTS REQUIRING HYDRAULIC CEMENT CONCRETE (ALL CONCRETE ITEMS INCLUDING PIPE)
c217e.doc	(0900)	TABLE II-17 REQUIREMENTS FOR HYDRAULIC CEMENT CONCRETE 05-15-00 (SPCN) ALL PROJECTS HAVING HYDRAULIC CEMENT CONCRETE
c217f.doc	(0900)	SECTION 217.08(b) STRENGTH TESTS 03-29-00 (SPCN) ALL PROJECTS HAVING HYDRAULIC CEMENT CONCRETE
c217g.doc	(0201)	SECTION 217.03 - HANDLING AND STORING MATERIALS

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
		6-15-00 (SPCN) ALL PROJECTS REQUIRING HYDRAULIC CEMENT CONCRETE (ALL CONCRETE ITEMS INCLUDING PIPE)
c221b.doc	(0801)	SECTION 221.02 DETAIL REQUIREMENTS 1-8-01 (SPCN) ALL PROJECTS HAVING GUARDRAIL
c223a.doc	(0295)	SECTION 223.02 (c) REINFORCING STEEL TO BE EPOXY COATED 8-30-94 Reissued 11-1-94 (SPCN) PROJECTS HAVING EPOXY COATED REINFORCING STEEL
c223b.doc	(0201)	SECTION 223-STEEL REINFORCEMENT 6-15-00 (SPCN) PROJECTS HAVING EPOXY COATED REINFORCING STEEL
c226a.doc	(0295)	SECTION 226 STRUCTURAL STEEL 11-1-94 (SPCN) PROJECTS HAVING STRUCTURAL STEEL (NOT TRAFFIC ITEMS)
c226c.doc	(0801)	SECTION 226.02(h)3 STRUCTURAL STEEL 2-14-01 (SPCN) PROJECTS HAVING STRUCTURAL STEEL
c229a.doc	(0396)	SECTION 229.02 (h) SAND CASTINGS 9-11-95 (SPCN) ALL PROJECTS WITH CASTINGS (ALUMINUM ALLOY ONLY)
c229b.doc	(0200)	SECTION 229.02(I) BREAKAWAY SUPPORT COUPLINGS FOR LIGHT POLES AND SIGN POSTS 8-25-98 (SPCN) ALL PROJECTS WITH LIGHT POLES AND SIGN POSTS (ALUMINUM ALLOY ONLY)
c232c.doc	(1297)	SECTION 232.02 – DETAIL REQUIREMENTS 6-27-97c (SPCN) ALL PROJECTS WITH PIPE
c234a.doc	(0796)	SECTION 234.02 – DETAIL REQUIREMENTS 2-26-96 (SPCN) PROJECTS WITH PAVEMENT MARKINGS
c236a.doc	(0595)	SECTION 236.02 (a)1 STRUCTURAL TIMBER AND LUMBER 11-30-94 (SPCN) PROJECTS HAVING STRUCTURAL TIMBER AND LUMBER (GUARDRAIL AND SIGNS WITH WOODEN POST AND TIMBER BRIDGES)

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
c237.doc	(0200)	SECTION 237 – BEDDING MATERIAL AND BEARING PADS 4-12-99 (SPCN) PROJECTS HAVING BEARING PADS.
c242a.doc	(0997)	SECTION 242.02 (c) TEMPORARY SILT FENCES, GEOTEXTILE FABRIC SILT BARRIERS, AND FILTER BARRIERS 3-10-97 (SPCN) PROJECTS HAVING GEOTEXTILE FABRIC SILT FENCES AND FILTER BARRIERS
c244a.doc	(0699)	SECTION 244.02 – TOPSOIL 3-16-99 (SPCN) PROJECTS WITH WETLAND MITIGATION
c302f.doc	(1297)	SECTION 302.03(b) – PRECAST DRAINAGE STRUCTURES 12-10-96 (SPCN) PROJECTS HAVING PRECAST UNITS, INCLUDING PRECAST BOX CULVERTS AND STRUCTURES
c303f.doc	(0200)	SECTION 303.03 (e) 1. TEMPORARY SILT FENCES 4-29-99 (SPCN)PROJECTS HAVING TEMPORARY SILT FENCE.
c303g.doc	(0200)	SECTION 303.04(h)-PROCEDURES 05-06-99 (SPCN) ALL PROJECTS.
c309a.doc	(0699)	SECTION 309.05-DENSITY REQUIREMENTS 3-5-99 (SPCN) PROJECTS REQUIRING AGGREGATE BASE
c316b.doc	(0295)	SECTION 316.02 (a) CONCRETE 3-1-94 _C Reissued 11-1-94 (SPCN) PROJECTS HAVING HYDRAULIC CEMENT CONCRETE PAVEMENT INCLUDING APPROACH SLABS AND ENTRANCE PAVEMENT
c403a.doc	(0295)	SECTION 403.06 (d) 2. HAMMERS FOR CONCRETE PILES 11-1-94 (SPCN) PROJECTS HAVING CONCRETE PILES AND SHELLS FOR CAST-IN-PLACE PILES (PILES OVER 25,000 POUNDS)
c403b.doc	(0295)	SECTION 403.07 (c) 1. b. TENSION 11-1-94 (SPCN) PROJECTS HAVING PRESTRESSED CONCRETE PILES

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
c403e.doc	(1297)	SECTION 403 BEARING PILES 6-10-97 (SPCN) PROJECTS HAVING PILES
c404b.doc	(0200)	SECTION 404.02 (d) CORRUGATED METAL BRIDGE DECK FORMS 4-7-99 (SPCN) PROJECTS WITH HYDRAULIC CEMENT CONCRETE BRIDGE DECKS
c405a.doc	(0801)	SECTION 405.05 - PROCEDURES (a) FORMS: 1-24-01 (SPCN) PROJECTS WITH PRESTRESSED CONCRETE
c406a.doc	(0295)	SECTION 406.03 (b) PROTECTING MATERIAL Reissued 11-1-94 (SPCN) PROJECTS HAVING EPOXY COATED REINFORCING STEEL
c406b.doc	(0295)	SECTION 406.03 (d) PLACING AND FASTENING SECTION 6.24 Reissued 11-1-94 PROJECTS HAVING CONCRETE BRIDGE DECKS AND BOX CULVERTS
c406c.doc	(0295)	SECTION 406.03 (d) PLACING AND FASTENING Reissued 11-1-94 (SPCN) PROJECTS HAVING EPOXY COATED REINFORCING STEEL ON BRIDGE DECKS AND BOX CULVERTS
c407b.doc	(0295)	SECTION 407.04 FABRICATION PROCEDURES 3-28-94 _c Reissued 11-1-94 (SPCN) PROJECTS HAVING STEEL STRUCTURES
c407c.doc	(1195)	SECTION 407.06 ERECTION PROCEDURES 6-8-95 (SPCN) PROJECTS HAVING BRIDGE WIDENING STRUCTURAL STEEL
c407d.doc	(0196)	SECTION 407.04 FABRICATION PROCEDURES 5-24-96 (SPCN) PROJECTS HAVING STEEL STRUCTURES
c407e.doc	(0201)	SECTION 407.06 (b) 3. b. TURN-OF-NUT TIGHTENING 10-20-00 (SPCN) PROJECTS HAVING STRUCTURAL STEEL
c407g.doc	(0801)	SECTION 407.06(b)1. BOLTS, NUTS AND WASHERS: 5-14-01 (SPCN) PROJECTS HAVING STEEL STRUCTURES
c408.doc	(0200)	SECTION 408.03(g) PLACEMENT 4-12-99 (SPCN)

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
		PROJECTS HAVING BEARING DEVICES OR ANCHORS
c505d.doc	(0900)	SECTION 505.03 - PROCEDURES 8-21-98 (SPCN) PROJECTS WITH GUARDRAIL
c519.doc	(0200)	SECTION 519.02 (m) INTERLOCKING PANELS 04-07-99 (SPCN) PROJECTS HAVING SOUND BARRIER WALLS.
c603a.doc	(0295)	SECTION 603.03 (c) APPLYING FERTILIZER Reissued 11-1-94 (SPCN) PROJECTS HAVING SEEDING
c701.doc	(0201)	SECTION 701 – TRAFFIC SIGNS 07-13-00 (SPCN) PROJECTS WITH TRAFFIC SIGNS

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
s102c.doc	102C	USE OF DOMESTIC MATERIAL 5-3-95 _C FEDERAL-AID PROJECTS
s106b.doc	106B	SECTION 106.04 – DISPOSAL AREAS 1-31-01 ALL PROJECTS
s107a.doc	107A	EROSION AND SILTATION ENFORCEMENT 3-11-99 ALL PROJECTS
s107c.doc	107C	VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) 6-17-99 PROJECTS WHEN VA. POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT IS REQUIRED.
s107d.doc	107D	STORM WATER POLLUTION PREVENTION PLAN 6-17-99 _{ccc} PROJECTS WHEN VA. POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT IS REQUIRED
s110e.doc	110E	SECTION 110.04 – Use of Disadvantage Business Enterprises 01-05-00 _C FEDERAL PROJECTS
s211h.doc	211H	SECTION 211 ASPHALT CONCRETE MIXTURES (SUPERPAVE) 9-27-00 PROJECTS HAVING SUPERPAVE, ASPHALT CONCRETE
s212.doc	212	SECTION 212 JOINT MATERIALS 11-25-95 PROJECTS HAVING BRIDGE STRUCTURES WITH SILICONE SEALER CLASS D (NOT PREFORMED AND BOX CULVERT)
s213a.doc	213A	SECTION 213 DAMP-PROOFING MATERIALS 11-22-93 Reissued 11-1-94 _C USE FOR DAMPPROOFING (NOT FOR WATER PROOFING)
s226.doc	226	SECTION 226 STRUCTURAL STEEL 6-26-97 _C PROJECTS HAVING STRUCTURAL STEEL (OVERHEAD SIGN STRUCTURES AND CANTILEVERS)
s231c.doc	231C	SECTION 231 - PAINT 4-19-00 _C PROJECTS REQUIRING PAINTING OF STEEL

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
		STRUCTURES
s235a.doc	235A	SECTION 235 RETRO-REFLECTORS 2-27-95 PROJECTS HAVING PAVEMENT MARKERS, DELINEATORS, TEMPORARY PAVEMENT MARKERS OR CONCRETE TRAFFIC BARRIER SERVICE (USE WITH SP 702)
s244.doc	244	SECTION 244 - ROADSIDE DEVELOPMENT MATERIALS 8-12-96 PROJECTS REQUIRING SEEDING AND FERTILIZERS
s246d.doc	246D	SECTION 246 PAVEMENT MARKING 7-17-00 PROJECTS HAVING PAVEMENT LINE MARKING
s247.doc	247	SECTION 247- REFLECTIVE SHEETING 9-15-00 PROJECTS HAVING REFLECTIVE SHEETING
s302f.doc	302F	FLOWABLE BACKFILL 11-30-98 PROJECTS HAVING CULVERTS OR UNDERGROUND UTILITIES
s303c.doc	303C	EROSION CONTROL MULCH 5-1-95 PROJECTS HAVING EROSION CONTROL MULCH
s315i.doc	315I	RUMBLE STRIP 7-19-99 WHEN REQUESTED BY THE DESIGNER
s315j.doc	315J	SECTION 315 ASPHALT CONCRETE PAVEMENT (SUPERPAVE) 10-4-00c PROJECTS HAVING SUPERPAVE, ASPHALT CONCRETE PAVEMENT
s404d.doc	404D	HYDRAULIC CEMENT CONCRETE OPERATIONS 3-31-98ccc PROJECTS WITH CONCRETE BRIDGES AND BOX CULVERTS
s407.doc	407	TOOTH EXPANSION JOINT 8-1-91 Reissued 11-1-94 PROJECTS HAVING TOOTH EXPANSION JOINTS
s407a.doc	407A	METALLIZATION OF FERROUS METAL SURFACES 1-5-98

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
		WHEN REQUESTED BY THE DESIGNER
s408a.doc	408A	HIGH LOAD MULTI-ROTATIONAL BEARINGS 3-25-92 ^{ccc} Reissued 11-1-94 PROJECTS HAVING HIGH LOAD MULTI-ROTATIONAL BEARINGS, TFE POT BEARINGS (SHOWN ON PLANS)
s411a.doc	411A	PROTECTIVE COATING OF METAL IN STRUCTURES 4-19-00 PROJECTS HAVING STEEL TO BE PAINTED
s413.doc	413	SECTION 413 - DISMANTLING AND REMOVING EXISTING STRUCTURES OR REMOVING PORTIONS OF EXISTING STRUCTURES 6-14-00c PROJECTS REQUIRING WORK ON EXISTING STRUCTURES - MUST BE USED IN CONJUNCTION WITH SPECIAL PROVISION 411A dated (April 19, 2000c)
s416.doc	416	SECTION 416 WATERPROOFING 12-7-93 ^c Reissued 11-1-94 PROJECTS HAVING BRIDGES
s501b.doc	501B	PREFABRICATED GEOCOMPOSITE PAVEMENT UNDERDRAIN UD-5 7-30-96 PROJECTS HAVING UD-5
s502.doc	502	SECTION 502 – INCIDENTAL CONCRETE ITEMS 4-12-99 ^{cc} PROJECTS HAVING INCIDENTAL CONCRETE ITEMS.
s512f.doc	512F	TRUCK MOUNTED ATTENUATOR (TMA) 10-22-98c PROJECTS THAT REQUIRE THE USE OF TRUCK MOUNTED ATTENUATORS
s512h.doc	512H	SECTION 512 MAINTENANCE OF TRAFFIC 9-15-00 ALL PROJECTS
s700b.doc	700B	SECTION 700 - GENERAL 12-30-96 PROJECTS HAVING SIGNS, SIGNALS, LIGHTING OR NAVIGATIONAL LIGHTS
s702.doc	702	SECTION 702 DELINEATORS 12-10-93 ^{cc} Reissued 11-1-94 PROJECTS HAVING ROAD EDGE, BARRIER OR GUARDRAIL DELINEATORS

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
s704b.doc	704B	TYPE B, CLASS VI PAVEMENT LINE MARKING 2-6-96 PROJECTS HAVING TYPE B, CLASS VI PAVEMENT LINE MARKING
s704d.doc	704D	SECTION 704 PAVEMENT MARKINGS AND MARKERS 9-15-00 PROJECTS HAVING PAVEMENT MARKINGS OR MARKERS

PROGRAM FILE NAME	FILE NAME	TITLE ISSUE DATE INSTRUCTIONS
SP	Low Permeability Concretes.doc 7-1-98	Low Permeability Concretes 7-1-98 Select Use Special Provision used on all concrete structures
SP	Rideability (South Dakota-Asphalt) 7-1- 98.doc	Rideability (South Dakota-Asphalt) 6-24-98 Select Use Special Provision used in conjunction with Superpave
SPCN	407 Steel Structures.doc 2-11- 00	407 Steel Structures 2-11-00 Select Use Special Provision used in conjunction with Federal Projects with Steel Structures
SP	Sound Barrier Walls.doc 3-18-92	Sound Barrier Walls 3-18-92
SP	Asbestos.doc 1-31- 01	Asbestos 1-31-01 Select Use Special Provision used in conjunction with demolition/asbestos abatement projects
SP	Retaining Walls.doc	Retaining Walls - Double Wall 6-27-97 - Hilfiker Retaining Walls 7-17-98 - Isogrid Retaining Walls 7-17-98 - Reinforced Earth Walls 7-17-98 - Retained Earth Walls 7-17-98 - Tiedback Retaining Walls 7-30-98 - T-Wall Retaining Wall System 6-27-97 Select Use Special Provisions approved by Materials Division (For walls under probationary status contact Materials Division)
SP Form	Post Tensioning Grout.doc Form C-8	Post Tensioning Grout.doc Select Use Special Provision (Federal Projects) Form C-8 Escrow Agreement 12-6-99 Form used in conjunction with Escrow in lieu of retainage.
SPCN	107.13-- Responsibility for Damage Claims	107.13--Responsibility for Damage Claims Use on all projects as of December 2001 advertisement date.

ATTACHMENT E TO APPENDIX 6 OF THE DESIGN-BUILD CONTRACT

Inventory of Known Existing Utilities

The following is a list of known Utility facilities located within the limits of the various Projects. It is based on the plans referenced in Attachment E to Appendix 6 and information obtained by Jamestown 2007.

Segment I

0.91m sanitary force main	Sta. 80+00 to Sta.105+00 Right
0.25m sanitary force main	West side of Mts. Bay Road
0.25m sanitary force main	Crossing at Sta. 103+38
0.20m sanitary force main	Sta. 104+20 Right
0.41m sanitary force main	Sta. 104+20 to 109+00 Right
0.51m water main	Sta. 80+00 to Sta. 109+00 Right
0.30m water main	Sta. 89+00 Right
0.30m water main	Sta. 92+00 to Sta. 109+00 & crossing R to L at Sta. 107+38
0.36m gas pipeline	Sta. 90+40 to Sta. 105+40 Right
Telephone duct	Sta. 88+90 to Sta. 93+15 then along west side Mts. Bay Rd.
Telephone duct (FO)	Sta. 90+40 to west side Mts. Bay Rd.
Buried electric lines	Sta. 88+90 to Sta. 94+00 Right then along east side of Mts. Bay
Buried electric lines	Crossing at Sta. 92+78 then along west side of Quarterpath Rd.
Buried electric lines	Sta. 92+65 Left then along east side of Quarterpath Rd.
Buried CATV / FO lines	Sta. 90+40 to west side Mts. Bay Rd.
Buried CATV / FO lines	Crossing at Sta. 92+78 then along west side of Quarterpath Rd.

Segment II

0.76m sanitary force main	Sta. 9+00 to Sta. 29+00 Left (0.61m attached to existing bridge)
0.41m water main	Sta. 9+00 to Sta. 29+00 Left (attached to existing bridge)
0.30m water main	Sta. 20+75 to Sta. 24+63 Right (College Ck. crossing)
0.30m water main	Crossing at Sta. 24+58 within casing.

Segment III

30-inch sanitary force main	Sta. 143+00 to Sta. 163+00 Left
8-inch sanitary sewer	Sta. 144+00 to Sta. 151+55 Right
Sanitary sewer	Sta. 92+50 to Sta. 97+00 Left
Sanitary sewer	Sta. 96+45 to Sta. 97+25 Right
18-inch sanitary force main	Sta. 95+65 to Sta. 101+00 Left
18-inch sanitary force main	Sta. 151+65 Right to Sta. 152+50 Left (crossing)
Sanitary sewer	Sta. 151+30 to Sta. 154+25 Right
16-inch water main	Sta. 143+00 to Sta. 163+00 Right

Water main	Sta. 147+50 to Sta. 150+83 Left
12-inch water main	Sta. 92+550 to Sta. 101+00 Right
12-inch water main	Sta. 151+10 to Sta. 162+00 Right
12-inch water main	Crossing at Sta. 162+10
6-inch water main	Crossing at Sta. 158+80
Water main	Sta. 155+75 to Sta. 157+30 Right
8-inch water main	Sta. 159+20 to Sta. 162+30 Right
12-inch water main	Sta. 150+80 Left to Sta. 153+00 Right
12-inch water main (abandoned)	Sta. 153+00 to Sta. 162+30 Right
6-inch gas main	Sta. 147+50 to Sta. 150+80 Left
gas main	Sta. 92+50 to Sta. 95+10 Right
gas main	Sta. 94+30 to Sta. 95+05 Right
4-inch gas main	Sta. 95+05 to Sta. 101+00 Left
6-inch gas main	Sta. 151+45 to Sta. 163+00 Right
2-inch gas main	Crossing at Sta. 158+55
Buried telephone	Sta. 147+50 to Sta. 150+45 Left
Telephone duct	Crossing at Sta. 93+80
Telephone duct	Sta. 92+50 to Sta. 101+00 Left
Telephone duct	Sta. 150+60 to Sta. 151+45 Right
Buried telephone	Crossing at Sta. 98+55
Telephone duct (FO)	Sta. 151+45 to Sta. 163+00 Right
Telephone duct	Sta. 151+45 to Sta. 156+00 Right
Buried telephone	Sta. 155+00 to Sta. 156+00 Right
Buried telephone/duct (2)	Sta. 156+00 to Sta. 163+00 Right
Buried telephone	Sta. 92+50 to Sta. 94+20 Left
Buried telephone	Sta. 162+25 (crossing)
U/g electric	Sta. 147+50 to Sta. 150+65 Left
U/g electric	Sta. 92+50 to Sta. 93+80 Right
Electric poles	Sta. 149+00 and Sta. 150+30 Right
Electric pole	Sta. 149+04 Left
U/g electric	Sta. 92+50 to Sta. 98+50 Right
U/g electric	Sta. 98+50 to Sta. 99+10 Left
U/g electric	Crossing at Sta. 98+95
U/g electric	Sta. 151+00 to Sta. 151+95 Right
Electric poles	Sta. 98+10, Sta. 99+10 and Sta. 100+72 Left
Electric poles	Sta. 151+95, Sta. 152+27, Sta. 153+45 Right
Electric poles	Sta. 153+87, Sta. 155+00 Right
CATV	Sta. 92+50 to Sta. 95+60 Left
CATV	Crossing at Sta. 98+60

Segment IV

6-inch sanitary force main	Crossing at Sta. 12+58
6-inch sanitary force main	Crossing at Sta. 29+65
12-inch water main	Sta. 12+00 to Sta. 15+00 Right (crossing at Sta. 15+00)
12-inch water main	Crossing at Sta. 25+65
2-inch gas main	Crossing at Sta. 12+53
Gas line (service)	Sta. 25+00 to Sta. 26+55 Left
2-inch gas main	Sta. 29+75 to Sta. 34+55 Right
Buried telephone	Crossing at Sta. 12+58
Buried telephone	West side of existing Route 359

Buried telephone (2 lines)	Crossing at Sta. 25+60
Buried telephone	Sta. 24+80 to 25+55 Left
Aerial electric	2 poles at marina entrance
Aerial electric	1 pole Sta. 20+90 right
Aerial electric	1 pole Sta. 26+10 Left (lines crossing)

APPENDIX 7

NOT USED

APPENDIX 8
DESIGNATION OF INITIAL REPRESENTATIVES

**APPENDIX 8
OF THE
DESIGN-BUILD CONTRACT**

Designation of Initial Representatives

Department Representatives:

- Malcom T. Kerley, Chief Engineer of Program Development
- C. Frank Gee, Chief of Operations

Contractor Representatives:

- Gary M. Massie, Project Manager
- W. Barry Bryant, Manager
- Andrew R. Curtis, Jr., Manager

APPENDIX 9

DIVISION 1, STANDARD SPECIFICATIONS

APPENDIX 9

OF THE

DESIGN-BUILD CONTRACT

Division 1 Standard Specifications

SECTION 101--DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.01--Abbreviations and Acronyms.

In these specifications and in other Contract Documents, the following abbreviations and acronyms shall be interpreted as follows:

AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ABS	Acrylonitrilebutadienestyrene (an elastomer)
AC	Alternating current
ACI	American Concrete Institute
ADT	Annual average daily traffic
AED	Associated Equipment Distributors
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APA	American Plywood Association
API	American Petroleum Institute; American Pipe Institute
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American wire gage
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
 BOCA	 Building Officials and Code Administrators
 CBR	 California bearing ratio
CRSI	Concrete Reinforcing Steel Institute
 DBE	 Disadvantaged Business Enterprise
DC	Direct current
DHV	Design hourly volume
 EEl	 Edison Electric Institute
EEO	Equal employment opportunity
EIA	Electronic Industries Association
EPA	Environmental Protection Agency
EPDM	Ethylenepropylenedienemonomer (an elastomer)

F/A	Filler/asphalt ratio
FHWA	Federal Highway Administration
FS	Federal Specifications, General Services Administration
ICEA	Insulated Cable Engineers Association
IMSA	International Municipal Signal Association
ITE	Institute of Transportation Engineers
LCD	Liquid crystal display
LPG	Liquid petroleum gas
MBE	Minority Business Enterprise
MEKP	Methyl ethyl ketone peroxide
MIL	Military specifications
MSDS	Materials Safety Data Sheet
MUTCD	<i>Manual on Uniform Traffic Control Devices for Streets and Highways</i> and the Virginia supplement to same
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NIST	National Institute of Standards and Technology
NRC	Nuclear Regulatory Commission
PCI	Prestressed Concrete Institute
PE	Polyethylene
PTL	Plywood Testing Laboratory
PVC	Polyvinylchloride
PVF	Polyvinylfluoride
REA	Rural Electrification Administration
SAE	Society of Automotive Engineers
SI	The International System of Units
SPIB	Southern Pine Inspection Bureau
SSPC	Steel Structures Painting Council
TAPPI	Technical Association of Pulp and Paper Industry
TFE	Polytetrafluoroethylene
UL	Underwriters' Laboratories, Inc.
VAC	Volts alternating current
VDC	Volts direct current
VDOT	Virginia Department of Transportation
VFA	Voids filled with asphalt
VMA	Voids in mineral aggregate
VOSH	Virginia Occupational and Health Administration
VTM	Virginia test methods; voids in total mix
WBE	Women Business Enterprise

101.02--Terms.

In these specifications and in other Contract Documents, the following terms and pronouns used in place of them shall be interpreted as follows:

- A -

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

- B -

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

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

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

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

Board. Commonwealth Transportation Board of Virginia.

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

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

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

- C -

Calendar Day. Any day shown on the calendar.

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

Channel. A water course or drainage way.

Commissioner. Commonwealth Transportation Commissioner.

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

Construction Area. The area where authorized construction occurs.

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

Contract. The written agreement executed between the Department and the Contractor that sets forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, furnishing of materials and labor, and basis of payment. The Contract also includes these specifications; supplemental specifications; special provisions; special provision copied notes; plans; standard drawings; change orders; and work orders and agreements that are required to complete the construction of the specified work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument. Oral representations or promises shall not be considered a part of the Contract.

Contractor. Kellogg Brown & Root, and its permitted successors and assigns.

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

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

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

- D -

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

Department. Virginia Department of Transportation.

Deputy Commissioner. The assistant to the Commissioner who performs such of the Commissioner's duties as have been delegated to him by the Commissioner.

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

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

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

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

- E -

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

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

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

Employee. Any person working on the Project specified in the Contract who is under the direction or control of or receives compensation from the Contractor or subcontractor.

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

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

- F -

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

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

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

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

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

- G -

Gage. U.S. Standard Gage.

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

- H -

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

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

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

- I -

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

- M -

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

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

- O -

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

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

- P -

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

Plans. The “Plans and Specifications” as defined in the Contract.

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

- Q -

QA Manager. The specified person responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program as described in Appendix 6(Scope of Work), Attachment C of the Design-Build Contract.

- R -

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

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

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

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

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

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

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

- S -

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

Select Borrow. Borrow material that has specified physical characteristics.

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

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

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

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

Special Provision. Specifications or requirements for the Project, as set forth in Attachment D to Appendix 6.

Special Provision Copied Note. Specifications or requirements, usually limited in scope, for the Project, as set forth in Attachment D to Appendix 6.

Specifications. A general term that includes all directions, provisions, and requirements contained herein and those that may be added or adopted as special provisions or Special Provision Copied Notes. All are necessary for the proper fulfillment of the Contract.

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

State. Commonwealth of Virginia.

Station. When used as a definition or term of measurement, 100 meters Metric, or 100 feet Imperial as indicated on the section documents.

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

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

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

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

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

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

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

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

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

- T -

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

Ton. A metric ton, 1,000 kilograms; or an Imperial ton, 2000 pounds as indicated on the section documents.

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

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

- W -

Wearing course. See **Surface course**.

SECTION 102--NOT USED**SECTION 103--NOT USED****SECTION 104--SCOPE OF WORK****104.01--Intent of Contract.**

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

104.02--Not Used**104.03--Not Used****104.04--Maintenance During Construction.**

This Section 104.04 applies to the extent it does not conflict with the approved Construction Traffic Management Plan.

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

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

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

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

The Contractor shall keep the portions of the road being used by the public free from irregularities and obstructions that could present a hazard or annoyance to traffic. Contractor shall be responsible for implementing and maintaining adequate dust control measures. When directed by the QA Manager, allaying of dust shall be performed in accordance with the requirements of Section 511 and cost for such work shall be included in the Contract Price. Holes in hard surface pavements shall be filled with approved asphalt patching material.

- (a) **Maintenance of Traffic During Suspension of Work:** During any suspension of work, the Contractor shall temporarily open to traffic such portions of the Project and temporary roadways as may be agreed on by the Engineer.
- (b) **Delays:** Unless otherwise approved, two-way traffic shall be maintained at all times. The Contractor shall not stop traffic without permission.

If one-way traffic is approved, the Contractor shall provide flaggers to direct the traffic. When specified in the Construction Traffic Management Plan, pilot vehicles shall be furnished in accordance with the requirements of Section 512.

- (c) **Connections and Entrances:** When directed by the QA Manager, stabilization or surfacing material shall be applied to connections and entrances..

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

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

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

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

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

The proposed design of temporary structures shall be submitted to the Engineer prior to the beginning of construction in accordance with the requirements of the Contract Documents.

- (f) **Failure To Maintain Roadway or Structures:** If the Contractor fails to remedy unsatisfactory maintenance immediately after receipt of a notice by the Engineer, the Engineer may proceed with adequate forces, equipment, and material to maintain the Project. The cost of the maintenance, plus 25 percent for supervisory and administrative personnel, will be deducted from moneys due the Contractor for the Project.
- (g) **Haul Route:** The Contractor shall select haul routes between the Project and material source(s) that will minimize disturbance to the community. The Engineer may select alternate haul

routes, divide the hauling traffic over several routes, and impose other restrictions deemed necessary to minimize the impact of the hauling operation on local residents.

104.05--Removing and Disposing of Structures and Obstructions.

The Contractor shall remove and dispose of or store, fences, buildings, structures, or encumbrances within the construction limits. Materials so removed, including existing drains or pipe culverts, shall become the property of the Contractor.

- (a) **Signs:** The Contractor shall relocate street name signs, no parking signs, and other traffic signs within the construction limits that conflict with construction work. Signs that are not needed for the safe and orderly control of traffic during construction shall be removed and stored at a designated location within the Project limits. The removed signs shall be stored above ground in a manner that will preclude damage and shall be reinstalled in their permanent locations prior to final acceptance. If any of the removed signs are not to be reinstalled, the Contractor shall notify the Engineer at the time the signs have been properly stored. Such signs will be removed from the storage area by the Contractor. Any sign that is damaged or lost because of the fault of the Contractor shall be repaired or replaced at the Contractor's sole expense. Costs for removing, storing, protecting, and reinstalling such signs shall be included in the Fixed Price Amount of the Contract Price, and no additional compensation will be made.
- (b) **Mailboxes and Newspaper Boxes:** When removal of mailboxes and newspaper boxes is made necessary by construction operations, the Contractor shall place them in temporary locations so that access to them will not be impaired. Prior to Final Acceptance, boxes shall be placed in their permanent locations and left in as good condition as when found. Boxes or their supports that are damaged through negligence on the part of the Contractor shall be replaced at his expense. The cost of removing and resetting boxes shall be included in the Fixed Price Amount of the Contract Price.

104.06--Cleanup.

Removal from the Project of rubbish, scrap material, and debris caused by the Contractor's personnel or construction operations shall be a continuing process throughout the course of the work. The work site shall have a neat and orderly appearance at all times.

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

Within 30 days after Final Acceptance, the Contractor shall remove his equipment from the right of way and property adjacent to the Project that he does not own or control.

SECTION 105--CONTROL OF WORK

105.01--Authority of Engineer.

The Engineer has the authority to suspend the work wholly or in part if the Contractor fails to correct conditions that are unsafe for workers or the general public or carry out the provisions of the Contract. The Engineer may also suspend work for such periods as set forth in the Contract Documents.

105.02—Plans and Working Drawings.

The Contractor shall furnish As-built Working Drawings and maintain a set of approved Working Drawings for the Engineer as may be required. Working drawings shall not incorporate any changes from the requirements of the Contract unless the changes are specifically denoted, together with justification, and are approved in writing by the Engineer. Working Drawings and submittals shall be identified by a complete project identification. Items or component materials shall be identified by the specific contract item number and specification reference in the Contract.

105.03--Conformity With Plans and Specifications.

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

Permissible tolerances for the elevation of earthwork and thickness of the several courses of select material, subbases, and bases are specified in these specifications. If permissive tolerances are exceeded or if consistent deviations from the Plans or abrupt changes in grade occur, even though within the tolerances, the affected areas shall be reconstructed to conform to the specified tolerance and provide a smooth riding surface. When the plans require the finished surface to tie into any structural item whose elevation is fixed, the elevation of the finished surface shall coincide with the elevation of the structural item.

105.04--Not Used.**105.05--Coordination of Plans, Standard Drawings, Specifications, and Special Provisions.**

The 2001 Road and Bridge Standards and 2002 Road and Bridge Specifications are the standards to be used to administer Project Segments of both metric and imperial units and measurement. Both standards are in imperial units of measurement. Where projects are designed in metric units of measurement, the Contractor shall employ a hard conversion of metric dimensions and tolerances to all such references in these standards and as otherwise required throughout the Contract Documents. The Plans, Standard Drawings, these Specifications, Special Provisions, and supplementary documents are parts of the Contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of a discrepancy, the following will apply:

1. Calculated dimensions, unless obviously incorrect, will govern over scaled dimensions.
2. Plans will govern over these Specifications and the Standard Drawings.
3. Special Provisions will govern over these Specifications and Plans.
4. Special Provision Copied Notes will govern over Special Provisions.

105.06--Cooperation of Contractor.

The Contractor shall keep one complete set of Plans, Standard Drawings, Contract assemblies, and Specifications available on the Project at all times. The Contractor shall give the work the constant attention necessary to facilitate progress and shall cooperate with the Engineer and other contractors. If any portion of the Project is located within the limits of a municipality, military installation, or other federally owned

property, the Contractor shall cooperate with the appropriate officials and agents in the prosecution of the work to the same extent as with the Department.

105.07--Cooperation With Regard to Utilities.

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

The Contractor shall coordinate the Project construction with planned utility adjustments and take all necessary precautions to prevent disturbance of the utility facilities.

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

Existing, adjusted, or new utility facilities that are to remain within the right of way shall be properly protected by the Contractor to prevent disturbance or damage resulting from construction operations. If the Contractor desires the temporary or permanent adjustment of utilities for his own benefit, he shall conduct all negotiations with the utility owners and pay all costs in connection with the adjustment.

105.08--Cooperation Among Contractors.

Section 6.5.1 of the Design Build Contract shall govern over these provision.

The Department may at any time contract or approve concurrent contracts for performance of other work on, near, or within the same geographical area of the work specified in the Contract. Contractors shall not impede or limit access to such work by others.

When separate contracts are awarded within the limits of the Project Sections, Contractor shall not hinder the work being performed by other contractors. Contractors working in the same Project Section shall cooperate with each other. In case of dispute, the Engineer shall be the referee, and his decision shall be binding on all parties.

When contracts are awarded to separate contractors for concurrent construction in a common area, the contractors, in conference with the Engineer, shall establish a written joint schedule of operations based on the limitations of the individual contracts and the joining of the work of one contract with the others. The schedule shall set forth the approximate dates and sequences for the several items of work to be performed and shall ensure completion within the Contract Time Limit. The schedule shall be submitted to the Engineer for review and approval no later than 30 days after the award date of the later contract and prior to the first monthly progress estimate. The schedule shall be agreeable to, signed by, and binding on each contractor. The Engineer may allow modifications of the schedule when benefit to the contractors and the Department will result.

Any modification of the schedule shall be in writing, mutually agreed to and signed by the contractors, and shall be binding on the contractors in the same manner as the original agreement.

If the contractors fail to agree on a joint schedule of operations, they shall submit their individual schedules to the Engineer, who will prepare a schedule that will be binding on each contractor.

The joint schedule and any modification thereof shall become a part of each contract involved. The failure of any contractor to abide by the terms of the joint schedule shall be justification for declaring the contractor in default of his/her contract.

Each contractor shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the State from any and all damages and claims that may arise because of any inconvenience, delay, or loss experienced as a result of the presence and operations of other contractors working in or near the work covered by his/her contract. Each contractor shall also assume all responsibility for any of his work not completed because of the presence or operation of other contractors.

The Department will not be responsible for any inconvenience, delay, or loss experienced by the Contractor as a result of the failure of the Contractor to gain access to the work at the time contemplated, except as otherwise noted in the Contract. .

The Department will not assume any responsibility for acts, failures, or omissions of one contractor that delays the work of another except as provided herein.

105.09--Holidays.

Work that interferes with traffic shall not be performed on Sundays or the following holidays without the permission of the Engineer: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, day after Thanksgiving and Christmas Day.

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

105.10--Construction Stakes, Lines, and Grades.

The Contractor shall perform all construction and other surveying which the Contractor deems necessary to construct the Project in accordance with the Contract Documents. The cost for all surveying performed by the Contractor shall be included in the Fixed Price Amount of the Contract Price.

105.11--Not Used

105.12--Not Used

105.13--Removal of Unacceptable and Unauthorized Work.

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

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

If the Contractor fails to comply immediately with any order of the QA Manager made under the provisions of this section, the QA Manager will have the authority to cause unacceptable work to be removed and replaced and unauthorized work to be removed.

105.14--Size and Weight Limitations.

- (a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Contractor shall comply with legal size and weight limitations in the hauling or moving of

material and equipment on public roads open to traffic unless the hauling or moving is covered by a hauling permit.

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

105.15--Not Used

105.16—Submission and Disposition of Claims.

Early or prior knowledge by the Department of an existing or impending claim for damages could alter the plans, scheduling, or other action of the Department or result in mitigation or elimination of the effect of the act objected to by the Contractor. Therefore, a written statement describing the act of omission or commission by the Department or its agents that allegedly caused damage to the Contractor and the nature of the claimed damage shall be submitted to the Engineer in accordance with the provisions of the Contract. If such damage is deemed certain in the opinion of the Contractor to result from his acting on an order from the Engineer, he shall immediately take written exception to the order. Submission of a notice of claim as specified shall be mandatory. Failure to submit such notice shall be a conclusive waiver to such claim for damages by the Contractor in accordance with the terms of the Contract. An oral notice or statement will not be sufficient nor will a notice or statement after the event.

At the time of occurrence or prior to beginning the work, the Contractor shall furnish the Engineer an itemized list of materials, equipment, and labor for which additional compensation will be claimed. Only actual cost for materials, labor, and equipment will be considered. The Contractor shall afford the Engineer every facility for keeping an actual cost record of the work. The Contractor and the Engineer shall compare records and bring them into agreement at the end of each day. Failure on the part of the Contractor to afford the Engineer proper facilities for keeping a record of actual costs will constitute a waiver of a claim for such extra compensation except to the extent that it is substantiated by the Department's records. The filing of such notice by the Contractor and the keeping of cost records by the Engineer shall in no way establish the validity of a claim.

If the Contractor's claim contains data furnished by the Contractor that cannot be verified by the Department's records, the data shall be subject to a complete audit by the Department or its authorized representative if they are to be used as a basis for claim settlement.

Upon completion of the Contract, the Contractor may, within 60 days from the time of Final Acceptance, submit to the Department a written claim, an original and three legible copies, for the amount he deems he is entitled to under the Contract. The claim shall set forth the facts upon which the claim is based. The Contractor shall include all pertinent data and correspondence that may substantiate the claim. Only actual cost for materials, labor, and equipment will be considered. Within 90 days from the receipt of the claim, the Department will make an investigation and notify the Contractor by registered mail of its decision. However, by mutual agreement, the Department and Contractor may extend the 90-day period for another 30 days.

If the Contractor is dissatisfied with the decision, he shall notify the Commissioner in writing within 30 days from receipt of the Department's decision that he desires to appear before him, whether in person or through counsel, and present additional facts and arguments in support of his claim. The Commissioner will schedule and meet with the Contractor within 30 days after receiving the request. However, the Commissioner and Contractor, by mutual agreement, may schedule the meeting to be held after 30 days but before the 60th day from the receipt of the Contractor's written request. Within 45 days from the date of the meeting, the Commissioner will investigate the claim, including the additional facts presented, and notify the Contractor in writing of his decision. However, the Commissioner and Contractor, by mutual agreement, may extend the 45-day period for another 30 days. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the Contractor subject to the provisions of Section 2.1-127 of the Code of Virginia 1950 as amended. No suit or action shall be brought against the Department by the Contractor or any persons claiming under him or on behalf of a subcontractor of the Contractor or a person furnishing materials for the Contract to the Contractor, arising from the performance of the Contract by the Contractor, subcontractor or person furnishing materials to the Contractor, unless such claimant shall have exhausted the review process provided above. Further, no such action shall be brought unless the same shall be brought within twelve months from receipt of the decision of the Commissioner of the Department. In no event shall any delay therein on the part of the Contractor, subcontractor or person furnishing materials be construed as a reason for extending the time within which such suit or action must be brought. Any such case brought on behalf of a subcontractor or person furnishing materials to the Contractor shall only be brought for costs and expenses caused by the acts or omissions of the Department and shall not be brought for costs and expenses caused by the Contractor.

Any moneys that become payable as the result of claim settlement after payment of the final estimate will not be subject to payment of interest unless such payment is specified as a condition of the claim settlement.

SECTION 106--CONTROL OF MATERIAL

106.01--Source of Supply and Quality Requirements.

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

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

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

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

106.02--Not Used**106.03—Local Material Sources (Pits and Quarries).**

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

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

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

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

If the Contractor fails to provide necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, he shall take immediate action to abate erosion and siltation. The Engineer may cause the Contractor to cease all contributing operations and direct efforts toward corrective action or may perform the work with state forces or other means determined by the Engineer. If the work is not performed by the Contractor, the cost of performing the work, plus 25 percent for supervisory and administrative personnel, will be deducted from moneys due the Contractor. Costs for applying seed, fertilizer, lime, and mulch; restoration; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Fixed Price Amount of the Contract Price.

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

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

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

106.04--Disposal Areas.

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

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

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

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

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

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

If the Contractor fails to provide the necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, the Contractor shall take immediate action to abate erosion and siltation. The QA Manager shall cause the Contractor to cease all contributing operations and direct efforts toward corrective action. If the work is not performed by the Contractor, the Department may perform the work and in such event the Contractor shall reimburse the Department for the entire cost of performing the work, plus 25 percent for supervisory and administrative personnel.

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

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

106.05--Rights for and Use of Materials Found on Project.

The Contractor may use in the Project any materials found in the excavation that comply with the specifications. The Contractor shall replace at his own expense with other acceptable material the excavation material removed and used for embankments, backfills, approaches, or otherwise.

106.06--Not Used

106.07--Not Used

106.08--Not Used

106.09--Not Used

106.10--Not Used

106.11--Not Used.

SECTION 107--LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01--Laws To Be Observed

The Contractor shall keep fully informed of federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the work, the conduct of the work, or the execution of any documents in connection with the work. The Contractor shall observe and comply with such laws, ordinances, regulations, orders, or decrees and shall indemnify and hold harmless the State and its agents, officers, or employees against any claim for liability arising from or based on their violation, whether by himself, his agents, his employees, or subcontractors. The Contractor shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting the Contract or prosecution of the work thereunder. The Contractor shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any state or federal agency charged with enforcement of such law.

107.02--Not Used.

107.03--Not Used.

107.04--Restoration of Work Performed by Others.

The Department may construct or reconstruct any utility service in the highway or street or grant a permit for the same at any time. The Contractor shall be entitled to any damages to the extent provided by Article 19.

When authorized by the Engineer, the Contractor shall allow any person, firm, or corporation to make an opening in the highway within the limits of the Project upon presentation of a duly executed permit from the Department or any municipality for sections within its corporate limits..

107.05--Federal-Aid Provisions.

On the section(s) where the U.S. government pays all or any portion of the cost of the Project, the Contractor shall observe the federal laws and rules and regulations made pursuant to such laws. The work shall be subject to inspection by the appropriate federal agency.

Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party.

107.06--Sanitary Provisions.

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

107.07--Public Convenience and Safety.

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

107.08--Railway-Highway Provision.

The Contractor shall coordinate all railway work with the appropriate railway company. The Contractor is responsible for complying with all railway requirements, including fees, insurance, permits, and flagmen.

107.09--Construction Over or Adjacent to Navigable Waters.

The Contractor shall conduct the work on navigable waters so as to ensure the least possible obstruction to navigation and that the existing navigable depths will not be impaired except as may be allowed by a permit issued by the U.S. Coast Guard. The Contractor shall also provide and maintain temporary navigation lights and signals required by U.S. Coast Guard regulations for the protection of navigation. When the Contractor determines that the work has reached a point where such action may be taken, the channel(s) through the structure shall be promptly cleared of falsework, piling, or other obstructions placed therein or caused by the construction of the structure to the satisfaction of the Coast Guard.

107.10--Barricades and Warning Signs.

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

Highways closed to traffic shall be protected by barricades and other warning devices.. Barricades and warning devices shall be illuminated where required during darkness and low visibility. The Contractor shall erect warning devices in advance of a location on the Project where operations or obstructions may interfere with the use of the road by traffic and at all intermediate points where the new work crosses or coincides with an existing roadway. The Contractor shall maintain sign faces and reflective surfaces of warning devices in a clean and visible condition. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the requirements of the *MUTCD*. The reflective surface of signs and safety devices furnished by the Contractor shall be fabricated using encapsulated lens reflective sheeting conforming to the requirements of Section 701.

107.11--Use of Explosives.

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

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

107.12--Protecting and Restoring Property and Landscape.

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

When the Contractor finds it necessary to enter on private property, he shall secure from the owner or lessee written permission for such entry prior to moving thereon. An executed copy of this written permission shall be retained by the Contractor.

The Contractor shall be responsible for damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the method of executing the work or attributable to defective work or materials. This responsibility shall not be released until Final Acceptance of the Project.

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

107.13--Not Used

107.14--Environmental Stipulations.

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

promptly notified prior to the award of the Contract if the Contractor receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the work or precautions described herein except where provided for in the Contract or except where provision has been made for such payment in the Plans and Specifications.

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

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

The Contractor shall inspect erosion and siltation control devices and measures for deficiencies immediately after each 1" of daily rainfall and at least daily during prolonged rainfall. Deficiencies shall be corrected immediately. Failure on the part of the Contractor to maintain erosion and siltation control devices in a functioning condition shall result in the QA Manager notifying the Contractor in writing of specific deficiencies. If the Contractor fails to correct or take appropriate actions to remedy the specified deficiencies within 24 hours after receipt of such notification, the QA Manager shall require the Contractor to discontinue work in other areas and concentrate efforts toward rectifying the specified deficiencies. If the work is not performed by the Contractor, the Department may perform the work and in such event the Contractor shall reimburse the Department the entire cost of performing the work, plus 25 percent for supervisory and administrative personnel.

- (b) **Pollution:**

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

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

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

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

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

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

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

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Contractor shall design and provide temporary channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Contractor shall submit a temporary relocation design to the QA Manager for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Fixed Price Amount of the Contract Price.

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

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

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

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

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

3. **Noise:** Contractor shall comply with all local noise ordinances.

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

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

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

- (c) **Forests:** The Contractor shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by the Project as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Contractor upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Contractor shall negotiate with the proper forest official for compensation for such labor, tools, or equipment.
- (d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of work, the Contractor shall act immediately to suspend work at the site of the discovery and notify the proper state authority charged with the responsibility of investigating and evaluating such finds. The Contractor shall cooperate and, assist in protecting, mapping, and removing the findings. Findings shall become the property of the State unless they are located on federal lands, in which event they shall become the property of the U.S. government.

107.15--Opening Partial Sections of Projects to Traffic.

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

On any partial section of the work opened by order of the Engineer where the Contract does not provide for traffic to be carried through the work and the Contractor has not been dilatory in prosecuting the work, the Contractor will not be required to assume any expense entailed in maintaining the road for traffic. Such

expense will be borne by the Department or will be compensated for in accordance with the requirements of the Contract. Repair of slides and repair of damage attributable to traffic will be compensated for in accordance with the requirements of the Contract. The cost of all other repairs shall be borne by the Contractor. Slides shall be removed by the Contractor in accordance with the terms of the Contract and the Warranty.

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

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

107.16--Contractor's Responsibility for Work.

Until Final Acceptance of each section of the work by the Engineer in accordance with the requirements of the Contract, the Contractor shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other cause. The Contractor shall rebuild, repair, restore, and make good damage to any portion of the work occasioned by any of the foregoing causes before Final Acceptance and shall bear the expense thereof.

In case of suspension of work, 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 erosion control and drainage, and erect any necessary temporary structures, signs, or other facilities at no additional cost to the Department. During the suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect new tree growth and other important vegetation against damage.

107.17--Contractor's Responsibility for Utility Property and Services.

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

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

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Contractor's work operations require the disconnection of "in service" fire hydrants, the Contractor shall notify the locality's fire department or communication center at least 24 hours prior to disconnection. In addition, the Contractor shall notify the locality's fire department or

communications center no later than 24 hours after reconnection of such hydrants. The Contractor shall be responsible for any damage to utilities that are attributable to his neglect or methods of performing the work.

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

107.18--Not Used.

107.19--Personal Liability of Public Officials.

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

107.20--No Waiver of Legal Rights.

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

SECTION 108--PROSECUTION AND PROGRESS OF WORK

108.01--Not Used.

108.02--Not Used.

108.03--Prosecution of Work.

Work shall be conducted in such a manner and with sufficient materials, equipment, tools, and labor as are necessary to ensure its completion in accordance with the Plans and these Specifications within the time limit specified in the Contract and these Specifications. Once the Contractor has begun work, it shall be prosecuted continuously and to the fullest extent possible except for interruptions caused by weather or delays authorized or ordered by the Engineer. If approval is given to discontinue the work temporarily, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

108.04--Not Used.

108.05--Limitation of Operations.

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

108.06--Gratuities.

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

The Contractor shall not employ any personnel of the Department for any services without the prior written consent of the Engineer.

If the Engineer determines that the Contractor or the Contractor's employees, representatives, or agents of any person acting in his behalf have violated this provision, the Contractor and/or its members may, at the discretion of the Engineer, be disqualified from bidding on future contracts with the Department. Any implicated employees, agents, or representatives of the Contractor and/or its members may be prohibited from working on any contract awarded by the Department. The decision of the Engineer shall be binding on all parties. A Contractor so disqualified may be reinstated only by petition to and approval by the Engineer.

108.07--Character of Workers .

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

108.08--Not Used.**108.09--Not Used.****108.10--Not Used.****108.11--Not Used.****108.12--Not Used.****108.13--Not Used.****108.14--Not Used****108.15--Not Used.**

SECTION 109--MEASUREMENT AND PAYMENT**109.01--Measurement of Quantities.*****The following section applies only with respect to unit-priced Work***

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

Longitudinal measurements for surface computations will be made horizontally, and transverse measurements will be the surface measure shown on the Plans. Individual utility encroachment areas of 9 square feet or less will not be deducted from surface areas measured for payment.

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

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

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

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

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

The Contractor shall have the weighperson perform the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) **Specific Items:**

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

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

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

where V = volume of asphalt to be corrected; V^1 = volume of asphalt at 60° F; K = correction factor (coefficient of expansion); and T = temperature in degrees Fahrenheit of asphalt to be corrected.

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

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

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

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

4. **Timber:** Timber will be measured in cubic yards actually incorporated in the structure. Measurement will be based on nominal widths and thickness and the extreme length of each piece.
5. **Equipment Rental:** Equipment rental will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the Project or source of supply and the Project except when another method of measurement is specified.

109.02--Not Used

109.03--Not Used

109.04--Not Used

109.05--Not Used

109.06--Not Used

109.07--Not Used

109.08--Not Used

109.09--Not Used

SECTION 110--MISCELLANEOUS PROVISIONS

110.01--Not Used**110.02--Labor and Wages.**

The Contractor shall comply with the provisions and requirements of the State's workers' compensation law and public statutes that regulate hours of employment on public work. On all Federally funded portions of the Project, the Contractor shall comply with all applicable Federal requirements. Job orders placed with a State Employment Service shall indicate that employment preference will be given to veterans referred for employment. Advertisements in newspapers or other publications for Project employees shall include the notation "Employment Preference to Veterans."

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

110.03--Equal Employment Opportunity.

Refer to Appendix 7 to the Design Build Contract for Equal Employment Opportunity provisions.

110.04--Not Used**110.05--Construction Safety and Health Standards.**

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

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

110.06--Bulletin Boards and Posting Official Notices.

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

110.07--Certification of Nonsegregated Facilities.

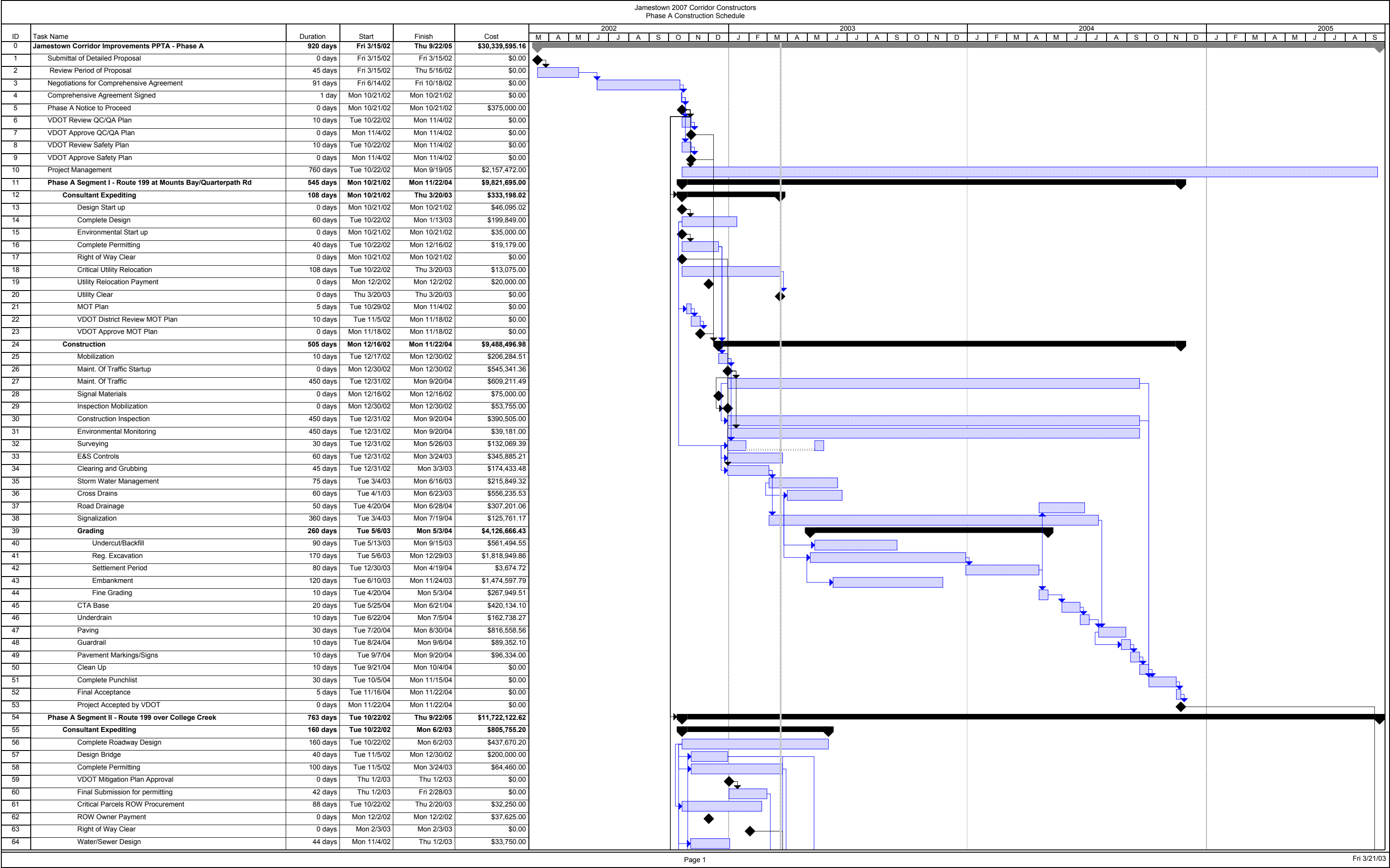
The Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities for highway construction contracts exceeding \$10,000 that are not exempt from the provisions of the equal opportunity clause,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

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

1. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause. This certification provides that the subcontractor or material supplier does not maintain, or provide for his employees, facilities that are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

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

APPENDIX 10
CPM/PAYMENT SCHEDULE



Jamestown 2007 Corridor Constructor Phase A Construction Schedule

Jamestown 2007 Corridor Constructors Phase B - D Construction Schedule																			
ID	Task Name	Duration	Start	Finish	Cost	2004													
						M	A	M	J	J	A	S	O	N	D	J	F		
0	Jamestown Corridor Improvements PPTA Phases B - D	826 days	Fri 11/1/02	Fri 12/30/05	\$1,467,962.00														
1	Phase B - Acquire Vermillion	60 days	Fri 11/1/02	Thu 1/23/03	\$450,000.00														
2	Notice to Proceed	0 days	Fri 11/1/02	Fri 11/1/02	\$0.00														
3	Acquire Vermillion Property	60 days	Fri 11/1/02	Thu 1/23/03	\$450,000.00														
4	Property Acquired	0 days	Thu 1/23/03	Thu 1/23/03	\$0.00														
5	Phase C - National Park Service	265 days	Mon 12/16/02	Fri 12/19/03	\$469,142.00														
6	Notice to Proceed	0 days	Mon 12/16/02	Mon 12/16/02	\$0.00														
7	Grading in Phase A Segment IV Complete	0 days	Mon 9/1/03	Mon 9/1/03	\$0.00														
8	Construct Alignment "B"	80 days	Mon 9/1/03	Fri 12/19/03	\$469,142.00														
9	Alignment complete	0 days	Fri 12/19/03	Fri 12/19/03	\$0.00														
10	Phase D - Landscaping	644 days	Tue 7/15/03	Fri 12/30/05	\$548,820.00														
11	Notice to Proceed	0 days	Tue 7/15/03	Tue 7/15/03	\$0.00														
12	Landscaping in Section IV	66 days	Wed 10/1/03	Wed 12/31/03	\$148,820.00														
13	Landscaping in Section I and III	151 days	Fri 10/1/04	Fri 4/29/05	\$300,000.00														
14	Landscaping in Section II	65 days	Mon 10/3/05	Fri 12/30/05	\$100,000.00														
Page 3																			
Fri 3/21/03																			

APPENDIX 11

MODIFICATIONS TO DEPARTMENT'S RIGHT OF WAY MANUAL OF INSTRUCTIONS

APPENDIX 11 OF THE DESIGN-BUILD CONTRACT

Modifications to the Department's Right of Way Manual of Instructions **(Volume I)**

The following sections of the VDOT Right of Way and Utilities Division Manual of Instructions (Volume I) shall apply to the Contractor in performance of its duties under Article 6 of the Design-Build Contract for the Jamestown Corridor Improvements Project.

Within the text of the sections listed below, the word "Contractor, acting as an agent for VDOT" shall be substituted wherever references are made to "VDOT", "the Department", "Right of Way and Utilities Division", "District Offices", or other such personnel, departments or divisions of VDOT said to be performing activities, reviewing documents, and receiving information relative to the ROW acquisition process. This word substitution shall not apply whenever text describes the power to exercise eminent domain, as such power remains solely with VDOT.

CHAPTER 1: INTRODUCTION

Section 1 –	Purpose and Objectives	Dated July 31, 2001
Section 4 –	Professional Conduct & Public Relations (Limited to the following sections only)	Dated July 1, 1999
	1.4.1 – General	
	1.4.2 – Work Environment	
	1.4.5 – Code of Ethics	

CHAPTER 2: PRELIMINARY RIGHT OF WAY STAGE

Section 1 –	General	Dated May, 2001
Section 2 –	Right of Way Plans & Estimates	Dated June 8, 2001
Section 3 –	Right of Way Estimates & Field Studies	Dated July 23, 2001
Section 4 –	Field Inspection Plans	Dated Feb. 22, 2001
Section 5 –	Frontage Road Studies	Dated July 1, 1999
Section 6 –	Public Hearings and Meetings	Dated July 1, 1991

CHAPTER 3: LEGAL CONSIDERATIONS IN RIGHT OF WAY AND UTILITIES ACQUISITION

Section 3 –	Preliminary Title Work (Limited to the following subsections only)	Dated Feb. 22, 2001
	3.3.1 – General	
	3.3.2 – Title Reports	
	3.3.3 – Current Owner Rundowns	
	3.3.4 – Timing of Preliminary Title Work	
	3.3.5 – Responsibility for Title Work	

Section 4 –	Special Ownerships	Dated Feb. 22, 2001
Section 5 –	Closings	Dated Feb. 22, 2001

CHAPTER 4: APPRAISAL

Section 1 –	Appraisal Administration (Limited to the following subsection only) 4.1.14 – Fee Appraiser Pre-Qualification, Part A – Appraiser's Application	Dated March 9, 2001
Section 2 –	Pre-negotiations Appraisal Reports	Dated March 1, 2001
Section 3 –	The Sales Brochure	Dated March 1, 2001
Section 4 –	Elements of the Appraisal Report	Dated March 1, 2001
Section 5 –	Special Appraisal Topics	Dated March 1, 2001

CHAPTER 5: ACQUISITION

Section 1 –	Introduction	Dated March 1, 2001
Section 2 –	Preparation for Negotiations	Dated July 31, 2001
Section 3 –	Initial Negotiations	Dated March 1, 2000
Section 4 –	Continuing Negotiations and Acceptance	Dated March 1, 2000
Section 5 –	Donations, Proffers & Dedications	Dated March 1, 2000
Section 6 –	Special Clients	Dated March 1, 2000
Section 7 –	Easements	Dated March 1, 2000
Section 9 –	Special Property Elements	Dated March 1, 2000
Section 10 –	Acquisition of Residues	Dated July 31, 2001
Section 12 –	Administrative Settlements, (Limited to the following subsections only) 5.12.1 – General 5.12.2 – Justification for Administrative Settlements 5.12.4 – Agreements after Certificate	Dated March 9, 2001
Section 13 –	Industrial & Recreational, Historical Access Roads	Dated March 1, 2000
Attachment 1 –	Option Clauses	Dated July 1, 1999
Attachment 2A –	Making a Closed Survey and Preparing the Plats	Dated July 1, 1999
Attachment 2B –	Metes and Bounds Description Samples	Dated July 1, 1999
Attachment 3 –	Special Negotiations Acquisition Procedures	Dated March 1, 2000

**CHAPTER 6: RULES AND REGULATIONS GOVERNING
RELOCATION ASSISTANCE**

Dated NOV. 21, 2001

Section 1 –	General
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Section 2 –	Planning and Public Information
Section 3 –	Written Notices
Section 4 –	Relocation Advisory Services
Section 5 –	Moving Costs – Residential
Section 6 –	Moving Costs – Business
Section 7 –	General Provision for Replacement Housing Payments
Section 8 –	Replacement Housing Payments for Owner-Occupants for 180 Days or More
Section 9 –	Replacement Housing Payments for Tenants, and Owners Who Choose to Rent
Section 10 –	Mobile Homes
Section 11 –	Last Resort Housing
Section 12 –	Records, Reports and Audits

NOTE: Chapter 6 was revised November 21, 2001, and was totally reformatted. The references used below are from an older version of the manual and do not correspond to the new version. The above represents all sections of the revised Relocation portion of the manual.

APPENDIX A: RIGHT OF WAY DEFINITIONS

Dated July 1, 1999

RIGHT OF WAY AND UTILITIES MANAGEMENT SYSTEM (RUMS)

All parcels are to be set up and tracked in the Right of Way and Utilities Management System (RUMS) I accordance with Department Policy and Procedure (for which training shall be provided by Department on request of Contractor). Contractor shall have computers and modems equipped to meet or exceed the Virginia Department of Transportation's requirements to access and utilize RUMS.

The following modifications to the VDOT Right of Way and Utilities Division Manual of Instructions - Volume II (hereafter, "the Manual") shall apply to the Contractor in performance of its duties under Article 7 of the Design-Build Contract for the Jamestown 2007 Corridor Improvements.

Contractor will utilize the Manual as a guide, and reserves the right to modify or deviate from the Manual in its dealings with any utility. However, the final product will conform to the utility specifications and VDOT standards.

Within the text of Manual, the word "Contractor, acting as an agent for VDOT" shall be substituted wherever references are made to "VDOT", "the Department", "Right of Way and Utilities Division", "District Offices", or other such personnel, departments or divisions of VDOT said to be performing activities, reviewing documents, and receiving information relative to the Utility Relocation process.

APPENDIX 12
ESCROW AGREEMENT – RETAINAGE

Order No.:

Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the Securities themselves, and the securities have the date of the repurchase agreement as a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third part, and segregated from other securities owned by the Bank.

- (7) No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.

- VI. The Contractor may from time to time withdraw the whole or any portion of the escrowed funds by depositing with the Bank approved securities in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.

Upon receipt of a direction signed by the Commonwealth Transportation Commissioner, Deputy Commonwealth Transportation Commissioner or the Chief of Operations, the Bank shall pay the principle of the fund, or any specified amount thereof, to the Treasurer of Virginia for the account of the Department of Transportation.

- VII. For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same by the Contractor.
- VIII. The net income earned and received upon the principle of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs or administration such income shall be deemed a part of the principle of the fund.
- IX. The Surety undertakes no obligations hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written

By: _____
Chief of Operations or Contract Engineer

Contractor

By: _____
Contractor

By: _____
Officer, Partner or Owner (Seal)

By: _____
Officer, Partner or Owner (Seal)

ATTEST:

Bank Officer

Bank

By: _____
Vice-President

Surety Company

Surety Company

By: _____
Attorney-in-Fact (Seal)

By: _____
Attorney-in-Fact (Seal)

Address

Address

APPENDIX 13
SPECIAL PROVISION FOR DISPUTE RESOLUTION

APPENDIX 13 OF THE DESIGN-BUILD CONTRACT

Special Provision for Dispute Resolution

I. PURPOSE

In accordance with the terms and conditions set forth herein and in Article 27 of the Contract, a Dispute Review Board shall be established to assist in the resolution of Disputes arising out of the work on this Project. The Board shall assist in and facilitate the timely and equitable resolution of Disputes between the Department and the Contractor in an effort to avoid construction delay, the formal claims process and litigation. The Board shall fairly and impartially consider Disputes referred to it, and shall provide non-binding, written recommendations to the Department and the Contractor to assist in the resolution of these Disputes. It is intended that the Department and the Contractor resolve potential Disputes as quickly as possible at the Project level to maintain cooperative working relationships, minimize costs, avoid delays, claims and litigation.

II. DEFINITIONS

Capitalized terms used herein shall have the definitions provided in Appendix 1 to the Contract, except as specified in this Paragraph II below:

Dispute Review Board Hearing or Board Hearing - A meeting called for the specific purpose of hearing a Dispute.

Party - For the purposes of this Appendix 13, the term shall generally refer to the Department, the Contractor and the three members of the Dispute Review Board.

III. CONTINUANCE OF WORK DURING DISPUTE

See Section 27.2 of the Contract.

IV. BOARD MEMBERSHIP

Board members shall be very experienced with the type(s) of design-build construction involved in the Project, the interpretation of contract documents, plans, specifications, and contract negotiations. The Contractor and the Department shall select Board members.

The Dispute Review Board shall consist of one member nominated by the Department, and approved by the Contractor; one member nominated by the Contractor, and approved by the Department; and a third member nominated by the first two members, and approved by the Contractor and the Department. At least one member of the Board shall have previous alternative dispute resolution experience.

The Department and the Contractor shall complete the nomination and the approval process and negotiate a working agreement with their prospective members within three (3) weeks after one of the Parties serves written notice upon the other of its intention to seek Board resolution of a dispute. This working agreement shall be separate but in accordance the terms and conditions of the Dispute Review Board Agreement and this Appendix 13. Once executed, copies shall be provided to all Parties. Immediately after approval, the Department and the Contractor shall notify their respective members to begin selection of the third member. The third member shall be selected and approved within two (2) weeks after the first two members are notified to proceed with their selection. The first two members shall ensure that the third member meets the criteria listed herein. Once all members of the Board are selected, the Dispute Review Board shall execute the Dispute Review Board Agreement within one (1) week after approval of the third Board member. Within one week following execution by the Board of the Dispute Review Board Agreement, the Board shall meet to formulate its rules of operation, the selection of its chairperson and shall establish a schedule to proceed with preparation for, and hearing of, the dispute.

The Board members shall be neutral, show no partiality to either the Contractor or the Department, or have any conflict of interest. To that end, no member shall have the following:

1. An ownership interest in any entity involved in the performance of the Contract or a financial interest in the Contract within a period of two (2) years prior to the Agreement Date, except for payment rendered for services on the Dispute Review Board;
2. Previous employment by, or financial ties to the Department, the Contractor Party, or any Subcontractor within a period of two (2) years prior to the award date of the construction contract;
3. A close professional, personal or familial relationship with any key entity involved in the Contract which, in the judgment of either Party, could suggest favoritism or partiality;
4. Prior involvement in the Project of a nature which could compromise that member's ability to participate impartially in the Board's activities;
5. Employment with or any contractual relationship with the Department, any Contractor Party, or Subcontractor;
6. A discussion or an agreement with the Department, any Contractor Party or Subcontractor regarding employment or any other type of contractual relationship to occur after the Contract is completed;

As a part of the nomination and approval process, the first two prospective Board members shall submit complete disclosure statements to the Department and the Contractor. Each statement shall include a resume of experience, together with a declaration of all past, present, and anticipated or planned future relationships to the Project and with all Parties and entities involved in the Project. Disclosure of any recent, close, professional, personal and familial relationships with all key members of all Parties to the design or construction contract shall be included. The third Board member shall supply such a statement to the first two Board members and to the Department and the Contractor before his/her appointment is final.

If the Parties impanel the Board to hear a dispute, the same Board shall hear any subsequent disputes between the Parties. However, services of a Board member may be terminated for any reason at any

time during which no dispute is pending before the Board; provided written notice is given no less than thirty (30) calendar days prior to the effective date of termination. No termination of an existing Board member shall be permitted after service by one Party of written notice of its intention to submit a dispute to the Board and prior to full discharge by the Board of its duties with respect to such dispute unless such termination is at the request of the Board or a Board member and good reason exists for such termination.

Conditions for termination where permitted above are:

1. The Department may terminate the services of its appointee
2. The Contractor may terminate the services of its appointee
3. The third member's services may only be terminated by the consent of the Department and the Contractor
4. The personal resignation of the Board member

If it becomes necessary to replace a member of the Board, the replacement member shall be nominated and approved in the same manner as the original member. Once the need for a replacement member is determined, the nomination and approval procedures shall begin immediately and shall be completed within thirty (30) calendar days, or as mutually agreed upon by the Parties, from the notice of termination. The Dispute Review Board Agreement will be amended to reflect the change.

V. RULES OF OPERATION FOR BOARD MEMBERS

The Board shall formulate its own rules and/or procedures of operation consistent with the purposes of this special provision. The rules and/or procedures of operation shall be flexible to allow for changing situations. The Board shall furnish a copy of its rules of operation to the Department and the Contractor.

VI. PROCEDURES FOR SCHEDULING AND CONDUCTING A DISPUTE RESOLUTION BOARD HEARING

Either the Department or the Contractor may refer a matter believed to be a Dispute to the Board at any time. The request for a Board Hearing shall be submitted in writing to the other Party. This request for a Hearing shall state clearly and in full detail the specific issue(s) of the Dispute to be considered by the Board. . After conferring with each Party, the Board chairperson shall establish a submittal schedule and date for the Hearing so that adequate time is allowed for the other Party to respond to the requesting Party's statement and for the Board members to review both statements and any supporting documentation prior to the Hearing.

Statements and documentation shall conform to the following requirements:

Each Party shall prepare concise written position statements, with page number references for any supporting documentation;

A single, complete, mutually agreed upon compilation of supporting documentation with pages consecutively numbered. The Parties shall cooperate in composing this documentation and submitting copies for each Board member in sufficient time for review prior to the Hearing;

The Party requesting the Hearing shall submit their position paper first, followed by the other Party, with copies provided to each Board member and the other Party;

Normally, Hearings will be conducted at the Project Site by individuals directly involved with the performance of the work. However, any location that can provide all the required facilities and access to necessary documentation may be used. During the Hearing, the party requesting the Hearing shall present its position first, followed by the other party. Attorneys may attend the Hearing and advise their clients but may not participate unless the Parties agree otherwise in writing. Each Party will be permitted successive rebuttals until all aspects are fully covered. The Board members and the Parties may ask questions, request clarification, or ask for additional data. In difficult or complex cases additional Hearings may be necessary to facilitate full consideration and understanding of all the information and documentation presented. Both the Department and the Contractor shall be given reasonable time to present the information and documentation regarding the issue(s) before the Board.

Generally, a formal transcript will not be prepared. Each Board member will take notes during the Hearing.

During the Hearing no Board member shall express any opinion concerning the merits of any aspect of the Dispute.

VII. BOARD DELIBERATIONS AND RECOMMENDATIONS

After the Hearing is concluded, the Board will confer to formulate its recommendations. All deliberations of the Board will be conducted in private and with individual views kept strictly confidential. The Board's deliberations and recommendations, together with any explanations for its reasoning, shall not be disclosed to either Party except by final written recommendation.

The Board shall make every effort to reach a unanimous recommendation. If this is not possible, the dissenting member may prepare a minority report.

The Board's recommendation for resolution of the Dispute will be provided in writing to the Department and the Contractor within one (1) week of the completion of the Hearing. In difficult or complex cases or in consideration of the Board's schedule, this time may be extended by the mutual agreement of the Board and both Parties.

Within thirty (30) calendar days of receiving the Board's recommendation, each Party shall respond to the other Party in writing stating its position on the Board's recommendation. If the Board's recommendation is accepted, the Department will move to promptly process the resolution as mutually agreed upon by the next monthly progress estimate or within the time frame that is stated in the work/change order. Failure to timely respond to the Board's recommendation shall constitute a rejection of the recommendation.

In the event the Board's recommendation is rejected, at the request of either Party, the Board may meet with both Parties to provide additional clarification of its recommendations. This Meeting shall not be used to appeal the Board's recommendation or to introduce additional information or

documentation unless such information or documentation is newly revealed and directly pertinent to the issue(s) in question. If new information has become available, either Party may request that information be considered before the Board makes its final recommendation. The recommendation of the Board is not binding upon either Party. The recommendation shall not be admissible in any subsequent administrative or judicial proceeding or discovery related thereto between the Parties and any other entity, regardless of tier, involved in the prosecution of the work.

The Parties agree not to subpoena or otherwise seek discovery from Board members, including their notes, transcripts of Board Meetings or Hearings, any other documents originated by the Board or presented by either Party, and not otherwise part of the normal contract documentation, for any subsequent administrative or judicial proceeding between the Parties or any other entity, regardless of tier, involved in the prosecution of the work.

VIII. PAYMENT FOR BOARD SERVICES

The Department and the Contractor shall pay the cost for Board members services and expenses in accordance with Section VI Payment for Services in the Dispute Review Agreement.

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
**DISPUTE RESOLUTION BOARD
AGREEMENT¹**

_____, 2002²

PROJECT NAME: Jamestown Corridor Improvements

PROJECT LOCATION: James City County, Virginia

I. PARTIES

The parties to this Agreement are:

A. The Virginia Department of Transportation:

1. Authorized Representative: _____

B. Contractor:

1. Authorized Representative: _____

C. Dispute Review Board Members:

1. _____

2. _____

3. _____

II. PURPOSE

The Department and the Contractor are now engaged in the construction of the Jamestown Corridor Improvements.

The construction contract for this Project provides for the establishment and operation of a Dispute Review Board to assist in resolving Disputes as defined in the Contract. The objective of the Board is to consider fairly and impartially the Disputes that are referred to it and to provide written non-binding recommendation(s) to the Department and the Contractor to resolve these Disputes.

III. SCOPE OF DUTIES

Duties of Board members and the other parties to this Agreement shall be as stipulated in the Appendix 13 to the Design-Build Contract that is incorporated by reference herein. Other duties that may prove necessary to facilitate a recommendation from the Board shall be mutually decided and agreed upon by all signatories to this Agreement.

IV. AREAS OF RESPONSIBILITIES

¹ Modified for purposes of the Contract.

² To be executed after Agreement Date.

A. Board Responsibilities

The Board is organized to facilitate the resolution of Disputes between the Department and the Contractor arising under the terms and conditions of the Contract. Board members shall not assign or subcontract any of the duties or services of this Agreement.

The Board may encourage the parties involved in the Dispute to settle issues at the job level prior to arranging for a Hearing before the Board.

Except for the duties and services required by this Agreement and Appendix 13 to the Contract, the Board members shall refrain from giving any advice to either Party concerning the conduct of the work, the merits of a Dispute, the resolution of other non-Dispute problems or other Project-related issues.

B. Contractor Responsibilities

Except for its participation in the Board's activities as provided for in the Contract, Appendix 13 to the Contract and this Agreement, the Contractor shall not solicit advice or consultation from the Board or its members on matters dealing with the prosecution, conduct, or resolution of Disputes or other Project-related issues.

C. Department Responsibilities

Except for its participation in the Board's activities as provided for in the Contract, Appendix 13 and this Agreement, the Department shall not solicit advice or consultation from the Board or its members on matters dealing with the prosecution, conduct, or resolution of Disputes or other Project-related issues.

The Department will, in cooperation with the Contractor, coordinate the operations of the Board. The Department will arrange for or provide conference facilities at or near the Project Site and provide secretarial and copying services.

V. LEGAL RELATIONSHIPS

The Parties acknowledge and agree that the Dispute Review Board members are serving in a non-binding, advisory capacity. Each Board member, in the performance of his or her duties on the Board, is acting independently and is not an employee or agent of either the Department or the Contractor.

By signing this Agreement all signatories agree to the respective duties and obligations stated herein.

The Parties agree not to subpoena or otherwise seek discovery from Board members, including their notes, transcripts of Board Meetings or Hearings, any other documents originated by the Board or presented by either Party, and not otherwise part of the normal contract documentation, for any subsequent administrative or judicial proceeding between the Parties or any other entity, regardless of tier, involved in the prosecution of the work.

VI. PAYMENT FOR SERVICES

The Department and the Contractor shall share equally (50\50 split) in the cost for Board members services and expenses for Board Hearings. Any amounts due and owing by Contractor and not paid may be paid by Department in its sole discretion and offset against amounts due Contractor by Department under the Contract.

Payment for services of the Department appointed and Contractor appointed members of the Board shall be at the hourly or daily rates agreed to between the Department and the Contractor and their respectively appointed Board member. Payment for services rendered by the third member of the Board shall be made at the rates agreed to among the Department, the Contractor, and the third member. The Department, the Contractor, and the third member shall mutually agree upon changes to the billing rates of the third member.

Changes in the billing rates are subject to approval between the Department and the Contractor and the respective and mutually appointed members.

The first two members appointed to the Board shall be reimbursed for the time and expense associated in the selection of the third member.

Direct non-fee expenses shall be reimbursed at the actual cost to the Board member, unless such costs are covered by the State per diem charges, in which case the State guidelines shall govern. Non-fee expenses may include, but are not limited to, automobile mileage or rental, parking fees, travel expense from the member's point of departure to the initial point of arrival, food and lodging, printing, long distance telephone calls, postage and courier delivery. Billing for these expenses shall include a detailed listing of items or charges supported by copies of the original bills, receipts, invoices, or expense accounts.

If the Board requests special services such as accounting or data research, both the Contractor and the Department must agree prior to the service being solicited and the cost will be divided as mutually agreed upon.

For Board Hearings, the Board shall submit an invoice of its fees and associated costs within 10 days after any scheduled Hearing to the Contractor for processing with copies to the Department. The Contractor shall submit fifty (50) percent of such amounts on his monthly progress estimate (referenced as DRB Hearing #1, DRB Hearing #2, etc. as appropriate) for payment. The value of the services submitted for payment shall be based on the established billing rate for the number of hours/days rendered for each Board member together with any direct, non-fee expenses. The Contractor shall make payment to the Dispute Review Board within 60 days from its receipt of the invoices. Payment received shall constitute full compensation for services performed and for all materials, supplies, services, and incidentals required completing the services.

Each Board member shall keep, available for inspection by representatives of the Department and the Contractor for a period of three years after final payment of the construction contract the cost records and accounts pertaining to this Agreement.

VIII. DATE OF AGREEMENT

This Agreement is effective as of _____
And is signed by the Party or its duly authorized representative:

1. Board Member (Department Appointed) _____
2. Board Member (Contractor Appointed) _____
3. Board Member (Board Appointed) _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: Department Representative: _____

Title: _____

CONTRACTOR

By: Contractor Representative: _____

Title: _____

APPENDIX 14
ESCROW AGREEMENT – PRICING DOCUMENTS

ESCROW AGREEMENT

Jamestown Corridor Improvements Project

THIS ESCROW AGREEMENT (“Agreement”) is made and entered into as of _____, 20__, by and among Virginia Department of Transportation (“Department”), Jamestown 2007 Corridor Constructors, LLC (“Contractor”) and _____ (“Escrow Agent”) with reference to the following facts:

A. Pursuant to the Design-Build Contract between Department and Contractor (the “Design-Build Contract”) for the Jamestown Corridor Improvements (“Project”), and the Comprehensive Agreement to Design and Construct the Jamestown Corridor Improvements Project (the “Comprehensive Agreement”) between Department and Contractor, Contractor is required to provide all relevant documents used to formulate its Fixed Price Amount for the Project.

B. As such, Contractor is submitting one copy of all information regarding the calculation of the Fixed Price Amount as required under Section 8 of the Design-Build Contract in sealed and labeled boxes (“Pricing Documents”); and

C. Department and Contractor wish to employ the services of Escrow Agent to act as the escrow holder with regard to the Pricing Documents for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Deposit. Contractor hereby deposits with Escrow Agent the Pricing Documents. Escrow Agent hereby acknowledges receipt of such Pricing Documents, and such Pricing Documents shall be held in escrow under the terms and conditions of this Agreement.

2. Holding of Pricing Documents. Escrow Agent shall hold the Pricing Documents in escrow in a designated area on the premises of Escrow Agent located at _____ on a confidential basis. The Pricing Documents shall be stored in an area which is locked at all times. No third party, including the employees of the Escrow Agent, shall be allowed access to any of the Pricing Documents, provided that employees of Escrow Agent shall have access to the locked area for other purposes.

3. Availability of Pricing Documents. Escrow Agent shall make the Pricing Documents available as follows:

Upon ten (10) Business Days written notice to Escrow Agent signed by both parties or upon receipt of a decision by the Dispute Resolution Board that the Pricing Documents shall be made available to the Parties, Pricing Documents will be made available during business hours for joint review by Department and Contractor in connection with the requirements of the Design-Build Contract. Department shall be entitled to make and retain copies of Pricing Documents in

accordance with the terms of the Design-Build Contract provided that Department, as applicable, has executed and delivered to Contractor a confidentiality agreement in a form as provided in the Design-Build Contract.

4. Rights of Escrow Agent. If conflicting demands are made or notices served upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

- (a) rely upon a written direction of the Dispute Resolution Board;
- (b) withhold and stop all further proceedings in, and performance of this escrow;
- (c) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or
- (d) deliver all Pricing Documents with seals intact to another location to be selected by the parties within 30 Days after Escrow Agent delivers to Department notice thereof.

5. Release. The Escrow Agent shall release the Pricing Documents and any other documents contained in the escrow upon receipt of written notice and certification for each of Department and Contractor that (i) 180 Days have elapsed from the last acceptance date of the Project or any earlier termination of the Design-Build Contract, (ii) all disputes regarding the Design-Build Contract have been resolved and (iii) final payment under the Design-Build Contract has been made and accepted. Contractor, at that time, will provide instruction to the Escrow Agent as to destruction and return requirements with respect to the Pricing Documents or other documentation held in the escrow.

6. Fees. Department shall be responsible for any escrow fees until the release as specified above. If Contractor fails to deliver instructions under Section 6, Contractor shall pay any fees accruing thereafter.

7. Notices. All notices which may be or are required to be given or made by either party hereto to the other shall be in writing. Such notices shall be either personally delivered or sent by registered mail, postage prepaid, to:

If to Contractor:

If to Department:

If to Escrow Agent:

 Attention: _____

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

8. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

9. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

10. Governing Law. The laws of the Commonwealth of Virginia shall govern this Agreement.

11. Amendment. This Agreement may not be amended or modified except by a written amendment signed by each party.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

JAMESTOWN 2007 CORRIDOR CONSTRUCTORS,
 LLC

By: _____
 Name: _____
 Title: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
 Name: _____
 Title: _____

The escrow provided for in this Agreement is hereby
accepted, only to the extent of the escrow provisions,
By Escrow Agent.

By: _____

Title: _____

**Jamestown 2007 Corridor Improvements
Plan of Finance**

Cash Flows

			Fiscal Year Draw Requirement	Phase A			Total Phase A	Phase B 4. Jamestown- Yorktown Foundation	Phase C 5. National Park Service	Phase D		Total Funds Available
Month	Date	Total Monthly Draws		1. VDOT Allocations	2. Revenue Sharing James City County	3. Revenue Sharing VDOT - State Match				6. VDOT Allocations	7. James City County	
1	11/1/2002	\$ 2,048,980	12,471,558	\$ 1,391,480	\$ 250,000	\$ 250,000	\$ 1,891,480	\$ 157,500				\$ 2,048,980
2	12/1/2002	1,752,597		1,587,597			1,587,597	165,000				1,752,597
3	1/1/2003	2,040,507		1,913,007			1,913,007	127,500				2,040,507
4	2/1/2003	1,061,124		1,061,124			1,061,124					1,061,124
5	3/1/2003	859,281		859,281			859,281					859,281
6	4/1/2003	1,814,976		1,814,976			1,814,976					1,814,976
7	5/1/2003	1,467,560		1,467,560			1,467,560					1,467,560
8	6/1/2003	1,426,534		1,426,534			1,426,534					1,426,534
9	7/1/2003	1,633,233		1,633,233			1,633,233					1,633,233
10	8/1/2003	1,470,951		1,470,951			1,470,951					1,470,951
11	9/1/2003	1,515,957		886,943	250,000	250,000	1,386,943		129,014			1,515,957
12	10/1/2003	1,594,204		1,459,326			1,459,326		134,878			1,594,204
13	11/1/2003	1,319,562		1,202,276			1,202,276		117,286			1,319,562
14	12/1/2003	1,081,783		993,819			993,819		87,964			1,081,783
15	1/1/2004	754,640	13,247,360	754,640			754,640					754,640
16	2/1/2004	957,528		957,528			957,528					957,528
17	3/1/2004	617,437		617,437			617,437					617,437
18	4/1/2004	678,232		678,232			678,232					678,232
19	5/1/2004	680,828		680,828			680,828					680,828
20	6/1/2004	943,005		943,005			943,005					943,005
21	7/1/2004	941,023		941,023			941,023					941,023
22	8/1/2004	1,277,338		1,277,338			1,277,338					1,277,338
23	9/1/2004	914,690		393,829	250,000	250,000	893,829			TBD*	20,861	914,690
24	10/1/2004	162,430		140,575			140,575				21,854	162,430
25	11/1/2004	141,713		118,866			118,866				22,848	141,713
26	12/1/2004	115,435		94,574			94,574				20,861	115,435
27	1/1/2005	153,300		133,433			133,433				19,868	153,300
28	2/1/2005	190,690		167,843			167,843				22,848	190,690
29	3/1/2005	206,957		186,096			186,096				20,861	206,957
30	4/1/2005	405,329		405,329			405,329					405,329
31	5/1/2005	425,858	5,189,820	425,858			425,858					425,858
32	6/1/2005	255,057		255,057			255,057					255,057
33	7/1/2005	-		-			-					-
34	8/1/2005	-		-			-					-
35	9/1/2005	500,000			250,000	250,000	500,000					500,000
36	10/1/2005	-		-			-					-
37	11/1/2005	-		-			-					-
38	12/1/2005	-		-			-					-
\$ 31,408,737			\$ 31,408,737	\$ 28,339,595	\$ 1,000,000	\$ 1,000,000	\$ 30,339,595	\$ 450,000	\$ 469,142	\$ -	\$ 150,000	\$ 31,408,737

NOTE

*Source of funding to be determined.

**OPERATING AGREEMENT
OF
JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, LLC**

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OPERATING AGREEMENT

OF

JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, LLC

a Virginia limited liability company

THIS OPERATING AGREEMENT (this "Agreement") of Jamestown 2007 Corridor Constructors, LLC, a Virginia limited liability company (the "Company"), dated as of the 24th day of July, 2002, by and among the corporations listed on Exhibit A attached hereto (collectively the "Members" and each, a "Member") for the regulation of the affairs and the conduct of the business of the Company, recites and provides as follows:

ARTICLE I DEFINITIONS

Section 1.1 Act.

"Act" shall mean the Virginia Limited Liability Company Act, Code of Virginia (1950) §§ 13.1-1000, *et seq.*, as amended from time to time.

Section 1.2 Affiliate.

"Affiliate" shall mean any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of at least 50% of the voting securities, by contract or otherwise.

Section 1.3 Agreement.

"Agreement" shall mean this Operating Agreement of the Company, as it may be amended from time to time.

Section 1.4 Annual Tax Reports.

"Annual Tax Reports" shall have the meaning set forth in Section 11.2 hereof.

Section 1.5 Board of Managers or Board.

"Board of Managers" or "Board" shall mean the Managers of the Company as described and as designated under ARTICLE V.

Section 1.6 Capital Account.

"Capital Account" shall have the meaning set forth in Section 6.3 hereof.

Section 1.7 Capital Contribution.

“Capital Contribution” shall mean the amount of money or the fair market value of other property contributed to the Company by each Member pursuant to the terms of this Agreement.

Section 1.8 Cash Available for Distribution.

“Cash Available for Distribution” shall mean, for any period, the excess, if any, of (i) the cash receipts of the Company (other than from a Terminating Capital Transaction) and amounts withdrawn from reserves, over (ii) disbursements of cash by the Company (other than distributions to Members and amounts paid with receipts from a Terminating Capital Transaction), including: (A) the payment of operating expenses, debt service on loans from both Members and third parties, (B) capital expenditures, and (C) amounts deposited in reserves.

Section 1.9 Code.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or any successor provision of law.

Section 1.10 Company.

“Company” shall mean Jamestown 2007 Corridor Constructors, LLC, a Virginia limited liability company.

Section 1.11 Company Minimum Gain.

“Company Minimum Gain” shall have the meaning set forth in Treasury Regulations Section 1.704-2(d) and any corresponding provision or provisions of succeeding Regulations. In accordance with Treasury Regulations Section 1.704-2(d), the amount of Company Minimum Gain is determined by first computing, for each nonrecourse liability of the Company, any gain the Company would realize if it disposed of the property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. A Member’s share of Company Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704-2(g)(1).

Section 1.12 Fiscal Year.

“Fiscal Year” shall have the meaning provided in Section 11.1 hereof.

Section 1.13 Indemnitee.

“Indemnitee” shall have the meaning provided in Section 8.1.

Section 1.14 IRS.

“IRS” shall mean the Internal Revenue Service.

Section 1.15 Managers.

“Managers” shall mean the designees of the Members or any successor manager(s) designated by the Members, and any other managers designated by Members pursuant to ARTICLE V hereof.

Section 1.16 Member or Members.

“Member or Members” shall mean any or all of those corporations listed as Members in Exhibit A attached hereto, in each such corporation’s capacity as a Member of the Company.

Section 1.17 Member Expenses, Direct Member Expenses and Indirect Member Expenses.

“Member Expenses, Direct Member Expenses and Indirect Member Expenses” shall have the meanings provided in Section 6.7.

Section 1.18 Membership Unit.

“Membership Unit” shall mean a unit of ownership interest in the Company, which includes (i) such Member’s interest in the income, gains, profits, deductions, losses, credits or distributions of the Company, (ii) all benefits to which such Member may be entitled hereunder, and (iii) all obligations of such Member to comply with the terms and provisions of this Agreement. The Members’ Unit ownership shall be as set forth in Exhibit A attached hereto.

Section 1.19 Member Nonrecourse Debt Minimum Gain.

“Member Nonrecourse Debt Minimum Gain” shall have the meaning set forth in Treasury Regulations Section 1.704-2(i). A Member’s share of Member Nonrecourse Debt Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(5).

Section 1.20 Notice.

“Notice” shall have the meaning provided in Section 11.8 hereof.

Section 1.21 Person.

“Person” shall mean and include an individual, proprietorship, trust, estate, partnership, joint venture, association, company, corporation, limited liability company or other entity.

Section 1.22 State.

“State” shall mean the Commonwealth of Virginia.

Section 1.23 Taxable Year.

“Taxable Year” shall have the meaning set forth in Section 11.1 hereof.

Section 1.24 Terminating Capital Transaction.

“Terminating Capital Transaction” shall mean the sale, exchange or other disposition (including a disposition pursuant to foreclosure or deed in lieu of foreclosure) of the assets of the Company or following the dissolution and termination of the Company pursuant to one of the other events listed in Section 2.4 hereof.

Section 1.25 Treasury Regulations.

“Treasury Regulations” shall mean the Treasury regulations issued under the Code, as amended and as hereafter amended from time to time. Reference to any particular provision of the Treasury Regulations shall mean that provision of the Treasury regulations on the date hereof and any successor provision of the Treasury Regulations.

**ARTICLE II
NAME AND TERM**

Section 2.1 Formation.

The Members hereby acknowledge the formation of the Company as a limited liability company pursuant to the Act by virtue of Articles of Organization filed with the State Corporation Commission of Virginia on July 24, 2002. The rights and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein.

Section 2.2 Name, Office and Registered Agent.

(a) The name of the Company shall be “Jamestown 2007 Corridor Constructors, LLC”. The principal office and place of business shall be 3900 Cokes Lane, Williamsburg, Virginia 23288. The Board may at any time change the location of such office to another location, provided that the Board gives notice of any such change to all Members and the registered agent of the Company.

(b) The initial registered office of the Company for purposes of the Act shall be Hunton & Williams, 951 East Byrd Street, Riverfront Plaza, East Tower, Richmond, Virginia 23219. The initial registered agent of the Company for purposes of the Act shall be J. Waverly Pulley, III, whose business office is identical to the Company’s registered office. The registered office and registered agent may be changed by the Board at any time in accordance with the Act. The registered agent’s sole duty as such is to forward to the Company (Attn: Project Manager) at its principal office and place of business any notice that is served on him as registered agent. The Project Manager will promptly forward a copy of any such notice to the Members.

Section 2.3 Governing Law.

This Agreement and all questions with respect to the rights and obligations of the Members, the construction, enforcement, and interpretation hereof, and the formation, administration and termination of the Company shall be governed by the provisions of the Act and other applicable laws of the State.

Section 2.4 Term.

(a) The Company's existence shall be perpetual, except the Company shall be dissolved and terminated upon the first to occur of the following:

(i) The unanimous written agreement of all the Members to dissolve and terminate the Company;

(ii) The entry of a decree of judicial dissolution under Section 13.1-1047 of the Act;

(iii) The automatic cancellation of the Company's certificate of organization under Section 13.1-1064 of the Act; or

(iv) As otherwise required by the Act.

(b) Upon the dissolution of the Company for any reason, the Members shall promptly proceed to wind up the affairs of and liquidate the Company. Except as otherwise provided in this Agreement, the Members shall continue to share distributions and allocations during the liquidation period in the same manner as before dissolution.

**ARTICLE III
BUSINESS OF COMPANY**

The Company is formed for the limited purposes of (i) engaging in the construction of the Jamestown 2007 Corridor Improvements as contemplated by the Detailed Proposal submitted by the Members to the Virginia Department of Transportation under the Virginia Public Private Transportation Act of 1995 and (ii) transacting any and all lawful business for which a limited liability company may be formed under the laws of the State that is incident and necessary to accomplish the foregoing.

**ARTICLE IV
RIGHTS AND OBLIGATIONS OF MEMBERS**

Section 4.1 Members.

The address, telephone number and facsimile number of each initial Member are set forth opposite each Member's name on Exhibit A attached hereto.

Section 4.2 Voting Rights; Management Rights.

(a) Except as otherwise provided herein, the Members shall have no voting power.

(b) Except as expressly provided herein, the Members shall not take part in the management of the business nor shall they transact any business for the Company in their capacity as Members, nor shall they have power to sign for or to bind the Company.

Section 4.3 Other Activities.

Except as otherwise set forth herein, any Member may engage in or possess an interest in other business ventures of every nature and description, independently or with others, unless such engagement or possession is in direct competition with the Company, and neither the Company nor any of the Members shall have any rights by virtue of this Agreement in and to such independent ventures or the profits derived from them.

Section 4.4 No Right to Withdraw.

Except as otherwise provided in this Agreement, no Member shall have any right to voluntarily resign or otherwise withdraw from the Company without the written consent of all remaining Members of the Company.

**ARTICLE V
MANAGEMENT**

Section 5.1 General Powers; Designation of Board of Managers.

(a) The property and business of the Company shall be managed under the direction of the Board of Managers. Except as otherwise expressly provided by law or this Agreement, the Board shall have complete and exclusive control of the management of the Company's business and affairs.

(b) Each Member shall designate an individual to serve as its representative on the Board of Managers. The size of the Board shall be three Managers, consisting of one Manager for each of the three Members. A Manager may be replaced by the Member he represents, from time to time, by giving written notice thereof to the other Members. The three Managers initially designated by the Members are W. Barry Bryant, representing Bryant Contracting, Inc., a Virginia corporation, Andrew R. Curtis, Jr., representing Curtis Contracting, Inc., a Virginia corporation, and Gary M. Massie, representing Jack L. Massie Contractor, Inc., a Virginia corporation.

(c) The Board shall appoint a Project Manager, who will manage the day-to-day affairs of the Company and carry out the directions of the Board, subject to the limitations set forth herein. The initial Project Manager shall be Gary M. Massie. In the event of Gary M. Massie's death, retirement, resignation, removal or inability to serve, a successor Project Manager shall be appointed by the Board, which appointment shall have been approved by at least two of the three Members. Unless the Board provides otherwise, the Project Manager shall have the exclusive right, power, and authority on behalf of the Company and in its name to execute agreements, documents or other instruments and exercise all of the rights, powers and authority of the Company under the Act and to take any and all actions that the Company may be entitled to take, provided that:

(i) all such acts shall be strictly limited to the business of the Company authorized by Article III hereof and shall not otherwise be in contravention of the terms of this Agreement;

(ii) the Project Manager shall not, without a unanimous vote of the Board of Managers, do any one or more of the following:

(A) admit any new Member or amend any provision of this Agreement, except that Exhibit A may be amended by the Project Manager only to accurately reflect changes to the information set forth therein;

(B) incur, issue, assume, guarantee or otherwise become liable for any debt for borrowed money on behalf of the Company;

(C) declare or make any distribution on behalf of the Company;

(D) purchase, lease or otherwise acquire any assets on behalf of the Company;

(E) create any lien or encumbrance over any of the assets of the Company;

(F) sell, pledge, transfer or otherwise dispose of any assets of the Company;

(G) settle on behalf of the Company any suit, proceeding or arbitration before any court or arbitrator or any governmental agency, authority or official; or

(H) enter into any contract on behalf of the Company with the Virginia Department of Transportation, any of the Members, any of their respective Affiliates or any shareholders, members, managers, partners, officers, directors, employees, agents, consultants or advisors of any of the foregoing; and

(iii) the Project Manager shall not, without an affirmative vote of a majority of the Board of Managers, do any one or more of the following:

(A) enter into any transaction or series of transactions which would, individually or in the aggregate, result in the Company either paying or incurring a payment obligation in excess of \$25,000.

(B) except as otherwise provided in Section 6.2(a) hereof, request additional Capital Contributions from the Members in excess of \$25,000 per Member in any Fiscal Year.

Section 5.2 Voting Rights.

Except as otherwise provided herein, voting power shall be vested solely in the Board of Managers, and all matters requiring a vote pursuant to this Agreement or the Act shall be determined by the vote of the Board of Managers. Except as otherwise provided herein or in the Act, any action required or permitted to be taken by the Members or Managers must be approved by at least two of the three members of the Board of Managers.

Section 5.3 Quorum.

Two Managers shall constitute a quorum for the transaction of business by the Board. The act of a majority of Managers present at a Board meeting at which a quorum is present or action taken by written consent of a majority of all Managers shall be the act of the Board of Managers. Less than a quorum may adjourn any meeting.

Section 5.4 Third Party Reliance.

Third parties dealing with the Company shall be entitled to rely conclusively on the power and authority of the Project Manager or any other officers of the Company appointed or elected by the Board of Managers.

Section 5.5 Duties of Managers.

Each Manager shall devote such time, effort and skill to the Company's business affairs as is necessary and proper for the Company's welfare and success. The Members expressly recognize that the Managers have or may have substantial other business activities and agree that the Managers shall not be bound to devote all of their business time to the affairs of the Company, and that the Managers may engage for their own account and for the accounts of others in other businesses or activities.

Section 5.6 Meetings of Managers.

An annual meeting of the Board of Managers shall be held on the third Tuesday of April of each year, or on the next succeeding business day should such date fall on a holiday, at such place as the Board of Managers may designate. Other meetings of the Board of Managers shall be held at places within or without the State and at times fixed by resolution of the Board of Managers, or upon call of the Project Manager. All Managers shall be given not less than 24 hours' notice by letter, telegraph, e-mail, telephone or facsimile (or in person) of all meetings of the Board of Managers, provided that notice need not be given of the annual meeting or of regular meetings held at times and places fixed by resolution of the Board of Managers. Meetings may be held at any time without notice if all of the Managers are present, or if those not present waive notice in writing either before or after the meeting. The notice of meetings of the Board of Managers need not state the purpose of the meeting.

Section 5.7 Telephonic Meetings Permitted.

Members of the Board of Managers may participate in a meeting thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 5.7 shall constitute presence in person at such meeting.

Section 5.8 Action by Unanimous Written Consent.

Notwithstanding any provision hereof, the Members may act by unanimous written consent in the absence of a meeting.

ARTICLE VI
CAPITAL CONTRIBUTIONS AND FINANCIAL OBLIGATIONS OF MEMBERS

Section 6.1 Initial Capital Contribution.

As their initial Capital Contributions, each Member shall contribute cash to the capital of the Company in the amount set forth next to their names on Exhibit A attached hereto.

Section 6.2 Additional Capital Contributions.

(a) Each Member hereby agrees to make additional cash Capital Contributions of up to \$25,000 in the aggregate during each Fiscal Year upon the Project Manager's request therefor. Otherwise, no additional Capital Contributions (other than Capital Contributions required to fulfill the Company's obligations under Section 10.2 of the Comprehensive Agreement executed between the Company and the Virginia Department of Transportation) shall be required unless a majority of the Members consent thereto in writing.

(b) In the event any additional Capital Contribution is approved by a majority of Members in accordance with subsection(a) above, each Member shall contribute to the capital of the Company an amount equal to the additional Capital Contribution multiplied by such Member's Membership Units. The Members shall have ten business days following receipt of notice requesting that they make an additional Capital Contribution to notify the Board of Managers in writing of their decision whether to make such additional Capital Contribution.

(c) In the event an additional Capital Contribution is approved by a majority of the Members and any Member does not contribute its additional capital within ten days after the date scheduled for such contribution, one or more of the other Members may (i) contribute such capital on the defaulting Member's behalf and (ii) take the defaulting Member's Membership Units as collateral for such capital until the defaulting Member pays in the capital or repays the other Member or Members (together with interest thereon at a rate equal to 2% per annum plus the rate announced from time to time by the Company's bank as its "prime" or "base" rate (but not to exceed the highest rate permitted by law)) and provides written documentation of said payment.

(d) As collateral security for any Capital Contribution advanced on behalf of a defaulting Member under subsection (c) above, each Member hereby pledges to the other Members, and grants to the other Members a continuing first priority security interest, its Membership Units. Each Member hereby authorizes the other Members to file such financing statements (and all amendments thereto and continuations thereof) on its behalf and without its signature if permitted to do so under applicable law. In addition to other rights and remedies provided for herein, a Member advancing any Capital Contribution on behalf of a defaulting Member shall have all the rights and remedies of a secured party under the Uniform Commercial Code as in effect from time to time in the State.

Section 6.3 Capital Accounts.

A separate capital account ("Capital Account") has been or will be established and maintained for each Member in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

Section 6.4 No Interest on Contributions.

Except as otherwise set forth in Section 6.2(c) above, no Member shall be entitled to interest on its Capital Contribution.

Section 6.5 Return of Capital Contributions.

No Member shall be entitled to withdraw any part of its Capital Contribution or its Capital Account, or to receive any distribution from the Company, except as specifically provided in this Agreement. Except as otherwise provided herein, there shall be no obligation to return to any Member or withdrawn Member any part of such Member's Capital Contribution to the Company for so long as the Company continues to exist.

Section 6.6 No Third Party Beneficiary.

No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party, nor may such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or of any of the Members. In addition, it is the intent of the parties hereto that no distribution to any Member shall be deemed a return of money or other property in violation of the Act. Any Member receiving the payment of any such money or distribution of any such property shall not be required to return any such money or property to any Person, the Company or any creditor of the Company. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to return such money or property, such obligation shall be the obligation of such Member and not of the other Members. Without limiting the generality of the foregoing, a deficit Capital Account of a Member shall not be deemed to be a liability of such Member nor an asset or property of the Company.

Section 6.7 Expense Reimbursement.

(a) From the date of this Agreement, each of the Members shall account for expenses incurred by it ("Member Expenses") as follows:

(i) Member Expenses shall be divided into two categories, direct and indirect expenses. "Direct Member Expenses" are those Member Expenses which are easily quantified and are incurred exclusively in the performance of activities related to the business of the

Company. Examples of Direct Member Expenses may include, but are not limited to, salary or wages for employees engaged in activities exclusively related to Company business, legal fees exclusively related to Company business, consulting fees exclusively related to Company business, long distance telephone charges for calls generated by Company business, travel expenses for business travel exclusively related to Company business and other similar charges. "Indirect Member Expenses" are those Member Expenses which are difficult to quantify because they are incurred partially in the performance of activities related to the Company business and partially in the performance of non-Company business. Examples of "Indirect Member Expenses" may include, but are not limited to, rent, supplies, property insurance, utilities, computer software, depreciation of equipment, operating licenses, repair and maintenance, and other similar charges. Any dispute over the characterization of an expense as direct or indirect shall be resolved by the Board.

(ii) No Member shall incur a Member Expense in excess of \$2,500 without consulting the Board and obtaining the Board's approval of the expense. Without prior Board approval of a Member Expense, the Board may determine that the Company will not reimburse the Member Expense.

(iii) The Company shall reimburse Members for approved Direct Member Expenses upon presentation of documentation supporting the expenses.

(iv) The Company may reimburse Members for approved Indirect Direct Member Expenses upon presentation of documentation supporting the expenses.

(b) The Board shall conduct a monthly review of Member Expenses and shall conduct a quarterly review of the method of accounting for Member Expenses.

Section 6.8 Member Loans.

Members may make loans to the Company, provided that any such loan is approved by a unanimous vote of the Board.

ARTICLE VII ALLOCATIONS AND DISTRIBUTIONS

Section 7.1 Allocation of Profits and Losses.

(a) Profits and losses of the Company for each Fiscal Year shall be allocated to the Members in accordance with their respective Membership Units.

(b) Notwithstanding any provision to the contrary, (i) any expense of the Company that is a "nonrecourse deduction" within the meaning of Treasury Regulations Section 1.704-2(b)(1) shall be allocated in accordance with the Members' respective Membership Units, (ii) any expense of the Company that is a "partner nonrecourse deduction" within the meaning of Treasury Regulations Section 1.704-2(i)(2) shall be allocated in accordance with Treasury Regulations Section 1.704-2(i)(1), (iii) if there is a net decrease in Company Minimum Gain within the meaning of Treasury Regulations Section 1.704-2(f)(1) for any Taxable Year, items of

gain and income shall be allocated among the Members in accordance with Treasury Regulations Section 1.704-2(f) and the ordering rules contained in Treasury Regulations Section 1.704-2(j), and (iv) if there is a net decrease in Member Nonrecourse Debt Minimum Gain within the meaning of Treasury Regulations Section 1.704-2(i)(4) for any Taxable Year, items of gain and income shall be allocated among the Members in accordance with Treasury Regulations Section 1.704-2(i)(4) and the ordering rules contained in Treasury Regulations Section 1.704-2(j). A Member's "interest in partnership profits" for purposes of determining its share of the nonrecourse liabilities of the Company within the meaning of Treasury Regulations Section 1.752-3(a)(3) shall be the percentage of all outstanding Membership Units held by such Member.

(c) If a Member receives in any Taxable Year an adjustment, allocation, or distribution described in subparagraphs (4), (5), or (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) that causes or increases a negative balance in such Member's Capital Account that exceeds the sum of such Member's shares of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, as determined in accordance with Treasury Regulations Sections 1.704-2(g) and 1.704-2(i), such Member shall be allocated specially for such Taxable Year (and, if necessary, later Taxable Years) items of income and gain in an amount and manner sufficient to eliminate such negative Capital Account balance as quickly as possible as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(d). After the occurrence of an allocation of income or gain to a Member in accordance with this Section 7.1(c), to the extent permitted by Regulations Section 1.704-1(b) and Section 7.1(d) hereof, items of expense or loss shall be allocated to such Member in an amount necessary to offset the income or gain previously allocated to such Member under this Section 7.1(c).

(d) Losses shall not be allocated to a Member to the extent that such allocation would cause a deficit in such Member's Capital Account (after reduction to reflect the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6)) to exceed the sum of such Member's shares of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain. Any loss in excess of that limitation shall be allocated to all the other Members in accordance with their respective Membership Units. After the occurrence of an allocation of loss to a Member in accordance with this Section 7.1(d), to the extent permitted by Treasury Regulations Section 1.704-1(b), profit shall be allocated to such Member in an amount necessary to offset the loss previously allocated to such Member under this Section 7.1(d).

(e) "Profits" and "losses" and any items of income, gain, expense or loss referred to in this Section 7.1 shall be determined in accordance with federal income tax accounting principles as modified by Treasury Regulations Section 1.704-1(b)(2)(iv), except that profits and losses shall not include items of income, gain, and expense that are specially allocated pursuant to Section 7.1(b), 7.1(c) or 7.1(d) hereof. All allocations of income, profits, gains, expenses, and losses (and all items contained therein) for federal income tax purposes shall be identical to all allocations of such items set forth in this Section 7.1, except as otherwise required by Section 704(c) of the Code and Section 1.704-1(b)(4) of the Treasury Regulations.

Section 7.2 Distribution of Cash Available for Distribution.

The Board of Managers may in its sole discretion elect to distribute to the Members within 90 days following the end of each Fiscal Year an amount not to exceed Cash Available

for Distribution for such Fiscal Year (or part thereof) *pro rata* among the Members in accordance with their respective Membership Units. Notwithstanding the foregoing, if it is anticipated that the Members will recognize taxable income with respect to the Company for any year, the Board of Managers shall make a good faith estimate of the amount of such taxable income to be recognized by each of the Members, and distributions of Cash Available for Distribution shall be made to the Members, *pro rata* among the Members in accordance with their respective Membership Units, in an aggregate amount sufficient to permit each of the Members to pay federal, state and local income taxes (giving effect to the deduction of state and local income taxes, as applicable, for federal and state income tax purposes) on their distributive shares of such taxable income. Distributions required to be made pursuant to the preceding sentence shall be made at such times as may be appropriate to permit the Members to make estimated tax payments.

Section 7.3 Distribution of Proceeds from Terminating Capital Transaction.

The net proceeds of a Terminating Capital Transaction shall be distributed in the following order of priority:

- (a) *First*, toward satisfaction of all outstanding debts and other obligations of the Company other than those specified in Section 7.3(b) hereof;
- (b) *Second*, toward repayment of outstanding loans, if any, made by Members to the Company; and
- (c) *Thereafter*, the balance, if any, to the Members with positive Capital Accounts in accordance with their respective positive Capital Account balances.

For purposes of Section 7.3(c), the Capital Account of each Member shall be determined after all adjustments made in accordance with Section 7.1 hereof resulting from the Company's operations and from all sales and dispositions of all or any part of the Company's assets. Any distributions pursuant to this Section 7.3 shall be made by the end of the Taxable Year in which the liquidation occurs (or, if later, within 90 days after the date of the liquidation). To the extent deemed advisable by the Board, appropriate arrangements (including the use of a liquidating trust) may be made to assure that adequate funds are available to pay any contingent debts or obligations.

**ARTICLE VIII
INDEMNIFICATION**

Section 8.1 Indemnification of Managers and Members.

Unless otherwise prohibited by law, the Company shall indemnify and hold harmless the Managers, the Members, the Project Manager, their respective agents, officers, directors and employees, and the agents, officers and employees of the Company and their respective successors (collectively, the "Indemnitees", and each individually, an "Indemnatee") from any claim, loss, expense, liability, action or damage resulting from any act or omission performed by or on behalf of or omitted by an Indemnatee in its capacity as a Manager, a Member, Project

Manager or an agent, officer or employee of the Company or any Manager or Member, including, without limitation, reasonable costs and expenses of such Person's attorneys engaged in defense of any such act or omission; *provided, however*, that an Indemnatee shall not be indemnified or held harmless for any act or omission that is in violation of any of the provisions of this Agreement or that constitutes fraud, gross negligence or willful misconduct. Any indemnification pursuant to this Section 8.1 shall be made only out of the assets of the Company.

Section 8.2 Additional Indemnities.

(a) The Members acknowledge that to the extent that any claim is made under the Company's payment and performance bond posted in favor of the Virginia Department of Transportation, the Members are jointly and severally liable to Travelers Casualty and Surety Company of America (the "Surety") for the reimbursement of such claim. If any Member shall be required to pay to the Surety an amount in excess of his pro rata share of any such claim (such pro rata share to be calculated as the aggregate amount of the claim multiplied by such Member's Membership Units), the aggregate amount of the claim shall be apportioned among the Members and any Member paying more than its pro rata share of such claim shall have a right of contribution from the other Members for the excess payment.

(b) Each Member, in its capacity as a subcontractor of the Company (a "Subcontractor Member"), shall indemnify and hold harmless the other Members of the Company from any claim, loss, expense, liability, action or damage resulting from the Subcontractor Member's breach of its subcontract with the Company.

(c) Any obligation of contribution or indemnification under this Section 8.2 shall be (i) made solely out of the assets of the responsible Member and (ii) secured by such Member's Membership Units.

(d) As collateral security for any Member's contribution and indemnification obligations under this Section 8.2, each Member hereby pledges to the other Members, and grants to the other Members a continuing first priority security interest, its Membership Units. Each Member hereby authorizes the other Members to file such financing statements (and all amendments thereto and continuations thereof) on its behalf and without its signature if permitted to do so under applicable law. In addition to other rights and remedies provided for herein, a Member to which any contribution or indemnity payment is owed shall have all the rights and remedies of a secured party under the Uniform Commercial Code as in effect from time to time in the State.

Section 8.3 Expenses.

To the fullest extent permitted by law, expenses (including legal fees) incurred by an Indemnatee in defending any claim, demand, action, suit or proceeding with respect to which such Indemnatee is entitled to indemnification under Section 8.1 hereof shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Indemnatee to repay such amount if it shall be determined that the Indemnatee is not entitled to be indemnified as authorized in this ARTICLE VIII.

Section 8.4 Insurance.

The Company may purchase and maintain insurance coverage to the extent and in such amounts as the Board shall, in its discretion, deem reasonable, on behalf of the Indemnitees against any liability that may be asserted against or expense that may be incurred by any Indemnitees in connection with activities of the Company or such Indemnitees with respect to which the Company would have the power to indemnify such Indemnitee against such liability under the provisions of this Agreement.

Section 8.5 Miscellaneous.

In no event may an Indemnitee subject a Member to personal liability by reason of these indemnification provisions. An Indemnitee shall not be denied indemnification in whole or in part under this ARTICLE VIII because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement. The provisions of this ARTICLE VIII are for the benefit of the Indemnitees and their heirs, successors, assigns, administrators and personal representatives and shall not be deemed to create any rights for the benefit of any other Persons.

Section 8.6 Notice of Claims.

With respect to any claim made or threatened against (i) a Manager, a Member, any of their agents, officers, directors or employees or any agent, officer or employee of the Company, or their respective successors for which such Indemnitee is or may be entitled to indemnification under this ARTICLE VIII, or (ii) the Company, the Board shall, or shall cause such Indemnitee to:

- (a) give written notice to the Members of such claim promptly after such claim is made or threatened, which notice shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim;
- (b) provide the Members with such information and cooperation with respect to such claim as the Members may require, including, without limitation, making appropriate personnel available to the Members at such times as the Members shall request;
- (c) cooperate and take all such steps as the Members may request to preserve and protect any defense to such claim;
- (d) in the event suit is brought with respect to such claim, upon prior notice, afford the Members the right, which the Members may exercise in their sole discretion and at their expense, to participate in the investigation, defense, and settlement of such claim; and
- (e) neither incur any material expense to defend against nor release or settle such claim or make any admission with respect thereto without the prior written consent of the Members.

ARTICLE IX

MEMBER REPRESENTATIONS AND WARRANTIES

Section 9.1 Representations and Warranties.

Each Member represents and warrants to the Company and each other Member that, on the date of this Agreement:

- (a) Organization and Existence. Such Member is duly organized, validly existing and in good standing under the laws of the state of its organization.
- (b) Power and Authority. Such Member has the full power and authority to execute, to deliver and to perform this Agreement, and to carry out the transactions contemplated hereby.
- (c) Authorization and Enforceability. The execution and delivery of this Agreement by such Member and the carrying out by such Member of the transactions contemplated hereby have been duly authorized by all requisite corporate action, if necessary, and this Agreement has been duly executed and delivered by such Member and constitutes the legal, valid and binding obligation of such Member, enforceable against it in accordance with the terms hereof.
- (d) No Consents. No authorization, consent, approval or order of, notice to or registration, qualification, declaration or filing with any governmental authority or other third parties is required for the execution, delivery and performance by such Member of this Agreement or the carrying out by such Member of the transactions contemplated hereby, except those previously obtained.
- (e) No Conflict or Breach. None of the execution, delivery and performance by such Member of this Agreement, the compliance with the terms and provisions hereof and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the organizational or corporate documents of such Member or any applicable order, writ, injunction, judgment or decree of any court or governmental authority against such Member or by which it or any of its properties (other than its Membership Units in the Company) is bound, or any loan agreement, indenture, mortgage, bond, note, resolution, contract or other agreement or instrument to which such Member is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties.
- (f) No Proceedings. There is no suit, action, hearing, inquiry, investigation or proceeding, at law or in equity, pending, or, to the knowledge of such Member, threatened, before, by or in any court or before any regulatory commission, board or other governmental administrative agency against or affecting such Member which could have a material adverse effect on the business, affairs, financial position, results of operations, property or assets, or condition, financial or otherwise, of such Member or on its ability to fulfill its obligations hereunder.

Section 9.2 Survival.

All representations and warranties contained in this Article IX shall survive the execution and delivery of this Agreement.

**ARTICLE X
TRANSFERS**

Section 10.1 Prohibition on Transfers.

Except as may otherwise be required by law, Members may not pledge, sell, assign or transfer part or all of their respective Membership Units.

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

Section 11.1 Fiscal and Taxable Year.

The Fiscal Year and Taxable Year of the Company shall be the 12-month period ending December 31 of each year or such other taxable year as may be required by Section 706(b) of the Code.

Section 11.2 Reports.

At the Company's expense, the Board shall prepare and deliver, or cause to be prepared and delivered, to the Board, and the Board shall approve and deliver to the Members no later than 75 days after the close of each Fiscal Year, a Schedule K-1, a copy of the Company's informational tax return (IRS Form 1065), and such other reports (collectively, the "Annual Tax Reports") setting forth in sufficient detail all such information and data with respect to the transactions effected by or involving the Company during such Fiscal Year as shall enable the Company and each Member to prepare its federal, state, and local income tax returns in accordance with the laws, rules, and regulations then prevailing. No later than 90 days after the end of a Fiscal Year or 45 days after the end of each quarter in a Fiscal Year, the Board shall prepare or cause the preparation of, and shall deliver or cause to be delivered to the Members, statements of the Company's (i) assets, liabilities and capital as of the end of the year or quarter, as applicable, and (ii) revenues and expenses for the year or the quarter and year-to-date, as applicable.

Section 11.3 Bank Accounts, Notes and Drafts.

(a) Funds of the Company shall be deposited in an account or accounts of a type, in form and name and in a bank(s) or other financial institution(s) which are participants in federal insurance programs as selected by the Board. The Board shall arrange for the appropriate conduct of such accounts. Company funds shall be deposited and held in accounts which are separate from all other accounts maintained by the Board and the Members, and the Company's funds shall not be commingled with any other funds of any Manager, any Member or any Affiliate (other than the Company itself) of a Manager or a Member. Funds may be withdrawn from such accounts only for *bona fide* and legitimate Company purposes.

(b) The Members acknowledge that the Board may maintain Company funds in accounts, money market funds, certificates of deposit and other liquid assets in excess of the insurance provided by the Federal Deposit Insurance Corporation, or other depository insurance institutions and that the Board shall not be accountable or liable for any loss of such funds resulting from failure or insolvency of the depository institution.

(c) All checks, notes, drafts, and other orders for the payment of money may be signed by any Manager (or his designee) or the Project Manager (or his designee).

Section 11.4 Books and Records.

(a) The Board shall keep, or cause to be kept, full and accurate books of account, financial records, and supporting documents, which shall reflect, completely, accurately, and in reasonable detail, each transaction of the Company, which books of account, financial records, and supporting documents shall be kept and maintained at the principal office of the Company. The Board shall keep, or cause to be kept, all other documents and writings of the Company, which documents and writings shall be kept and maintained at the principal office of the Board. Each Member or its designated representative shall, upon reasonable notice to the Board, have access to such books, records, and documents during reasonable business hours and may inspect and make copies of any of them at its own expense.

(b) The Board shall also keep, or cause to be kept, at its principal office the following:

(i) true and full information regarding the status of the business financial condition of the Company;

(ii) promptly after becoming available, a copy of the Company's federal, state and local income tax returns for each year;

(iii) a current list of the name and last known business, residence or mailing address of each Member and Manager;

(iv) a copy of this Agreement and the Company's articles of organization, and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which this Agreement and such articles of organization and all amendments thereto have been executed;

(v) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property and services contributed by each Member and which each Member has agreed to contribute in the future, and the date upon which each became a Member; and

(vi) other information regarding the affairs of the Company as is just and reasonable.

Section 11.5 Tax Matters Partner.

Bryant Contracting, Inc., a Virginia corporation, or such other Member as the Board may designate from time to time, shall be the Tax Matters Partner for the Company within the meaning of Section 6231(a)(7) of the Code. The Tax Matters Partner shall have the right and obligation to take all actions authorized and required, respectively, by the Code for the Tax Matters Partner. The Tax Matters Partner shall have the right to retain professional assistance in respect of any audit or controversy proceeding initiated with respect to the Company by the IRS or any state or local taxing authority, and all expenses and fees incurred by the Tax Matters Partner on behalf of the Company shall constitute expenses of the Company. In the event the Tax Matters Partner receives notice of a final partnership adjustment under Section 6223(a)(2) of the Code, the Tax Matters Partner shall either (i) file a court petition for judicial review of such adjustment within the period provided under Section 6226(a) of the Code, a copy of which petition shall be mailed to all other Members on the date such petition is filed, or (ii) mail a written notice to all other Members, within such period, that describes the Tax Matters Partner's reasons for determining not to file such a petition.

Section 11.6 Tax Elections.

(a) Except as otherwise provided in this Section 11.6, the Board shall, in its sole discretion, decide whether to make any available elections under the Code or any applicable state or local tax law on behalf of the Company.

(b) The Tax Matters Partner may, upon receiving the written consent of each other Member, make or revoke, on behalf of the Company, an election in accordance with Section 754 of the Code, so as to adjust the basis of Company property in the case of a distribution of property within the meaning of Section 734 of the Code, and in the case of a transfer of a Company Interest within the meaning of Section 743 of the Code. Each Member shall, upon request of the Tax Matters Partner, supply the information necessary to give effect to such an election.

(c) No election shall be made by the Company or any Member for the Company to be treated as a corporation, or an association taxable as a corporation, under the Code or any provisions of any state or local tax laws. The Company shall be treated as a partnership for U.S. federal income tax purposes.

Section 11.7 Confidentiality.

(a) The Members and Managers agree that the terms of this Agreement are confidential. In addition, the Members and Managers recognize that in the course of the Company's business and affairs, the Members and Managers will be exchanging non-public, proprietary and confidential information, the disclosure of which would be detrimental to the Company or a Member or Manager. The Members and Managers shall treat the terms of this Agreement and all proprietary information regarding the business and affairs of the Company or any Member or Manager as confidential and shall use their best efforts to protect such information from disclosure to any third party (except for employees, agents and representatives of the Members and the Virginia Department of Transportation), in whole or part, without the

prior written consent of the other Members or Managers (as applicable), except that the following information shall not be considered confidential and no Member or Manager shall have any obligation to treat it as such: (i) information that was known to such Member or Manager at the time of disclosure to it by the Company or any Member or Manager; (ii) information that was in the public domain at the time of disclosure by the Company or any Member or Manager, or that becomes a part of the public domain through no breach or fault of the Company or any Member or Manager; and (iii) information that was obtained by such Member or Manager from a third party who was under no obligation of confidentiality with respect thereto. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit any Member or Manager from disclosing confidential information if and only to the extent required by law, regulation or similar authoritative pronouncement, or an order, regulation or subpoena issued by a court or administrative agency of competent jurisdiction provided that such Member or Manager promptly notifies the other Members or Managers (as applicable) to which such disclosure relates. The Members agree to use their best efforts to cause their employees, managers, members, agents and representatives to maintain the confidentiality of any such information in accordance with the provisions of this Section 11.7.

(b) The Members and Managers shall maintain the confidentiality of such information for a period of three years from the date of receipt thereof or until earlier relieved of such obligation by written notice from the Company or until such information passes into the public domain through no fault of the Members or Managers. During such period, no Member or Manager shall make use of such information nor disclose the same to any third party, except as permitted hereunder.

(c) The obligations of confidentiality set forth in this Section 11.7 shall survive termination, cancellation or expiration of this Agreement. The Members and Managers shall, at all times during the term of this Agreement, use their best efforts and take all appropriate steps to safeguard the secrecy and confidentiality of the Company's marketing plans, customer information, specialized information, data bases, financial information and other confidential information regarding the Company and its activities.

Section 11.8 Notices.

Unless otherwise provided herein, any offer, acceptance, election, approval, consent, certification, request, waiver, notice or other communication required or permitted to be given hereunder (collectively referred to as a "Notice"), shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered to a Member or when sent by e-mail or facsimile (if confirmed) or nationally recognized reliable overnight carrier at the address of such Member set forth on Exhibit A attached hereto or at such other address as any Member hereafter may designate to the others in accordance with the provisions of this Section 11.8. In addition, the Board shall be sent a copy of all such Notices, by facsimile or nationally recognized overnight carrier. The date at which notice shall be deemed received shall be the date of the receipt of the copy of such notice by the Board.

Section 11.9 Entire Agreement.

This Agreement, including Exhibit A, constitutes the entire agreement of the Members with respect to the matters covered herein. This Agreement supersedes all prior and contemporaneous agreements and oral understandings among the Members with respect to such matters. In the event there is any litigation between the Members over the interpretation of any provision of this Agreement, the prevailing Member in such litigation shall be entitled to recover reasonable attorney's fees from the nonprevailing Member in such litigation.

Section 11.10 Amendment.

Except as otherwise provided herein, this Agreement may be amended or altered only by a unanimous vote of either the Members or the Board of Managers.

Section 11.11 Interpretation.

Wherever the context may require, any noun or pronoun used herein shall include the corresponding masculine, feminine, or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural, and vice versa.

Section 11.12 Severability.

Each provision of this Agreement shall be considered severable and if for any reason any provision hereof is determined to be invalid and contrary to existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and this Agreement shall remain in full force and effect and shall be construed and enforced in all respects, and such invalid or unenforceable provision shall be replaced with the alternative valid and enforceable provision which otherwise gives maximum effect to the original intent of such invalid or unenforceable provision.

Section 11.13 Successors.

Except as expressly otherwise provided herein, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives and successors.

Section 11.14 Further Assurances.

Each Member hereby agrees that it shall hereafter execute and deliver further instruments, provide all information and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

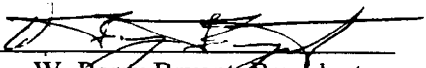
Section 11.15 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together will constitute one instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

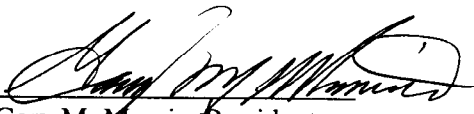
BRYANT CONTRACTING, INC.

By: 
W. Barry Bryant, President

CURTIS CONTRACTING, INC.

By: 
Andrew R. Curtis, Jr.,
Project Manager/Estimator

JACK L. MASSIE CONTRACTOR, INC.

By: 
Gary M. Massie, President

OPERATING AGREEMENT
OF
JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, LLC

MEMBERS, MEMBERSHIP UNITS AND CAPITAL CONTRIBUTIONS

<u>Members</u>	<u>Membership Units</u>	<u>Capital Contributions</u>
Bryant Contracting, Inc. P.O. Box 1000 Toano, VA 23168 Attention: W. Barry Bryant phone: (757) 566-0400 fax: (757) 566-8155	33 and 1/3 Units	\$1,000 contributed
Curtis Contracting, Inc. P.O. Box 2182 Newport News, VA 23103 Attention: Andrew R. Curtis, Jr. phone: (757) 888-2009 fax: (757) 888-2472	33 and 1/3 Units	\$1,000 contributed
Jack L. Massie Contractor, Inc. 3900 Cokes Lane Williamsburg, VA 23188-7010 Attention: Gary M. Massie phone: (757) 566-8643 fax: (757) 566-8566	33 and 1/3 Units	\$1,000 contributed

JAMESTOWN 2007 CORRIDOR CONSTRUCTORS, LLC

Unanimous Consent of Members

The undersigned, being all of the Members of Jamestown 2007 Corridor Constructors, LLC, a Virginia limited liability company (the "Company"), makes this record of the following actions taken by the undersigned:

Approval of Articles of Organization

The Company's Articles of Organization dated July 24, 2002, and filed with the Virginia State Corporation Commission (the "SCC") by J. Waverly Pulley, III, as organizer, are approved as filed and shall be kept with the records of the Company along with the Certificate of Organization (and receipt for filing fees) issued by the SCC.

Registered Agent and Registered Office

J. Waverly Pulley, III, who is a resident of Virginia and a member of the Virginia State Bar, is named as the Company's registered agent. His business address is 951 East Byrd Street, Riverfront Plaza-East Tower, Richmond, Virginia 23219, and such business office is designated as the Company's registered office.

Approval of Comprehensive Agreement and Design-Build Contract

The Members of the Company hereby approve the terms of the Comprehensive Agreement and the Design-Build Contract as reflected in the most recent drafts of such agreements submitted to the Members. The Project Manager is hereby authorized and directed to execute and deliver on behalf of the Company each of the Comprehensive Agreement and Design-Build Contract (and all documents ancillary thereto) with such changes, modifications and additions thereto as the Project Manager may deem necessary or desirable, the approval of such changes, modifications and additions to be conclusively evidenced by the execution thereof by the Project Manager.

Bank Accounts

The Project Manager is authorized, after consultation with the Board of Managers, to open commercial bank accounts for and in the name of the Company with such banks or other financial institutions as such Project Manager may select and to deposit to the credit of the Company in such banking accounts any monies, checks, drafts, orders or other commercial paper payable to the Company.

The Board of Managers is authorized to execute and deliver such resolutions, certificates and other documents as may be required by any commercial bank or other financial institution in connection with the opening of any such bank accounts in such form as the Board may approve in its discretion.

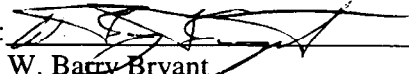
Effective Date

The foregoing authorizations shall be effective as of July 24, 2002.

WITNESS the following signatures.

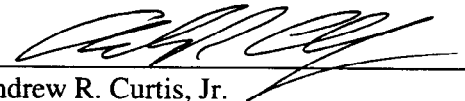
Date: 10/19/02

BRYANT CONTRACTING, INC.

By: 
W. Barry Bryant
President

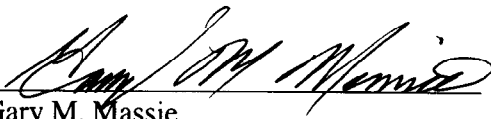
Date: 10/19/02

CURTIS CONTRACTING, INC.

By: 
Andrew R. Curtis, Jr.
Project Manager/Estimator

Date: 10-19-02

JACK L. MASSIE CONTRACTOR, INC.

By: 
Gary M. Massie
President