

**PART 3**  
**RFQ 228 – Design Build Delivery of the Route 772 Transit Connector**  
**Bridge**  
**Lump Sum Design Build Agreement Between**  
**County and Design-BUILDER**

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THIS AGREEMENT for the Design-Build Delivery of the Route 772 Transit Connector Bridge, herein after referred to as the “Project”, effective this \_\_\_\_ day of \_\_\_\_\_, 2016, is by and between **COUNTY OF LOUDOUN, VIRGINIA** (herein referred to as the "Owner"), and \_\_\_\_\_ (herein referred to as the "Design-BUILDER").

In consideration of the promises made herein and other good and valuable considerations, the following terms and conditions are hereby agreed to between the Owner and Design Builder.

**Table of Contents**

Article 1: Scope of Work.....	2
Article 2: Contract Documents.....	2
Article 3: Interpretation and Intent .....	2
Article 4: Ownership of Work Product .....	3
Article 5: Contract Time.....	4
Article 6: Contract Price .....	5
Article 7: Procedure for Payment .....	5
Article 8: Termination for Convenience .....	7
Article 9: Representatives of the Parties .....	10
Article 10: Bonds and Insurance .....	11
Article 11: Project Management and Reporting.....	12
Article 12: Other Provisions.....	14

**Article 1**  
**Scope of Work**

- 1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

**Article 2**  
**Contract Documents**

- 2.1 The Contract Documents are comprised of the following:
- 2.1.1 All written modifications, amendments and work orders to this Agreement issued in accordance with General Conditions of Contract (Part 4) Between the County and Design-Builder.;
- 2.1.2 This Agreement (Part 3), executed by County and Design-Builder, inclusive of all Exhibits;
- 2.1.3 General Conditions of Contract (Part 4);
- 2.1.4 County's Request for Proposal (RFP) dated July 17, 2015 including all Addenda;
- .1 Part 1, Request for Qualifications, Section 1 through 11 including attachments.
- .2 Part 2, Project Technical Information and Requirements, including RFP Information Package;
- 2.1.5 Loudoun County Revisions to the Division 1 (Part 5) of the Standard Specifications, ("Division I Amendments");
- 2.1.6 Construction Documents prepared and approved in accordance with Section 2.5 of the General Conditions of Contract, and
- 2.1.7 Design-Builder's Proposal dated \_\_\_\_\_ and submitted in response to RFP, including all final modifications to proposal (list proposal modifications by number and date:

**Article 3**  
**Interpretation and Intent**

- 3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words

and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1.

- 3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the General Conditions of Contract.
- 3.3 The Contract Documents form the entire agreement between the County and Design-Builder with respect to its subject matter and by incorporation herein are as fully binding on the parties as if repeated herein. The parties have made no oral representations or other agreements, except as specifically stated in the Contract Documents.
- 3.4 Except as set forth in the last sentence of this Section 3.4, and notwithstanding anything to the contrary in Design-Builder's Proposal, Design-Builder is obligated to perform the Work in full compliance with the RFP Documents. The parties agree, however, that the betterments and higher and/or more stringent standards or specifications and design and construction criteria, concepts, and drawings set forth in the Design-Builder's Proposal (collectively referred to as "Enhancements") shall supersede the minimum requirements of the RFP Documents and Design-Builder is obligated to perform the Work in compliance with the Enhancements.

#### **Article 4**

#### **Ownership of Work Product**

- 4.1 Work Product Defined. The term "Work Product" is intended to include all drawings, specifications, calculations, reports, and documentation, whether in paper copy or electronic format, produced by or through Design-Builder that is furnished to the County.
- 4.2 Ownership of Work Product. The County shall own all rights, title and interest in the Work Product upon its receipt of such Work Product. The County's ownership rights, include without restriction or limitation, the right of the County, and anyone contracting with the County, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by the County on another project. In receiving all rights, title and interest in the Work Product, the County is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Work Product, and Design-Builder agrees that it shall, at the request of the County, execute all papers and perform all other acts that may be necessary (if any) to ensure that the County's rights, title and interest in the Work Product are protected. The rights conferred herein to the County include, without limitation, the County's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

- 4.3 Use of Work Product at the County's Risk. The County's use of the Work Product on any subsequent procurement by the County on another project shall be at the County's sole risk, and Design-Builder neither warrants nor represents that the Work Product is suitable for use on another project without modification. The County waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from the County's use of the Work Product on another project.

## **Article 5**

### **Contract Time**

- 5.1 Notice to Proceed. The Work shall commence upon Design-Builder's receipt of the County's Notice to Proceed, unless the parties mutually agree otherwise in writing. The County will issue a Notice to Proceed within fifteen (15) days after the Agreement Date, unless the parties mutually agree otherwise in writing.
- 5.2 Completion Dates
- 5.2.1 Final Completion Date. The Design-Builder shall finally complete the Work in accordance with the Contract Documents no later than December 1, 2018.
- 5.2.2 Final Acceptance Date. When VDOT accepts the Project into its State Secondary Road System for Maintenance. The Design Builder will be responsible for Project maintenance until Final Acceptance has been achieved.
- 5.3 Adjustments. All of the scheduled completion dates set forth in Section 5.2 above (collectively referred to as "Contract Times") shall be subject to adjustment in accordance with the General Conditions of Contract.
- 5.4 Time is of the Essence. The County and Design-Builder mutually agree that time is of the essence with respect to the Contract Times.
- 5.5 Liquidated Damages. Design-Builder understands that if the Final Completion Date is not attained, the County will suffer damages which are difficult to determine and accurately specify. To compensate the County for such damages, Design-Builder hereby agrees as follows:
- If Final Completion of the Work is not attained by the Final Completion Date, Designer-Builder shall pay the County \$2,000.00 as liquidated damages for each day that actual Final Completion of the Work extends beyond the Final Completion Date.
- 5.6 Liquidated Damages Not Penalty. The parties acknowledge, recognize and agree on the following:
- 5.6.1 that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the County as a result of Design-Builder's failure to complete the Work on or before the applicable Contract Time(s);
- 5.6.2 that any sums which would be payable under this Article 5 are in the nature of

liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and

- 5.6.3 that any sums which would be payable herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by the County which are occasioned by any delay in achieving the applicable Contract Times for the above-referenced Work. Notwithstanding the above, liquidated damages are not intended to excuse Design-Builder from liability for any other breach of its obligations under the Contract Documents.

## **Article 6** **Contract Sum**

- 6.1 Contract Sum. The County shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (herein referred to as the "Contract Sum or Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.
- 6.2 Markups for Changes. If the Contract Sum requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 9.4.1 of the General Conditions of Contract, markups shall be allowed on such changes in accordance with requirements of Section 109.05 of the Division I Amendments.

## **Article 7** **Procedure for Payment**

- 7.1 Progress Payments
- 7.1.1 Design-Builder shall submit to the County a draft on the twenty fifth (25th) day of each month, beginning with the first month after Design-Builder's receipt of the County's Notice to Proceed, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.
- 7.1.2 The County shall make payment within thirty (30) days after the County's approval of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract. The County's payment shall comply with VA. CODE §2.2-4352, et seq., which addresses prompt payment.

- 7.1.3 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees that, within seven (7) days following receipt of monies from the County for work performed by any Subcontractor, Design-Builder shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the Subcontractor; or (b) notify the County and Subcontractor, in writing, of Design-Builder's intention to withhold all or a part of the Subcontractor's payment, specifying the reason for the non-payment. Design-Builder also agrees that it shall include in all of its subcontracts a provision that: (a) obligates Design-Builder to pay interest to Subcontractors on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt of monies from the County for work performed by any Subcontractor, except for amounts withheld as allowed in the preceding sentence;
- (b) states, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 7.1.3 with respect to each lower-tier Sub-subcontractor.
- 7.1.4 Design-Builder's obligations to pay an interest charge to a Subcontractor pursuant to Section 7.1.3 shall not be construed to be an obligation of the County, nor shall any modification to this Agreement be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement claims shall not include any amount for reimbursement for the interest charge.
- 7.1.5 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees to provide the County, within five (5) days of the Agreement Date, its federal employer identification number (FEIN).
- 7.2 Progress Payments. The County will authorize progress payments to the Design Builder for up to 95% of the Lump Sum Fixed Price when payment is due in accordance with the Contract Documents. When Final Completion is achieved the County shall release an additional 3% or payment of 98% of the Lump Sum Fixed Price. The County shall release the remaining 2% of the Lump Sum Fixed Price when the Design Builder has obtained Final Acceptance.
- 7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to the County in accordance with Section 6.6 of the General Conditions of Contract. The County shall make payment on Design-Builder's approved Final Application for Payment within thirty (30) days after the County's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for Final Payment set forth in Section 6.6.2 of the General Conditions of Contract and 7.2 of the Agreement. County's payment shall comply with VA. CODE §2.2-4352 et seq. dealing with prompt payment.
- 7.4 Interest. Payments due and unpaid by the County to Design-Builder, whether progress payments or Final Payment, shall bear interest commencing seven (7) days after payment is due in accordance with VA. CODE §2.2-4352.
- 7.5 Record Maintenance and Retention of Records. Design-Builder shall keep full

and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final Payment, the County and the County's accountants shall be afforded access from time- to-time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as "Books and Records") relating to: (a) changes in the Work performed on a cost basis; or (b) any request by Design-Builder for an adjustment in the Contract Price or Contract Times. Design-Builder shall preserve all of its Books and Records for a period of five (5) years after Final Payment.

## **Article 8**

### **Termination for Convenience**

- 8.1 Upon ten (10) days written notice to Design-Builder, the County may, for its convenience and without cause, elect to terminate all or part of the Work if the County, in its sole discretion, determines that such a termination is in the County's best interests. The County shall notify Design-Builder of the decision to terminate by delivering to Design-Builder a written notice of termination specifying the extent of termination and its effective date (a "Notice of Termination").
  - 8.1.1 If the County terminates all of the Work for convenience before issuing a Notice to Proceed, Design-Builder agrees that it shall have no right to recover any monies from the County. Design-Builder specifically waives any and all rights to claim from the County for any cost, profit, overhead contribution or any other monetary relief associated with the Contract Documents or Project, including but not limited to bid and proposal costs, or any services that might have constituted Work under the Contract Documents.
  - 8.1.2 If the County terminates all or part of the Work for convenience after issuing a Notice to Proceed, then Sections 8.2 through 8.8 below shall apply.
- 8.2 After receipt of a Notice of Termination, and except as directed by the County, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 8:
  - (a) Stop Work as specified in the notice;
  - (b) 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;
  - (c) Unless instructed otherwise by the County, terminate all Subcontracts to the extent they relate to the Work terminated and except to the extent that

continuation of the Subcontract is necessary in order to mitigate damages;

(d) Assign to the County or its designee in the manner, at the times, and to the extent directed by the County, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case the County 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;

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

(f) Transfer and deliver to the County or its designee, as directed by the County: (1) possession and control of the Project; and (2) all right, title and interest of Design-Builder in and to: (i) the Work in process, completed Work, supplies and other materials produced or acquired for the Work terminated; (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 the County if the Work had been completed; and (iii) all intellectual property developed specifically for the Project; provided, however, that in the event of such transfer, the Design-Builder shall not be liable for any warranties for Work which has not achieved Final Acceptance, nor shall the Design-Builder have any liability with respect to any design materials produced with respect to the Project;

(g) Complete performance in accordance with the Contract Documents of all Work not terminated;

(h) Take all action that may be necessary, or that the County may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Design-Builder and in which the County has or may acquire an interest; and

(i) As authorized by the County, use its best efforts to sell at fair market value any property of the types referred to in Section 8.3; provided, however, that Design-Builder: (1) shall not take any such action with respect to any items for which title has previously transferred to the County; (2) is not required to extend credit to any purchaser; and (3) may acquire the property itself, under the conditions prescribed and at prices approved by the County. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the County under the Contract Documents or paid in any other manner directed by the County.

8.3 Inventory. Design-Builder shall submit to the County a list of termination inventory not previously disposed of and excluding items authorized for disposition by the County; and within thirty (30) days of receipt of the list, Design-Builder shall deliver such inventory to the County and the County shall accept title to such inventory as appropriate.

8.4 Settlement Proposal. After termination, Design-Builder shall submit a final



termination settlement proposal to the County in the form and with the certification prescribed by the County. Design-BUILDER shall submit the proposal promptly, but no later than thirty (30) days from the effective date of termination unless Design-BUILDER has requested a time extension in writing within such 30-day period and the County has agreed in writing to allow such an extension.

- 8.5 Amount of Termination Settlement. Design-BUILDER and the County shall negotiate in good faith to reach agreement on the settlement amount to be paid to Design-BUILDER by reason of the termination of Work pursuant to this Article 8 and any such settlement shall be subject to the provisions of the Code of Virginia §2.2-514. Such negotiated settlement shall include an allowance for profit solely on Work that has been performed as of the termination date. Such agreed amount or amounts payable for the terminated Work, exclusive of demobilization costs and other shut-down costs, shall not exceed the total Contract Price as reduced by the Contract Price of Work not performed. Upon determination of the settlement amount, this Agreement will be amended accordingly, and Design-BUILDER will be paid the agreed amount as described in this Section 8.5. County's execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to compliance of the Work which has achieved Final Acceptance with all applicable Contract requirements or any of its rights under payment and performance bonds or any of its rights against Subcontractors.
- 8.6 No Agreement as to Amount of Claim. In the event of failure of Design-BUILDER and the County to agree upon the amount to be paid Design-BUILDER by reason of the termination of Work pursuant to this Article 8, the amount payable (exclusive of interest charges) shall be determined in accordance with the dispute resolution procedures of the General Conditions.
- 8.7 Reduction in Amount of Claim. The amount otherwise due Design-BUILDER under this Article 8 shall be reduced by: (a) the amount of any valid claim which the County may have against Design-BUILDER in connection with this Agreement; and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things previously paid for by the County and to be retained by Design-BUILDER or sold by the Design-BUILDER (with the proceeds being retained by the Design-BUILDER), pursuant to the provisions of this Article 8.
- 8.8 Payment. The County 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 Design-BUILDER in connection with the terminated portion of this Agreement, whenever in the opinion of the County the aggregate of such payments shall be within the amount to which Design-BUILDER 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 8, such excess shall be payable by Design-BUILDER to the County upon demand together with interest at a variable rate per annum equal to the reference rate announced by Bank of America, N.A., from time-to-time, plus one percent (1%).
- 8.9 Inclusion in Subcontracts. Design-BUILDER 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 the County and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. Design-Builder shall communicate, immediately upon receipt thereof, any Notice of Termination issued by the County to all affected Subcontractors.

- 8.10 No Consequential Damages. In the event of a termination for convenience under this Article 8, Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed plus its settlement and closeout costs. Under no circumstances shall Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Article 8. The payment to Design-Builder determined in accordance with this Article 8 constitutes Design-Builder's exclusive remedy for a termination hereunder.
- 8.11 No Waiver. Anything contained in this Agreement to the contrary notwithstanding, a termination under this Article 8 shall not waive any right or claim to damages which the County may have with respect to Work which has achieved Final Acceptance prior to the date of termination, and the County may pursue any cause of action which it may have by law or under this Agreement on account of such completed Work. The Design-Builder makes no warranties with respect to Work which has not achieved Final Acceptance prior to the date of termination. County's termination of this Agreement shall not relieve any rights the County has under any performance bonds issued on the Project.
- 8.12 Dispute Resolution. The failure of the parties to agree on amounts due under Article 8 shall be a dispute to be resolved in accordance with the requirements of the General Conditions, Article 10.
- 8.13 Right to Use Work Product. If the County terminates this Agreement pursuant to this Article 8, County's rights to use the Work Product shall be as set forth in Article 4 hereof.

## **Article 9**

### **Representatives of the Parties**

#### **9.1 County's Representatives**

- 9.1.1 The County designates the individual listed below as its Senior Representative ("County's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

Christopher Bresley  
Contracting Officer  
Division of Procurement  
1 Harrison Street, S.E.  
Leesburg, VA 20175

- 9.1.2 County designates the individual listed below as its County's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Melissa Tello  
Construction Program Manager  
Department of Transportation and Capital Infrastructure  
801 Sycolin Road, Suite 310  
Leesburg, VA 20175

9.2 Design-Builder's Representatives

- 9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

[DESIGN-BUILDER'S SENIOR REPRESENTATIVE]

- 9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

[DESIGN-BUILDER'S REPRESENTATIVE]

- 9.3 The County and Design-Builder shall, in the spirit of cooperation, exchange information in a timely manner. While the Contract Documents establish a timeline and process for making decisions and managing communications on the Project, the parties recognize it is not possible to specify processes for all activities that may occur. The parties shall communicate in a manner consistent with the VDOT Special Provision for Project Communication and Decision Making for Design-Build Projects contained in Appendix 5 to the VDOT Guide for Minimum Requirements for Quality Assurance and Quality Control on Design Build and Public-Private Transportation Act Projects.

## **Article 10**

### **Bonds and Insurance**

- 10.1 Insurance. Design-Builder shall procure and maintain insurance in accordance with the Contract Documents, including Article 5 of the General Conditions of Contract and Division I Amendments.
- 10.2 Performance and Payment Bonds. Design-Builder shall procure and maintain performance and payment bonds executed by a surety acceptable to the County, each in the amount of one hundred percent (100%) of the Contract Price, and in accordance with all other requirements of the Contract Documents, including the Division I Amendments.
- 10.3 Warranty Bond. Design-Builder shall procure, maintain and provide to the

County, after Final Completion but before Final Payment, a Warranty Bond issued by a surety licensed to do business in Virginia and otherwise acceptable to the County, for the faithful performance of the warranty. Said Bond(s) shall be in effect until VDOT accepts the Project into its State Secondary Road System for Maintenance and in the amount of ten percent (10%) of the final gross value of the Contract.

## **Article 11**

### **Project Management and Reporting**

#### **11.1 Project Management and Reporting Requirements**

- 11.1.1 Preliminary Schedule. Unless otherwise stated, within fifteen (15) days of Design-Builder's receipt of the County's Notice to Proceed, Design-Builder shall submit to the County, for its review and approval, a Preliminary Schedule in accordance with Exhibit 11.1 (Special Provision for Design-Build Schedules). The Preliminary Schedule shall be the basis for monitoring the Design-Builder's performance of the Work until such time as a Baseline Schedule has been approved by the County in accordance with Section 11.1.2 below. The County reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Preliminary Schedule.
- 11.1.2 Baseline Schedule. Unless otherwise stated, within ninety (90) days of Design-Builder's receipt of the County's Notice to Proceed, Design-Builder shall submit to the County, for its review and approval, a Baseline Schedule in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Baseline Schedule.
- 11.1.3 Schedule Updates. Design-Builder shall submit Schedule Updates in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Schedule Update.
- 11.1.4 Revised Baseline Schedule. Design-Builder shall submit a Revised Baseline Schedule when required in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Revised Baseline Schedule.
- 11.1.5 Final As-Built Schedule. Design-Builder shall submit a Final As-Built Schedule in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of Design-Builder's Applications for Final Payment until such time Design-Builder furnishes an approved Final As-Built Schedule.
- 11.1.6 Other Information and Alteration. Design-Builder shall, whenever required by the County, provide in writing a general description of the arrangements and

methods which Design-Builder proposes to adopt for the execution of the Work. No significant alteration to the Baseline Schedule, or to such arrangements and methods, shall be made without informing the County and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of the County and the work to be carried out by the County's Separate Contractors. If any alteration affects any such actions, obligations or Work, it shall not be made without the prior approval of the County. If the progress of the Work does not conform to the Baseline Schedule, as updated herein, the County may instruct Design-Builder to revise the Baseline Schedule, showing the modifications necessary to achieve completion within the Contract Times.

11.1.7 County's Separate Contractors. Design-Builder agrees to include the activities of the County's Separate Contractors into the Baseline Schedule. Design- Builder shall reasonably cooperate with the County's Separate Contractors and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

11.1.8 County's Review and Approval of Schedule Submissions. The County's review and approval of the Preliminary, Baseline Schedule or subsequent Schedule Updates and Revised Baseline Schedule shall not be construed as relieving Design- Builder of its complete and exclusive control and responsibility over the means, methods, sequences and techniques for executing the Work and does not constitute approval or acceptance of Design-Builder's ability to complete the Work within the Contract Time(s).

11.1.9 Monthly Reports. Monthly reports shall be prepared by Design-Builder and submitted to the County in four (4) copies. The first report shall cover the period up to the end of the calendar month after that in which the Agreement Date occurred; reports shall be submitted monthly thereafter, on or before the twenty fifth (25th) day of each month. Reporting shall continue until the County's determination that the Project has achieved Final Acceptance. Each report shall include:

- .1 Photographs and detailed descriptions of progress, including each stage of design, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition), procurement, delivery to Site, and construction;
- .2 Charts showing the status of all design documents, purchase orders, right-of- way acquisition, Governmental Approvals (including but not limited to permit acquisition) and construction;
- .3 Records of personnel and Design-Builder's equipment;
- .4 Copies of quality assurance documents, and test results;
- .5 Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- .6 Status of approvals for Governmental Approvals, as required by Section

- 2.6.1 of the General Conditions of Contract;
- .7 Monthly updates to the Baseline Schedule and narrative;
- .8 Unresolved claims or disputes that involve requests for extension to the Contract Time(s) or adjustment to any other date or milestone set forth in the Contract Documents or increases in the Contract Price;
- .9 All required EEO documentation for federal-aid projects;
- .10 Weekly work zone safety reviews;
- .11 Erosion & Sediment Control Reports; and

Failure of Design-Builder to provide complete monthly reports, including but not limited to the monthly schedule updates, shall be grounds for the County to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design- Builder furnishes such complete reports.

11.1.10 Project Records. Design-Builder shall organize and maintain its project records in a manner that allows such project records to be filed by work packages, as applicable. Additionally, Design-Builder shall develop a tracking log wherein the project records are provided chronologically, with the file type, description, date received/sent, entity the documentation is from/to, pay package reference, status and electronic location. If the project record relates to changes in the Work, preferably only one work package shall be referenced in such project record. If a project record relates to multiple work packages, then all related work packages shall be referenced in such project record. As a condition of Final Payment, Design-Builder shall provide the County with a complete set of all project records by and between Design-Builder and the County exchanged on the Project.

## **Article 12**

### **Other Provisions**

#### **12.1 Miscellaneous**

12.1.1 In executing this Agreement, the County and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary approvals to execute this Agreement and to perform the services and obligations described herein.

12.1.2 The parties acknowledge that as of the Agreement Date, the County has allocated, funding for the Project, and the County's obligation to pay the Contract Price for the Work is subject to the appropriations and allocations.

#### **12.2 Exhibits**

12.2.1 The following exhibits, as well as any other exhibits specifically set, are made part of, and incorporated into this Agreement.

Exhibit 11.1 -- Special Provision for Design-Build Schedules

Witness the following signatures:

**COUNTY OF LOUDOUN, VIRGINIA**

Division of Procurement  
One Harrison Street, S.E.  
Leesburg, VA 20175

Phone: (703) 777-0403

Fax: (703) 771-5097

By: \_\_\_\_\_

Name: Christopher Bresley, CPPB

Title: Contracting Officer

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

**CONTRACTOR**

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Kenneth M. Golski  
Assistant County Attorney

**END OF PART 3  
LUMP SUM DESIGN-BUILD AGREEMENT**