

ATTACHMENT to Part 3 Article 5
PROVISION FOR INTERIM MILESTONES AND “NO EXCUSES” INCENTIVES

5.2.1 Final Completion Date. The Design-Builder shall finally complete the Work for all three elements of the Project (US 29 & Rio Road Grade Separated Intersection, US 29 Widening and Berkmar Drive Extension) in accordance with the Contract Documents no later than October 30, 2017 (referred to as both “Final Completion Date” and “Contract Time”).

5.2.2 Early Completion of Entire Project The Department will pay the Design-Builder a payment in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000) to be known as a "no excuses" incentive payment if the Work under the Contract Documents for all three elements of the Project (US 29 & Rio Road Grade Separated Intersection, US 29 Widening, and Berkmar Drive Extension) is completed on or before July 1, 2017. For every day after July 1, 2017 the Design-Builder takes to complete the Work for all three elements of the Project, the “no excuses” incentive payment will decrease at a daily rate of Ten Thousand Seven Hundred and Forty Four Dollars (\$10,744). NO incentive payment will be paid for completing all Work after October 29, 2017. The "no excuses" incentive payment will be paid in addition to and separate from the Contract Price. For the purposes of this provision, completion shall be defined as Final Acceptance of all Work completed in accordance with the Contract Documents for all three elements of the Project in accordance with the process described in Part 4, Section 6.6.3.

5.2.2.1 The Design-Builder may elect to perform the Work for the US 29 & Rio Road grade Separated Intersection in the year 2016 or 2017. The Department will pay the Design-Builder a “no excuses” incentive payment if the Work for the US 29 & Rio Road Grade Separated Intersection reaches a milestone completion between May 23, 2016 and September 2, 2016. However, there will be no incentive if the Design-Builder elects to defer starting Work on the US 29 & Rio Road Grade Separated Intersection until the year 2017. The specific requirements related to the Interim Milestone completion dates and “no excuses” incentives are as follows:

5.2.2.2 Interim Milestone One – Early Completion of US 29 & Rio Road Grade Separated Intersection (May 23, 2016 and September 2, 2016) The Department will pay the Design-Builder a “no excuses” incentive payment for the targeted completion of Interim Milestone One (as delineated below) if the Work for the US 29 & Rio Road Grade Separated Intersection reaches a milestone completion between May 23, 2016 and September 2, 2016. If the Design-Builder elects to start Work between May 23, 2016 and September 2, 2016 for the US 29 & Rio Road Grade Separated Intersection all Work shall be completed within this time period in accordance with this provision. If not completed, the Design-Builder will be assessed liquidated damages in accordance with Section 5.5.2 below. The Design-Build may elect to defer starting Work on the US 29 & Rio Road Grade Separated Intersection between May 23, 2017 and September 2, 2017 with no incentive, in accordance with Section 5.2.2.3 (Interim Milestone Two). Furthermore the 103 day US 29 & Rio Road Grade Separated Intersection closure period and associated operational requirements will only be permitted between May 23 and September 2 in the year 2016 or 2017 in accordance with Part 2 Section 2.10.

The Milestone Completion Work for the US 29 & Rio Road Grade Separated Intersection is defined as all lanes, local and through, open to traffic in the final configuration such that the travelling public has unrestricted use including, at a minimum, the completion of the following items:

- Asphalt Pavement (at a minimum through intermediate course)
- Temporary or permanent line striping and directional arrows
- All directional and regulatory signing installed
- Permanent or temporary signals installed and operational
- Loop detectors or other detector systems installed and operational
- Signal timing functional according to approved signal plans
- Bridge structure with all safety items installed
- Curb and gutter installed
- Drainage structures and systems installed and functional
- Barrier Walls and attenuators where designed
- All turning and through movements open
- Sidewalks complete
- Crosswalks marked and refuge areas accessible and functional
- Crosswalk curb cut ramps installed and functional
- Above bridge lighting installed and operational
- Under-bridge lighting installed and operational
- Albemarle Square signal removed and right-in/right-out access controlled
- Fashion Square Mall signal removed and right-in/right-out access controlled
- Removal of temporary signs or signals not required for further operation
- Permanent stormwater management systems installed and functional
- Any under-bridge fire suppression and ventilation systems (where required) installed, tested, and functional
- Utilities relocated to their final position with no service interruptions required to complete the project

The Department will pay the Design-Builder a “no excuses” incentive payment in the amount of Nine Million Dollars (\$9,000,000) if the Milestone Completion Work is completed between May 23, 2016 and June 28, 2016.

The Design-Builder will receive a “no excuses” incentive payment in the amount of Eight Million Dollars (\$8,000,000) if the Milestone One Completion Work is completed on June 29, 2016. For every day after June 29, 2016 the Design-Builder takes to complete the Milestone One Completion Work, the incentive will decrease at a daily rate of Thirty One Thousand Six Hundred Forty three Dollars (\$31,643) until August 5, 2016 when the “no excuses” incentive payment for Milestone

One Completion Work will be Six Million Eight Hundred Twenty Nine Thousand Two Hundred Nine Dollars (\$6,829,209).

The Design-Builder will receive a “no excuses” incentive payment for Milestone One Completion Work in the amount of One Million Eight Hundred Fifty Four Thousand Three Hundred Sixty One Dollars (\$1,854,361) if the Milestone One Completion Work is completed on August 6, 2016. For every day after August 6, 2016 the Design-Builder takes to complete the Milestone One Completion Work, the incentive will decrease at a daily rate of Thirty One Thousand Six Hundred Forty Three Dollars (\$31,643) until September 2, 2016 when the “no excuses” incentive payment for Milestone One Completion Work will be One Million Dollars (\$1,000,000). If the Milestone Completion One Work is not completed by September 2, 2016, the Design-Builder will be assessed liquidated damages in accordance with Section 5.5.2 below.

The Milestone One Completion Work incentive payment would be paid in addition to and separate from the Contract price. For the purposes of this provision, completion shall be defined as Final Acceptance of all Milestone One Completion Work as defined above and in accordance with process described in Part 4, Section 6.6.3. Any remaining work required to reach final completion, and Final Acceptance for the entire US 29 & Rio Road Grade Intersection project in accordance the Contract Document will be required to be performed within the allowable work hour restrictions included in Part 2 of the RFP. No lane or shoulder closures will be allowed outside of the allowable work hours. The Final Acceptance of all Work for the US 29 & Rio Road Grade Separated Intersection, to be completed in accordance with the Contract Document, shall be no later than November 22, 2016.

5.2.2.3 Interim Milestone Two – Completion of US 29 & Rio Road Grade Separated Intersection (May 23, 2017 and September 2, 2017)

If the Design-Builder elects to start Work for the US 29 & Rio Road Intersection on May 23, 2017, the Design-Builder will be required to meet the same Milestone Completion Work requirements defined in Section 5.2.2.2 above by September 2, 2017. NO incentive payments will be provided for Interim Milestone Two Completion Work. For the purposes of this provision, work completion shall be defined as Final Acceptance of all Milestone Completion Work as defined above in Section 5.2.2.2 and in accordance with the process described in Part 4, Section 6.6.3. Any remaining work required to reach final completion in accordance with the Contract Documents, and Final Acceptance for the entire US 29 & Rio Road Grade Intersection project will be required to be performed within the allowable work hour restrictions included in Part 2 of the RFP. No lane or shoulder closures will be allowed outside of the allowable work hours. The Final Acceptance of all Work completed in accordance with the Contract Documents shall be no later than October 30, 2017. If the Interim Milestone Two Completion Work is not completed by September 2, 2017, the Design-Builder will be assessed liquidated damages in accordance with Section 5.5.3 below.

5.2.2.4 Acknowledgement of Delays

The parties anticipate that delays may be caused by, or arise from, any number of events during the term of the Contract Documents including, but not limited to: work performed, work

deleted, work orders, supplemental agreements, force accounts, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extension, extra work, overruns, nearby or adjacent projects, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions of third parties, actions of local residences and business owners, shop drawing approval, process delays, expansion of the physical limits of the Project, weather (other than floods in excess of the base flood, hurricane force winds and tornados), weekends, holidays, suspension of contract time, extended or absorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up impacts, conditions, circumstances, or potential damages on or pertaining to or as arising out of the Contract Documents, or other events, forces, or factors sometimes experienced in highway and bridge construction work. Further, all costs or impacts incurred by the Design-Builder (not previously identified and covered by work order, overrun, or force account) shall be the sole responsibility of the Design-Builder if the Design-Builder chooses to accept the “no excuses” incentive.

The “no excuses” incentive shall not apply to delays related to Unknown Hazardous Materials, wars, floods in excess of the base flood (as defined in the Division 1 Amendment), hurricane force winds, tornados, labor disputes, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Site.

5.2.2.5 Procedure to receive “no excuses” incentives

The Design-Builder shall, in order to receive any “no excuses” incentive payments:

1. Complete all Milestone Completion Work that the Design-Builder is seeking a “no excuses” incentive for as outlined above and in accordance with the Contract Documents.
2. Obtain Department written concurrence of Final Acceptance, in accordance with the process described in Part 4, Section 6.6.3.
3. After receiving written concurrence of Final Acceptance by the Department for the Interim Milestone the Design-Builder is seeking a “no excuses” incentive payment for, the Design-Builder shall sign a “Release of ALL Claims” form supplied by the Department. The “Release of ALL Claims” form certifies that all Work has been completed and has attained the Departments Final Acceptance and includes a full and complete release and acknowledgement of satisfaction by the Design-Builder of any and all claims, causes, actions, issues, demands, disputes, and matters of controversy of any nature or kind whatsoever for all Work performed from the Agreement Date until the Department’s Final Acceptance of all Milestone Completion Work the Design-Builder is seeking an incentive for and/or Early Completion of Final Project. This release and acknowledgement of satisfaction shall be all-inclusive and absolute.

5.2.2.6 Failure to Receive a “no excuses” incentive

Should the Design-Builder either fail to complete the Milestone Completion Work the Design-Builder is seeking a "no excuses" incentive payment for on or before the associated Interim Milestone Completion Date, or having satisfactorily completed the Work fail to request the “no excuses” incentive payment for any reason, including but not limited to the Design-Builder choosing not to fully release and acknowledge satisfaction of any and all claims etc. as set forth in the “Release of ALL Claims” form, the Design-Builder shall have no rights to any “no excuses” incentive payment(s) whatsoever.

5.3 Adjustments. The Final Completion Date(s) for the entire Project and Interim Milestones, in the Department’s sole discretion, shall be subject to adjustment in accordance with the provisions described herein.

The Department in its sole discretion will determine Final Acceptance and the Final Completion Date(s). The Interim Milestone Completion Date(s) will not be adjusted for any reason, cause or circumstances whatsoever, unless determined otherwise by the Department in accordance with the requirement and procedures outlined in Part 4, Article 9. In which case, the Department, in its sole discretion will determine if the Interim Milestone Completion Date(s) will be adjusted for any reason. In the event that the Department approves adjustments to the Final Completion Date for the Entire Project and/or Interim Milestone Completion dates, a work order will be generated to clearly identify the date changes and the application, if any, of any incentive/disincentive (or liquidated damages) with regard to any revised Final Completion Date for the Entire Project and/or Interim Milestone Completion dates.

5.5 Liquidated Damages. Design-Builder understands that if the Final Completion Date or any Interim Milestone Dates are not attained, Department will suffer damages which are difficult to determine and accurately specify. The liquidated damages specified herein shall act as an agreed and reasonable estimate of those damages and not as a penalty. To compensate the Department for such damages, Design-Builder hereby agrees as follows:

5.5.1 Liquidated Damages for Failing to Meet Final Completion Date for Entire Project

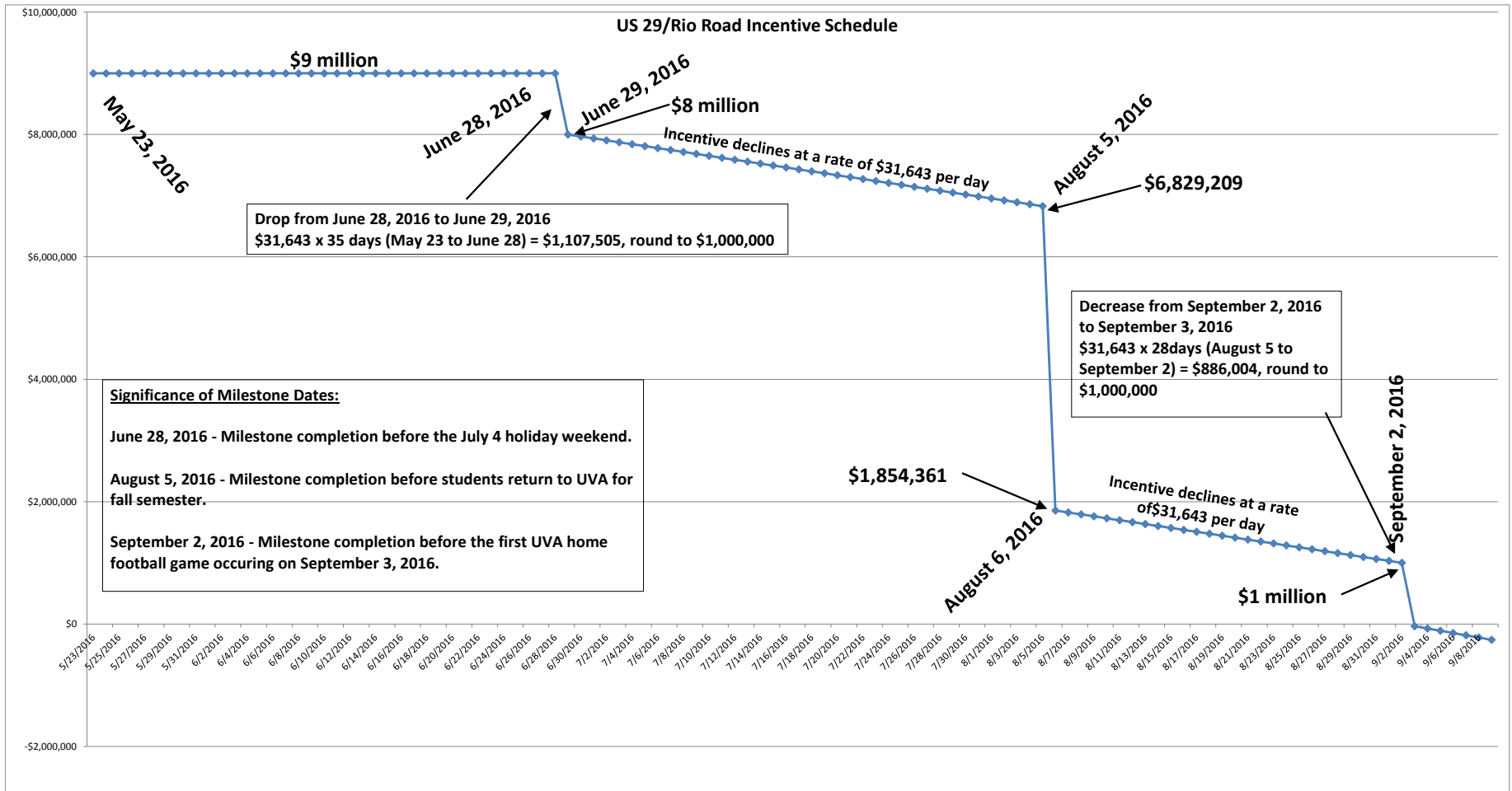
Liquidated damages for failing to attain Final Acceptance for all three elements of the Project (US 29 & Rio Road Grade Separated Intersection, US 29 Widening and Berkmar Drive Extension) by the Final Completion date of October 30, 2017 is Twenty Five Thousand Six Hundred Dollars (\$25,600) per day.

5.5.2 Liquidated Damage for Failing to Meet Completion Date(s) for Interim Milestone One

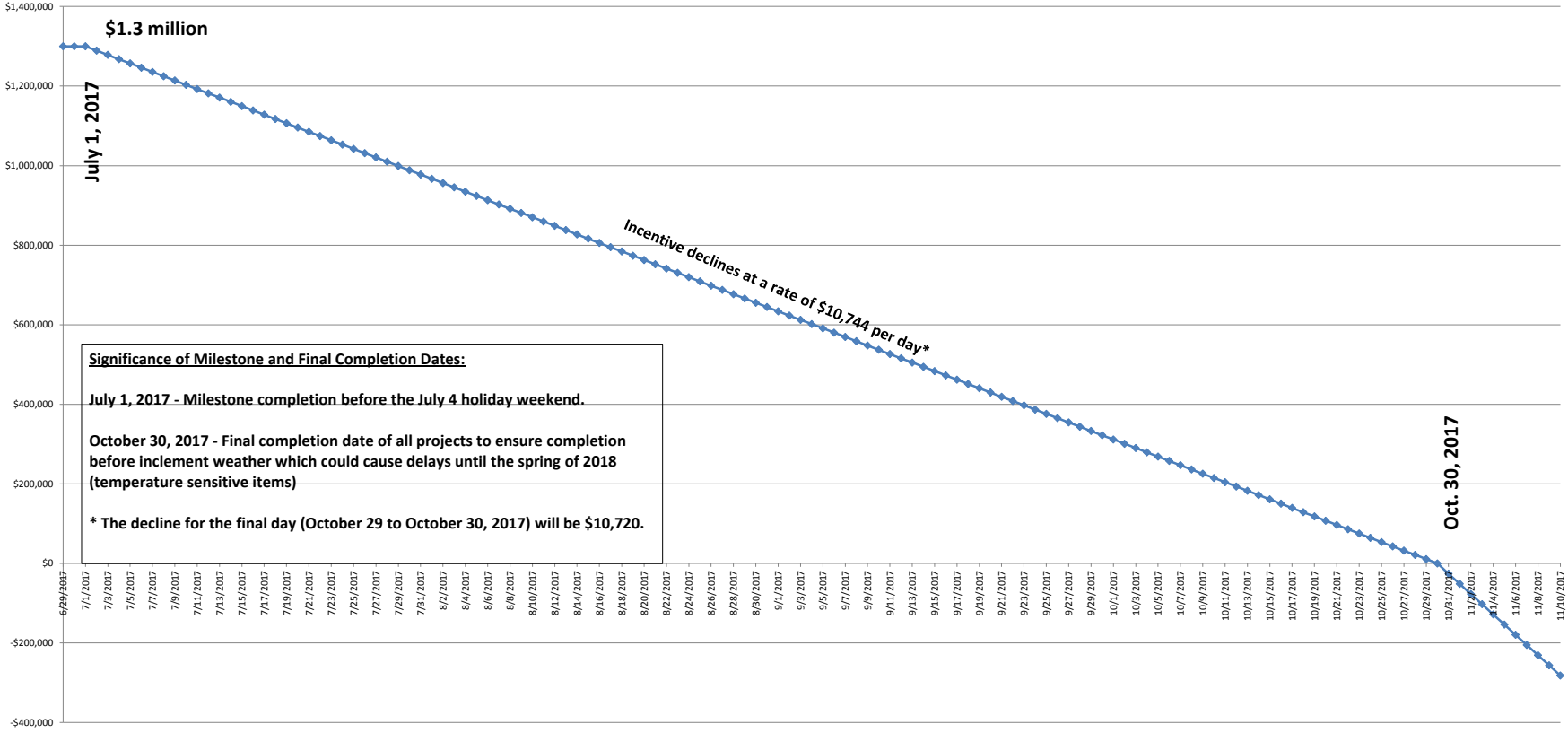
Liquidated damages for failing to attain Final Acceptance for all Work items defined in Section 5.2.2.2 for Milestone One Completion by September 2, 2016, is Thirty Seven Thousand Dollars (\$37,000) per day. An additional liquidated damage in the amount of Three Thousand One Hundred Dollars (\$3,100) per day will be applied for not attaining Final Acceptance of all remaining Work for the entire US 29 & Rio Road Grade Intersection by December 2, 2016.

5.5.3 Liquidated Damage for Failing to Meet Completion Date for Interim Milestone Two

Liquidated damages for failing to attain Final Acceptance for all Work items defined in Section 5.2.2.3 for Milestone Two Completion by September 2, 2017 is Thirty Seven Thousand Dollars (\$37,000) per day.



All Projects Incentive Schedule



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RELEASE OF ALL CLAIMS
Design-Build Project for Route 29 Solutions
Contract ID. No. C00077383DB80

Having completed the [*Project or Interim Milestone One*] as defined in the Attachment to Part 3 Article 5 of the above described contract, and in consideration of the agreed settlement sum of [*written dollar value*] Dollars (\$[*numerical*]), the sufficiency of which is hereby acknowledged, [*full company name*], [*nickname of company*], for itself and on behalf of its agents, employees, subcontractors, and material suppliers, or any combination thereof, and on behalf of its or their respective heirs, executors, administrators, successors, and assigns, hereby accepts said agreed settlement sum in full and final settlement of each and every claim of any nature, whether known or unknown, that exists for any reason against the Commonwealth of Virginia, Department of Transportation that is related in any way or degree to the Design-Build Project for Route 29 Solutions referenced above. Therefore, [*nickname of company*] does hereby release, acquit and forever discharge the Commonwealth of Virginia, its political subdivisions, departments, agencies and instrumentalities, the Comptroller of Virginia, the Commissioner of Highways, the Virginia Department of Transportation, directly and indirectly and in their official capacities, and their respective heirs, executors, administrators, successors, and assigns, of and from any and all actions, causes of actions, liability, rights, suits, contracts, claims and demands whatsoever, in law or in equity, for any and all injuries, damages, costs, expenses, attorney fees, consultant fees, or any other type of damage whatsoever, whether known or unknown. As set forth in the Attachment to Part 3 Article 5 of the above-described contract, and as further set forth by this documentary claims on work performed on the project before contract completion will be forever released and voided upon signature of this document.

In Further consideration of the above agreed upon final settlement sum, [*nickname of company*] expressly declares and agrees: 1) that the release of all claims herein shall not, and shall never be treated or considered as evidence of liability, nor as an admission of liability or responsibility at any time or in any manner whatsoever; and 2) that the Commonwealth of Virginia, its political subdivisions, departments, agencies and instrumentalities, the Comptroller of Virginia, the Commissioner of Highways, the Virginia Department of Transportation, directly and indirectly and in their official capacities will not be stopped from or otherwise barred from asserting, and they expressly reserve the right to assert, any claim or cause of action, known or unknown, they may have against [*nickname of company*] or any others; and 3) the payment of the agreed upon settlement sum is subject to (i) reduction by the amount of any outstanding debts owed to the Virginia Department of Transportation on this project and (ii) any set off by the Commonwealth of Virginia pursuant to the Virginia Debt Collection Act (Virginia Code Section 2.1-726, *et seq.*) and its implementing policies, procedures and regulations, provided however, the foregoing release will not extend to the Undersigned's right to contest the validity of such reduction or set-off but will be final in all other respects.

The Undersigned acknowledges under the above terms that this Release of all Claims has been fully and carefully reviewed and that all the terms and provisions contained herein are understood and agreeable.

I/we am/are authorized to execute this Release of all Claims on behalf of [*full company name*], this ____ day of _____, _____.

By: _____

Title: _____

State of _____

City/County of _____, To Wit

I, the undersigned, a Notary Public in and for the City\County and State aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument, bearing date of the ____ day of _____, _____ has this day acknowledged the same before me in my City\County and State aforesaid on behalf of [*full company name*].

Given under my hand this ____ day of _____, _____.

Notary Public

My commission expires _____