



ARKANSAS DEPARTMENT OF TRANSPORTATION

Alternative Project Delivery Program

Progressive Design-Build Guidelines and Procedures

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ABBREVIATION TABLE

Abbreviation	Definition
APD	Alternative Project Delivery
CPM	Critical Path Method
DBB	Design Bid Build
FHWA	Federal Highway Administration
GC	General Contractor
ICE	Independent Cost Estimator
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NTP	Notice to Proceed
OPCC	Opinion of Probable Cost
PD-B	Progressive Design-Build
PM	Project Manage
RE	Resident Engineer
RFP	Request for Proposal
SRT	Submittal Review Team

Section 1: Introduction

1.1 PURPOSE

The purpose of this document is to define the general ARDOT processes for efficiently and effectively administering an infrastructure/transportation project utilizing the Progressive Design-Build (PD-B) delivery method. The Planning, Preconstruction, and Construction phases are described herein.

1.2 INTRODUCTION

The PD-B project delivery method is used to deliver projects efficiently by using a procurement process which identifies the “Best Qualified Team” to deliver the project, and then that team collaborates to develop an optimized project design. The goal of the PD-B team during the Planning phase is to expedite the delivery of NEPA and other Planning level activities. During the Preconstruction phase, the project team will mitigate project risk, advance project innovations, develop an optimum construction schedule, and align with fair-market price for the project. There are numerous advantages to using PD-B including:

- Better owner control of project design
- Ease of procurement - quality-based selection
- Owner control of risk and associated savings
- Collaborative project team environment vs. low bid adversarial team relationships
- Negotiated project scope delivered at fair market price
- Identification of innovations that drive design optimization early in the process
- The ability to select the best Contractor and Subcontractors to meet the project goals

1.3 FEDERAL LAWS AND STATE AUTHORITY

On July 6, 2012, the Moving Ahead for Progress in the 21st Century Act MAP-21 was signed into law. MAP-21 authorized the use of the PD-B contracting model for delivering federal-aid projects. The passage of MAP-21 also removed the requirement for Special Experimental Project No. 14 (SEP-14) approval for PD-B projects occurring after October 1, 2012, provided their state statutes allow for it.

In 2015 Arkansas passed Act 704 giving full authority to the state highway commission to enter into a contract for qualification-based design-build services.

Section 2: Project Administration

2.1 ROLES AND RESPONSIBILITIES

This section outlines specific administrative activities for PD-B projects, and the roles and responsibilities of the various parties involved in managing and staffing a PD-B project.

ALTERNATIVE PROJECT DELIVERY ADMINISTRATOR (APDA)

The primary responsibilities of the APDA on PD-B projects include:

- **Administrative** - Managing and overseeing the procurement process for selecting the PD-B and ICE. The ICE is selected from the On-Call Independent Cost Estimating list of prequalified ICE consultants.
- **Contract Management** - Verifying that PD-B procurements are conducted in accordance with state and federal laws.
- **Risk Mitigation/Design Innovation** - Overseeing the interim pricing models and price proposal processes.
- **Administrative** - Managing the GMP bid process and making recommendations to award.
- **Contract Management** - Ensuring that preconstruction commitments are carried over and implemented in the construction phase.
- **Supervision** - Providing training and guidance to ARDOT's Project Manager.

The above list is not an all-inclusive list. Specific tasks and responsibilities of the APDA are listed throughout this manual.

PROJECT MANAGER (PM)

The PM is an APD employee responsible for managing the planning, preconstruction, and construction phases of a PD-B project. The PM's role typically requires more active team coordination and direct involvement than other project delivery methods.

The primary responsibility of the PM is to guide design decisions while overseeing the collaborative effort between the Designer and PD-B Contractor. The PM facilitates this collaborative process through active communication and project team meetings. The PM will focus on risk mitigation, alternate design/design innovation, and process alignment. The ARDOT PM is responsible for:

- **PD-B Oversight** - Overseeing the implementation of PD-B processes and commitments.
- **Partnering/Team building** - Participating in partnering workshops and follows through with continuing partnering efforts.
- **Project Scope** - Developing the scope of the project within the project budget.
- **Design** - Managing design and environmental approvals.
- **Alternate Design/Innovative Design** – Organizing task force groups and workshops. Oversees development of Innovations log and implementation of vetted innovations.
- **Risk Mitigation** - Managing and coordinating risk mitigation efforts. Oversees development of Risk Register.
- **Cost Models (OPCC Cycle)** - Facilitating price reconciliation meetings and workshops.

Note -The above list is not an all-inclusive list. Specific tasks and responsibilities of the PM are listed throughout this manual.

RESIDENT ENGINEER (RE)

The Resident Engineer (may be ARDOT employee or a consultant) is responsible for providing contract administration and project oversight once a construction contract is awarded on a PD-B project. The RE will work with the Project Manager to ensure that all PD-B processes and commitments are fully implemented during the construction phase of the contract. The RE has additional responsibilities in PD-B that are critical to the smooth transition from Preconstruction to the execution of the construction contract:

- **Construction Administration** - Meeting attendance (Risk Workshops, Design Review, OPCC, Task Force, and GMP meetings).
- **Constructability** - Reviewing plans during preconstruction phase.

- **Risk Management** - Championing risk mitigation efforts.
- **Construction Scheduling** - Reviewing construction schedule and project constraints/ limitations.

Note -The above list is not an all-inclusive list. Specific tasks and responsibilities of the RE are listed throughout this manual.

PD-B

The PD-B performs distinct roles on the project: Design Management, Construction Management, and General Contractor.

Planning Phase Management

- **NEPA** - Assisting, as required, to expedite the completion of the NEPA (National Environmental Policy Act) process. *The PD-B cannot have decision-making responsibilities to the NEPA process.*
- **Define Project Scope/ Alternate Designs** - Collaborating with the team to continually optimize the design to meet project goals.
- **Right of Way Mapping** - Optimizing right of way plans, prioritizing acquisitions, managing, and assisting with resources.
- **Risk Mitigation** - Identifying and prioritizing risks that will drive design. Champion risks, participate in task force meetings, and work to mitigate risks through design and project specifications.
- **Utility Planning** - Developing approach to Utility planning, procure agreements, design, and management.

Preconstruction Management

The PD-B works with the project team to manage the design and produce plan sets, specifications, and project quantities. The Designer's role in PD-B is like its role in Design Bid Build (DBB) contracting, with the following differences:

- **Alternate Design/Innovation** - Collaborating with the team to continually optimize the design.
- **Quantity Reconciliation** - Providing engineer's estimate of quantities. Participates in quantity reconciliation workshops. Providing summary of agreed project quantities.
- **Engineer's Estimate** - Providing an Engineer's Estimate to establish a market baseline for reference during OPCC discussions.

- **Innovation Log**- Developing and managing the innovation log and leading Innovation Workshops.
- **Risk Mitigation** - Championing risks, participating in task force meetings, and working to mitigate risks through design and project specifications.
- **Contract Management/Multiple Work Packages** - Developing multiple work packages, as required. Early work packages will require additional efforts.

Construction Manager:

- **Constructability** - Full engagement in the preconstruction phase, focusing on risk management and design optimization.
- **Meetings** - Participating in design review workshops, risk workshops, quantity reconciliation, estimate coordination meetings, and price reconciliation meetings at each interim pricing milestone.
- **Construction Cost Estimates** - Providing continuously refined, open-book OPCC estimates at estimating milestones.
- **CPM Schedule** - Developing and optimizing critical path construction schedule.
- **Risk Mitigation** - Evaluating project risks and developing comprehensive risk mitigation strategies.
- **Subcontracting** - Developing and updating the subcontracting plan for the construction phase that integrates subcontractors/suppliers, including those proposed to meet DBE, OJT and EEO requirements.
 - Contractor must make a good faith effort to meet the stated ARDOT DBE project goals. In addition, local Contractor inclusion is strongly encouraged where possible.
- **Multiple Work Packages** - Assisting with identifying and developing work packages that optimize the schedule, mitigate project risks, and/or result in cost savings.

General Contractor: Once Preconstruction phase activities are complete for the project or a work package, then the PD-B Contractor is given an opportunity to reach agreement with ARDOT on a proposed GMP (Guaranteed Maximum Price) to construct the project or work package. If ARDOT and the PD-B Contractor reach agreement, the PD-B Contractor becomes the General Contractor (GC) for construction of the project or the work package. The PD-B Contractor's role as the GC on a PD-B project is a traditional role like that of a GC on a DBB project.

Note -The PD-B Contractor is required to self-perform (Reference to legislation 19-11-1407 A4) at least 30% of the project construction (see Arkansas code § 19-11-1407 A4).

Note - A sample Scope of Work for PD-B Contractors is included in Appendix I

INDEPENDENT COST ESTIMATOR (ICE)

The ICE is a consultant hired by ARDOT with considerable experience producing production-based, Contractor-style estimates using Contractor-style estimating software. The purpose of the ICE is to provide another perspective to the PD-B Contractor's estimate that helps ensure a fair and reasonable price for construction. They must have hands-on construction experience and expertise in CPM schedule optimization, risk mitigation, and innovative construction practices. The ICE must be able to bid the project as though they are the Contractor.

The Independent Cost Estimator is responsible for the following:

- **Construction Cost Estimates** - preparing a production-based independent cost estimate at each interim design pricing milestone and at the time of the GMP Price Proposal. These cost estimates are comprised of direct costs, indirect costs, Contractor markup, and time-related overhead components.
- **Constructability** - reviewing plans and specifications and participating in design review workshops at interim milestones.
- **Innovation** - using construction/design best practices, identifying potential innovations that would save costs and/or optimize project duration.
- **Scheduling** - The ICE provides an independent construction CPM schedule that is correlated with their estimate and used to produce resource availability, overhead costs, and other time-related expenses.
- **Fair Market** - ICE is expected to know the local markets, suppliers, subcontractors, and DBEs.
- **Risk Management** - Leading risk workshops, developing risk register, identifying risk mitigation strategies, cost and time impacts, risk probabilities, and risk triggers.

Note - A sample Independent Cost Estimating Services scope of work is included in Appendix II

Federal Highway Administration (FHWA)

Federal involvement is required on projects with federal funding. The FHWA's Final Rule for PD-B outlines requirements, including FHWA approvals, specific to federally funded PD-B projects. FHWA and ARDOT also have a Stewardship and Oversight Agreement and a Memorandum of Understanding (MOU) that outlines the roles and responsibilities between the agencies on stewardship and oversight of federal-aid projects.

2.2 PROCUREMENT

PROCUREMENT OF THE PD-B AND ICE

The PD-B and ICE should be procured at the same time. The PD-B and ICE should be procured as early as possible to add the maximum value to the project. The PD-B and ICE are selected in accordance with the following:

ICE Procurement: The ICE is selected from the On-Call Independent Cost Estimating list of prequalified ICE consultants.

PD-B Procurement: RFP (Project Specific): Use a qualifications-based two-step procurement process consisting of a request for proposals (RFP) advertisement. A request for Letters of Interest (LOI) may be used prior to the advertisement of an RFP to gauge interest in the project. On more complicated projects, an interview of the most qualified respondents to a PD-B RFP could be included as part of the procurement. The interview process should be outlined in the RFP if it is anticipated to be a part of the procurement process.

The specific needs of a project should be considered when developing an RFP. If the project is driven by schedule, inquire about the proposer's resources and examples of their company successfully delivering projects with schedule constraints. If the project is budget-driven, then the RFP should inquire about examples where the proposer has implemented cost savings innovations on previous projects. The general format provided in Appendix XIII should be followed whenever possible.

Scoring criteria for the selection should be clearly described in the RFP. When drafting the requirements of an RFP, consideration should be given to how those requirements will be scored. Although subjectivity will always be part of the scoring process, requirements should be drafted in such a way as to allow for as much objectivity as possible. Experience requirements for key personnel and firms should include a requirement for clear and confirmable evidence that the respondents meet or exceed the stated requirements.

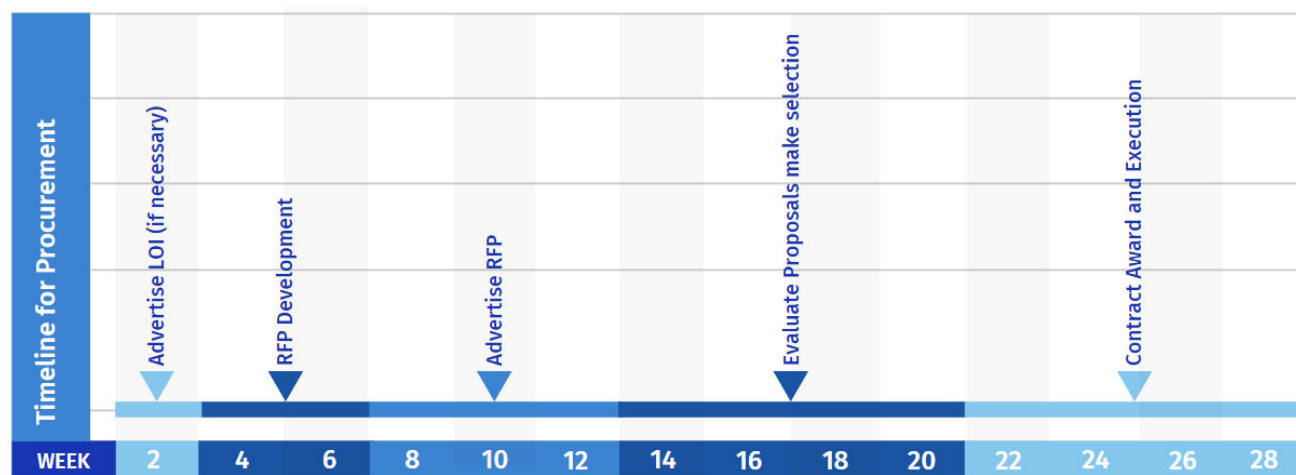
Note - Arkansas Highway Commission approval is needed prior to beginning procurement

Note - A sample notification of award for PD-B services is included in Appendix XV

Note - A sample PD-B RFP is included in Appendix XIII

TYPICAL PROCUREMENT TIMELINE

Listed below are typical timeframes needed to perform each procurement item. These timeframes will vary based on project complexity and procurement type and are provided for planning purposes only. The timeframes below assume a one-step (RFP only) process. If shortlisting and interviewing, add approximately eight weeks to the overall procurement timeline. The timeline assumes approval to begin procurement has been received from the Arkansas Highway Commission.



2.3 SELECTION

Submittal Review Team

The Submittal Review Team (SRT)/ or APD is responsible for performing a pass/fail review of all procurement submittals and for assigning a qualitative score to each section of a submittal that requires a score. The SRT will be selected by the Project Manager and APD. The SRT should consist of Department staff who are familiar with the project and with the areas of expertise that are being emphasized in the procurement documents.

Note - The Submittal Review Team will follow the standard ARDOT process for proposal evaluation, Steering Committee and Award Recommendations.

2.4 CONTRACT NEGOTIATIONS

After final approval of the selection by the Arkansas Highway Commission, the PM shall begin negotiations with the selected firm on a Task Order. Typical fees for ICE services on a PD-B project range between 2% - 3% depending on the scope of work and project complexity. Typical PD-B fees for the preliminary and preconstruction services vary depending on the scope of work and project complexity.

Note - A sample template for ICE Services Task Order is included in Appendix III

Note - A sample PD-B Minute Order is included in Appendix XIV

Note - A sample PD-B Master Agreement is included in Appendix XVI

A sample Task Order is provided in the Appendix. The Consultant Contracts Section should be consulted to determine the most up to date requirements for Task Orders. The Program Management Division should be consulted for details related to funding for the Task Order.

2.5 PAYMENT OF PLANNING/PRECONSTRUCTION SERVICES

Invoices should be submitted to ARDOT monthly. All expenses submitted for reimbursement must be in accordance with state and federal regulations and law and consistent with the Master Agreement and Task Order in which they are related. To expedite the processing of invoices, Contractors and consultants should utilize invoicing forms provided by ARDOT Consultant Contracts and submit invoices to consultantinvoices@ardot.gov. Expense reports created by a Contractor's or consultant's accounting software may be used as supporting documentation, however, the information contained in these reports should be translated to standard forms.

Section 3: Planning Phase

3.1 PD-B PLANNING PHASE ACTIVITIES

The Planning Phase begins upon execution of the Design-Build Agreement and continues until either the Preconstruction Phase Amendment/NTP is executed by ARDOT and the Design-Builder, or ARDOT exercises its right to terminate the Design-Build Agreement. The Planning Phase may overlap with the Preconstruction Phase. During the Planning Phase, the Design-Builder performs the Planning Phase Work. This work includes the activities detailed below.

NEPA (National Environmental Policy Act)

Federal Requirements prohibit private entities from preparing NEPA documents or from having any decision-making responsibility in the NEPA process. Therefore, ARDOT shall retain all NEPA decision-making responsibility. The Design-Builder shall assist ARDOT with certain tasks associated with the NEPA process and approvals, including:

- **Design** - The Design-Builder shall provide initial design scope to and any updates or modifications to the original scope. The Design-Builder shall work with ARDOT to obtain NEPA approvals and other governmental approvals for the project. The Design-Builder shall obtain the necessary environmental permits and complete all environmental mitigation and commitments prior to, during, or after construction, as applicable.
- **Mitigation Class Action** - If a new environmental approval becomes necessary for any reason other than a relief event, the Design-Builder is responsible for the cost of obtaining the new environmental approval and for all resulting requirements, as well as for any litigation arising in connection with it as well as any schedule impact. All required information for a new environmental approval should be prepared and submitted to ARDOT, who will then obtain the new environmental approval. The Design-Builder should not contact any agencies or persons regarding the new environmental approval without coordinating with ARDOT.
- **Mitigation of Hazardous Materials** - ARDOT may hold third parties legally responsible for all hazardous materials present on the site. State and federal

statutes provide that individuals and firms may be held liable for damages and claims related to hazardous materials under the doctrines of joint and several liability and/or strict liability. Using a risk register, ARDOT reimburses the Design-Builder for defined costs related to hazardous materials.

Note - If Hazardous Materials are encountered, ARDOT is responsible for disposal utilizing an EPA identification number or other appropriate legal device. ARDOT retains sole decision-making authority regarding selection of the destination facility and the applicable standards regarding transport of hazardous wastes.

Note - A typical planning phase schedule is included in Appendix V

Scope Planning/ Alternates

The Design-Builder is responsible for the efficient and collaborative development of the project design.

- Project Scope - Scoping a PD-B project begins with developing and reviewing the project's goals and risks. A unique benefit of PD-B is that the Design-Builder is selected based on qualifications and experience. This allows flexibility during design development as the Design-Builder and ARDOT work together to evaluate the work elements, formulate a project approach, and minimize project risks through negotiation. This collaborative process may produce new approaches or innovations to the project work elements and may include changes or additions to any early work packages under consideration. Therefore, the Design-Builder should be aware that the final Scope of Work and any early work packages for a project will be developed with input from both ARDOT *and* the selected Design-Builder.
- Consideration should be given to the project schedule and resources available to manage the process. PD-B projects place a unique collaborative responsibility on ARDOT, as it requires a high level of interaction between ARDOT and the PD-B team. Regular team meetings are required to successfully navigate the process. These will be discussed in greater detail below.

Utility Planning

The Design-Builder performs activities to clear the project of utility conflicts to accommodate design and construction including:

PLANNING PHASE

- Utility Mapping - The Design-Builder coordinates with all third-party and ARDOT utility groups to identify, map, and confirm all utilities within the project.
- Utility Agreements - The Design-Builder prepares and negotiates all required Utility Agreements with Utility Owners using Department approved forms. ARDOT and the Design-Builder coordinate to complete utility agreements, including engaging in outreach to utility owners and participating in negotiation sessions.

Note - The Design-Builder does not enter into any agreement with a utility owner that binds ARDOT in any way.

- Utility Relocations - The PD-B is responsible for oversight of utility relocations. The Design-Builder coordinates, monitors, manages the relocation efforts.
- Utility Event/Delays - ARDOT and the Design builder will agree to a reasonable delay cost if the utility owner fails to relocate the Utility by the deadline. The Design-Builder shall be entitled to cost and schedule relief resulting from such failure to the extent provided in the Risk Register.

Right of Way Mapping/Acquisitions

Right of Way (ROW) is a joint effort with ARDOT and the Design-Builder. ARDOT and the Design-Builder jointly produce ROW plans during the Planning Phase to identify the ROW needed to construct the Project.

- ROW Mapping - The Design-Builder assists ARDOT in identifying, mapping, prioritizing, and scheduling ROW acquisitions.
- ROW Acquisition - ARDOT acquires and bears the cost of the parcel takes for temporary construction access and full takes. ARDOT retains the right to direct the Design-Builder to retain a ROW consultant to assist with such services.
- ROW Delays - ARDOT will agree with the Design-Builder, as documented in the Risk Register, to cost and schedule relief if the Department fails to provide the Design-Builder with access to any ROW by the date identified in ROW acquisition schedule included in the GMP Amendment/NTP for Construction. The Design-Builder will coordinate with ARDOT to prioritize ROW acquisitions to minimize any cost and time impact.

3.2 PD-B PLANNING PHASE MEETINGS

The following is a series of meetings that occur at the onset of a PD-B project. These meetings will help build a collaborative team focused on meeting the project goals.

PROJECT KICKOFF MEETING

PURPOSE - The PD-B Planning Phase begins with a Project Kickoff Meeting. This meeting is used to review the team's roles and responsibilities, develop a preliminary Planning Phase schedule, review the project goals, and review the scope of work.

TIMING - Set aside one to two days for this Kickoff Meeting as soon as the PD-B team is procured.

ATTENDEES - PD-B key personnel, ICE key personnel, FHWA representative, ARDOT Project Manager, Resident Engineer, and representatives from every Division that will be involved in the project. It is also beneficial to have executive level involvement from the PD-B and ARDOT at the beginning of the meeting to ensure a strong commitment to partnering and the project goals.

MEETING GOALS

- Establish a collaborative team culture
- Understand the project goals
- Establish expectations
- Establish lines of communication
- Establish file sharing process
- Establish a preliminary project schedule

Note - Appendix XVII: Sample project kickoff agenda

NEPA TASK FORCE MEETINGS

PURPOSE - For regular coordination and collaboration to progress the NEPA process.

TIMING - Assume 2 hours for this meeting. This meeting can be held at regular intervals to meet the project timelines.

ATTENDEES - PD-B key personnel, ICE key personnel (as needed) FHWA representative, ARDOT Project Manager, and Resident Engineer, ARDOT discipline leads.

MEETING GOALS - Regular check-ins, accountability, review of deliverables, and schedule. The following list of activities are typical requirements to acquire NEPA approval. These activities may need to be adjusted to meet project-specific requirements.

- Review of Previous Data
- Develop Public Involvement Plan
- Develop Project Constraints Map
- Develop Traffic Operations & Safety Analysis Methodology
- Update Draft Purpose and Need
- Develop Alternatives Screening Methodology
- Conduct Initial Traffic Analysis

P L A N N I N G P H A S E

- Conduct Safety Analysis
- Perform Alternatives Screening
- Develop Stakeholder Contact List
- Develop NEPA Classification Memo
- Develop Environmental ROE Letter and Mailing List
- Conduct Detailed Traffic Analysis
- Develop Cultural, Hazmat, Air Quality, Community, and Habitat Report
- Develop Traffic Report
- Develop Noise and WOUS Report
- Schedule and hold public meetings
- Develop and address comments
- Coordinate with Internal Team
- Coordinate with Client
- Coordinate with Environmental Consultant

Note - Appendix XVIII: Sample Task Force Meeting Agenda

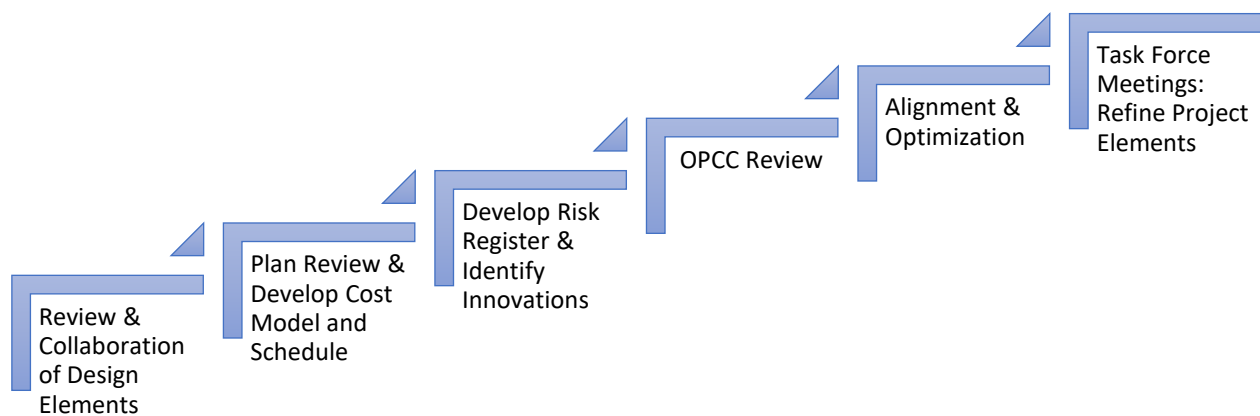
Section 4: Preconstruction

4.1 PD-B PRECONSTRUCTION ACTIVITIES

The processes outlined below are derived from best practices and lessons learned and should be ongoing to continually refine and focus the project. Following these steps, repeating the refinement cycle during collaborative meetings, and remaining open-minded to innovations will lead to getting the most out of your PD-B project team. These concepts and meetings with the associated goals keep the team focused on successful project delivery.

Note - A sample PD-B Preconstruction Schedule is included in Appendix VI

Initial Cost Model - The team starts immediately to refine and efficiently progress design, while minimizing risk, cost, and schedule impacts.



The Refinement Cycle - is the process of defining final project scope, cost, schedule, and contract language to agree on a construction contract for each work package.



Partnering - The PD-B process is a very collaborative project delivery method. Accordingly, it is essential that each member of the project team work together toward the same goal(s). Formal partnering is a good tool to make sure everyone is aligned and working together. Partnering typically starts at the kick-off meeting and continues throughout the construction phase.

Initial Approach to Cost - Soon after the kick-off meeting (or sometimes incorporated into the kick-off meeting), the PM should schedule the Initial Approach to Cost meeting. This meeting is typically lead by the ICE team and the purpose is to make certain that the estimators and schedulers are aligned on the PD-B processes. Also, roles, responsibilities and expectations are defined in this meeting.

Design Constructability Review - Constructability reviews should focus on identifying potential problems, such as vague requirements that may impact the construction or administration of the project. It should verify that the bid documents are clear, concise, and coordinated with all design disciplines. It should also include verification that existing conditions are accurately reflected on the plans along with Contractor access, staging areas and limitations of the work environment. In addition to ARDOT, the PD-B and ICE should review the design strategies to ensure that construction layout, functional

relationships, space allocations, accessibility and circulation, security and safety are properly addressed in the construction documents.

During the design review meetings, the project team should collaborate to:

- Ensure a constructible and cost-effective design that meets the project goals.
- Confirm that all work has been included and described in sufficient detail to ensure complete pricing of work.
- Allow for all parties involved to provide feedback on the constructability of the design.
- Facilitate discussion on assumptions for means and methods, construction staging, and sequencing of work.
- Reconcile quantity differences between the Designer and estimators.
- Identification of any errors, omissions, ambiguities, or other items that need to be corrected.

CPM Scheduling - Often, the longer it takes to build a project, the more it costs mostly due to time related overhead costs. Developing an optimized construction schedule can lead to significant project savings. For that reason, both the PD-B and the ICE will develop independent construction schedules using the Primavera P6 scheduling software (or similar). These independent schedules give ARDOT two looks at how this project can be built, and it often reveals innovations that can save time and money. The differences between the ICE and PD-B schedules are then compared and reconciled at the first OPCC meeting. Typically, around the 60% design level both the PD-B and ICE agree on the best approach (and schedule) for the project. From that point forward, the PD-B and ICE collaborate on optimizing the construction schedule.

Risk Management - Project risk can have a huge impact on price. The PD-B delivery method puts the control of project risk in the hands of ARDOT. ARDOT has the final say in how project risks will be mitigated. Accordingly, a formal risk management process should be employed on PD-B projects. If the ICE consultant is experienced with risk management, they are the preferred consultant to lead the risk management process and to manage the development of the risk register. If not, ARDOT should procure a 3rd party risk management consultant to lead the risk process. A sample risk register is included in the Appendix.

Innovation Development & Tracking - Great value can be added to PD-B projects through innovative designs and construction innovations. An innovation log should be

kept to track the identification, vetting and implementation of project innovations. The PD-B Contractor is typically the best party to manage the development of the innovation log.

Note - A sample innovation log is included in Appendix IV

Quantity Reconciliation - To successfully negotiate a fair-market price for a PD-B project, both the ICE and the PD-B must start with the same quantities. Accordingly, prior to beginning cost estimating at each milestone, the PD-B team needs to agree on quantities. For quantity reconciliation, the PD-B team will use a spreadsheet similar to a bid tab (without prices included) provided by the design team. This spreadsheet has a column for engineer quantities and a column for the ICE and PD-B takeoff quantities. The spreadsheet also includes a fourth column for agreed upon quantities. A sample quantity reconciliation sheet is included in the Appendix. The agreed upon quantities column is filled out at the quantity reconciliation meeting. At quantity reconciliation meetings, the three parties discuss the quantity difference and agree to quantities that will be used for the subsequent cost estimating task.

Opinions of Probable Construction Costs (OPCC) - The cost estimate models developed by the PD-B and ICE are called an OPCC. An OPCC cycle is typically completed at 30%, 60% and 90% design milestones where it makes the most sense for the project.

Note - There needs to be a stopping point in design where you make assumptions for this round and accept that there may be changes that won't be implemented in this cost model.

The PD-B and ICE will provide production-based (Contractor style) independent cost estimates at each design milestone and at the Final GMP bid. The cost estimators will develop their estimates using construction estimating software. Once the estimates are complete, the resultant unit prices will be transferred to an OPCC Price Comparison spreadsheet. A sample OPCC Price Comparison spreadsheet is included in the Appendix. Members of the PD-B, ICE, ARDOT, and Design team will attend cost reconciliation meetings at each milestone of the project.

Multiple Work Packages - During the development of design, it may become evident that portions of the project design can be finalized earlier than others, or it may become advantageous to advance a portion of the project ahead of the rest. The PD-B delivery method provides an opportunity for construction activities to commence on these portions of the project prior to the completion of the full design for the entire project. Construction

work that can be started in advance of the completion of final design can be developed as an early work package.

Criteria for an early work packages

- Early work packages must be severable from the rest of the project.
- Prior to developing early work packages, it is best practice to have “price certainty” that the overall construction project will be within budget.
- Separating out early work packages should not add cost to the overall project.

Before moving forward with the development of an early work package, the project team should contemplate the following circumstances and special considerations:

Beneficial Circumstances

- Work that can help with the relocation of utilities.
- Early purchase of materials that have long lead times.
- Work that will improve maintenance of traffic.
- Work that will improve the production rates of major portions of the final design.
- Work that will reduce project risk or improve the project schedule.
- Early start on Public Involvement work.

Special Considerations

- Will the early work package result in longer disruptions to traffic?
- Will the early work package result in additional impacts to stakeholders?
- Will the early work package result in a situation that will be problematic if the PD-B is not awarded a construction contract on the final design (severability)?
- Will the timing of the early work package result in the PD-B having to mobilize multiple times?

Developing an early/ separate work packages

Once the project team has decided it is in the best interest of the project to utilize an early work package, the Designers should begin to break this work out from the full project design.

1. The PM should work with the Program Management Division to establish a new project number for the early work package.
2. A new proposal will need to be established in ARDOT’s preconstruction software and a draft construction contract will need to be developed.

PRECONSTRUCTION

3. The project team should decide on whether an OPCC should be developed for the work prior to moving to the Price Proposal phase for the early work package.

Note - An early work package includes plans/ specifications for the scope of work, a risk register, agreed upon quantities, price, and schedule.

The OPCC for an early work package should follow the process detailed in Section 4.3 and the Price Proposal should follow the process detailed in Section 4 of these guidelines and procedures.

Negotiated GMP - The PD-B's final cost estimate (GMP Price Proposal) will become the construction contract price if the PD-B is selected as the General Contractor. The PD-B's Price Proposal must be less than 10% higher or lower than the ICE cost estimate for the PD-B to be awarded the construction contract.

4.2 PD-B PRECONSTRUCTION – ALIGNING THE TEAM

The following is a series of meetings that occur at the onset of a PD-B project. These meetings will help build a collaborative team focused on meeting the project goals.

PROJECT KICKOFF MEETING

PURPOSE - The PD-B Preconstruction Phase begins with a Project Kickoff Meeting. This meeting is used to review the team's roles and responsibilities, develop a preliminary preconstruction schedule, review the project goals, and review the scope of work.

TIMING - Set aside one to two days for this Kickoff Meeting as soon as the whole team is procured.

ATTENDEES - PD-B key personnel, ICE key personnel, FHWA representative, ARDOT Project Manager, Resident Engineer, and representatives from every Division that will be involved in the project. It is also beneficial to have executive level involvement from the PD-B and ARDOT at the beginning of the meeting to ensure a strong commitment to partnering and the project goals.

MEETING GOALS

- Establish a collaborative team culture
- Understand the project goals
- Establish expectations
- Establish lines of communication
- Initial Risk Workshop is included in the Project Kickoff agenda

Note - Appendix XVII: Project kickoff agenda

APPROACH TO COST MEETING

PURPOSE - to establish agreed upon assumptions and approaches to the open book, production-based estimating process during the design development phase. These assumptions and approach include alignment amongst the PD-B project team on the definition and assignment of direct and indirect costs, overhead, and profit to items of work.

TIMING - Assume 2-hours for this meeting. This meeting can be incorporated into the project kick-off meeting if desired.

ATTENDEES - PD-B key personnel, ICE key personnel, FHWA representative, ARDOT Project Manager, and Resident Engineer, Design discipline leads.

MEETING GOALS

- Establish expectations of Open Book Negotiating practices
- Define team members roles
- Create team culture for resolving cost and schedule differences
- Establish risk management process
- Discuss subcontracting plan
- Establish an understanding of cost estimating and scheduling parameters

Note - Appendix XIX: Sample Approach to Cost agenda

Appendix XII: Definition of Open Book Estimating / Fair-Price Overview

INITIAL RISK WORKSHOP

PURPOSE - An important component of the PD-B delivery method is the identification and mitigation of project risk. For this reason, formal risk workshops should be a part of the preconstruction activities. The risk register is a living document that should be continuously updated throughout project development and should include cost and schedule impacts for risks whenever possible. The cost and schedule impacts of a risk that is being tracked on the risk register shall not be included in the unit prices of an OPCC or GMP Price Proposal.

TIMING - The initial risk workshop is included in the project kickoff meeting agenda.

ATTENDEES - PD-B key personnel, ICE key personnel, design discipline leads, ARDOT Project Manager, Resident Engineer, and representatives from every Division that will be involved in the project.

MEETING GOALS - Identify/quantify project risks, assign risk champions, assign task force responsibilities, and identify initial risk mitigation strategies.

Note - Appendix IX: Sample Risk Register

Appendix XI: Sample Risk Management Plan

PARTNERING WORKSHOP

PURPOSE - The PD-B delivery method encourages collaborative teamwork by the entire PD-B team. Formal partnering establishes the ground rules that enable the team to quickly address project challenges and to establish clear lines of communication.

TIMING - Typically included as part of the project kickoff agenda. Plan for 4-8 hours depending on the complexity of the project.

ATTENDEES - Attendees should include the PD-B key personnel, FHWA representative, ICE key personnel, design discipline leads, ARDOT Project Manager, Resident Engineer, and representatives from every Division that will be involved in the project.

MEETING GOALS - Create a team culture that involves mutual trust and respect.

Note - Partnering can be facilitated by a 3rd party or ARDOT personnel.

4.3 PD-B PRECONSTRUCTION – DESIGN DEVELOPMENT/OPCC CYCLE

The PD-B process of design development must be an intentional, collaborative effort between the Designer, PD-B, and ICE. The following series of meetings provide guidance and best practices to get the most out of the PD-B process. The cycle applies to severable work packages and the overall project GMP.

TASK FORCE MEETINGS

PURPOSE - Task force meetings put all the right people in the same room to develop creative solutions for risk mitigation, design challenges, public involvement, and innovation vetting.

TIMING - as often as necessary to facilitate project goals – typically bi-weekly.

ATTENDEES - Attendees should include, at a minimum, the PD-B key personnel, FHWA representative, ICE key personnel, appropriate design discipline leads, ARDOT Project Manager, Resident Engineer.

MEETING GOALS - Mitigate project risks, analyze design alternates, coordinate efforts to improve project quality, and optimizing the project delivery schedule.

Note - Appendix XVIII: Sample Task Force meeting agenda

DESIGN MILESTONE REVIEW MEETINGS

PURPOSE - The purpose of design review meetings is to allow all parties involved in the project to engage the design process which is one of the benefits of the PD-B process. These meetings are part of quality control best practices. Review comments are reviewed and clarified. Constructability and risk issues are discussed.

TIMING - at design milestones - assume 2-8 hours depending on complexity.

ATTENDEES - Attendees should include, at a minimum, the PD-B key personnel, FHWA representative, ICE key personnel, design discipline leads, ARDOT Project Manager, Resident Engineer, and representatives from every Division that will be involved in the project.

MEETING GOALS - Team coordination and collaboration with a clear path forward for design progression.

QUANTITY RECONCILIATION MEETING

PURPOSE - To review the quantity differences of the project design after the estimating teams have performed their independent quantity takeoffs. These meetings result in agreement on OPCC quantities.

TIMING - Meetings are held at design milestones prior to OPCC meetings and should last 4-8 hours depending on project complexity. Any quantities that haven't been reconciled can be assigned to the estimators and reconciled at separate task force meeting(s).

ATTENDEES - Attendees should include, at a minimum, the PD-B key personnel, FHWA representative, ICE key personnel, design discipline leads, ARDOT Project Manager, and Resident Engineer.

MEETING GOALS - Agree on quantities to estimate for the upcoming OPCC.

Note - Appendix VIII: Quantity Reconciliation form

OPCC COST AND SCHEDULE RECONCILIATION MEETING

PURPOSE - To review the cost differences of the project cost estimates. These meetings should be focused on differences in assumptions to the approach, cost factors, schedules, and risk.

TIMING - Meetings are held at design milestones and should last 1 to 2 days depending on complexity. Any costs that haven't been reconciled can be assigned to the estimators and reconciled at separate task force meeting(s).

P R E C O N S T R U C T I O N

ATTENDEES - Attendees should include, the PD-B key personnel, FHWA representative, ICE key personnel, design discipline leads, ARDOT Project Manager, and Resident Engineer.

MEETING GOALS

1. PD-B and ICE are within acceptable price range on overall project costs.
2. Both ICE and PD-B are within the project budget.

Note - Appendix VII: OPCC Price Comparison form

Appendix X: GMP Cost Template

Section 5: GMP Price Proposal

This section outlines the activities involved in the development, review, and approval of the Price Proposal to be submitted by the PD-B for consideration of a construction contract.

5.1 GMP AGREEMENT (BASE CONTRACT AND EARLY WORK PACKAGES)

The Price Proposal is the PD-B's submitted price for construction of the project or an early work package. This price is based on final design and the contents of the construction contract. The ICE develops a final cost estimate in conjunction with the PD-B's Price Proposal. If the Price Proposal is within acceptable range of the independent cost estimate, ARDOT may award the construction contract to the PD-B. If the Price Proposal is not within acceptable range of the independent cost estimate, ARDOT may conduct a price reconciliation review of the Price Proposal and independent cost estimate, or ARDOT can repackage the project and put it out to bid.

5.2 PROGRESSION FROM ~60% DESIGN TO RFC DESIGN DOCUMENTS

The PD-B will provide a cost to progress the design to "Release for Construction" documents. ICE will verify fair market cost and scope. This cost will be included in the GMP. All parties of the project team should agree on the design, quantities, special details, special provisions, and all other aspects of design to establish the basis of the GMP price proposal. In addition, all risk items from the risk register must be retired or mitigated (with triggers and resolutions defined).

5.3 CONSTRUCTION CONTRACT

A draft construction contract should be finalized prior to PD-B beginning work on the Price Proposal. This draft construction contract, along with the final design, should be considered as the basis of the GMP price proposal for the PD-B and the ICE.

Note - The Construction Contract should be in the format of ARDOT's standard construction contract for design-bid-build projects with any special considerations for the PD-B delivery method being included by Special Provision.

5.4 FHWA APPROVAL

On a federal aid project, a Plans, Specifications, and Estimate (PS&E) assembly must be prepared and submitted to FHWA for approval.

After approval of the PS&E assembly has been received from FHWA, a request for authorization of federal funds for construction may be submitted if applicable. Prior to the request for authorization of federal funds, the Project Manager must ensure that NEPA is finalized, and that right-of-way has been certified. The Price Proposal cannot be approved on a federal aid project until after authorization of federal funds for construction has been received.

5.5 PRICE PROPOSAL SUBMITTAL

After all approvals of the final design have been received, a deadline for submittal of the Price Proposal and the final cost estimates should be agreed to by all parties. The PD-B shall submit their Price Proposal through ARDOT's electronic bid submittal system. The ICE should use an updated version of the spreadsheet used for previous cost estimating to submit their final cost estimates to the Project Manager. The Project Manager shall ensure that this spreadsheet matches exactly with ARDOT's electronic bid submittal system to pay items and quantities.

1. **Award the Project** - If the price proposal meets the requirements for award, proceed with contract preparations and complete the construction contract.
2. **Advertise the project** - In the event the price proposal does not meet requirements for award, prepare the construction package to advertise for bids. Award to lowest qualified bidder.

5.6 DETERMINATION OF AWARD

After completion of the Price Proposal Review, the Project Manager shall develop an interoffice memorandum to the ARDOT Director through the Alternative Project Delivery Administrator. This memorandum shall include a recommendation to accept or reject the proposed GMP and to award the construction contract to the PD-B. In addition, the memorandum should include succinct detail on the following:

1. Recommendation is to award a construction contract to the PD-B:

- a. Information on the final project price.
 - b. Information on the percent variance between the PD-B and the ICE.
2. Recommendation is to **not** award a construction contract to the PD-B:
- a. Information on the final project price and its variance with the ICE.
 - b. Information on the steps taken by the Project Manager to attempt to reconcile the price variance.
 - c. Details on why the decision was made to not move forward with the award of a construction contract to the PD-B.
 - d. Information detailing the proposed next steps for delivering the project.

Note - The Alternative Project Delivery Administrator shall notify the PD-B in writing of ARDOT's decision.

FHWA APPROVAL OF AWARD

Upon concurrence of award by the ARDOT Director, the concurrence memo shall be submitted to FHWA for their concurrence.

Note - Appendix XX: PD-B Checklist For Compliance With CFR

EXECUTION OF A CONSTRUCTION CONTRACT

Upon the final approval of award, the Project Manager shall coordinate with the Program Management Division to finalize the construction contract for execution.

Section 6: Construction

This section outlines special considerations for PD-B projects during the construction phase.

6.1 PROJECT TEAM CONTINUATION

Once a construction contract is executed on a PD-B project, it is important that the collaboration developed during the Preconstruction activities continue into the construction phase of the project. Prior to the start of construction, ARDOT and the PD-B should develop a project partnering plan for continued collaboration throughout the construction phase. The purpose of this partnering is to identify and resolve any risks, constructability issues, or other concerns which can carry from preconstruction and resolve any issues as efficiently as possible.

This teaming continues with early work packages and base contract alike.

6.2 PROJECT MANAGEMENT ROLES AND RESPONSIBILITIES

Project Manager - should be invited to all project meetings and should be involved in change and dispute processes as discussed below.

Resident Engineer (RE) - Upon the execution of a construction contract, the primary responsibilities for project management should be administered by the RE and include like responsibilities to standard ARDOT construction contract administration:

Risk Register - The Risk Register contains mitigation plans and strategies for all risks identified during the preconstruction phase. It is used to monitor project risks and mitigation efforts during pre-construction. The risks that are not mitigated during pre-construction will be developed into provisional sums and /or Contractor owned risk. If a provisional sum risk or a project risk is encountered during construction, the PD-B Contractor must immediately notify the RE. The RE will then review the details and advise the Project Manager how the risk will

be paid. If approved, the work will be completed and paid in accordance with the resolution stated on the Risk Register and its associated provisional sum.

This approach to mitigating risk improves a project's cost certainty, protects the PD-B in the event of unanticipated changes in the scope of work, and assures ARDOT that the awarded GMP is not inflated to include unidentified risks.

Upon final completion and acceptance of the project by ARDOT, any balance of the risk balance is either retained by ARDOT, or additional work is added to the project. The final decision is made by ARDOT. The Project Manager shall coordinate with the Program Management Division to for approval to use the balance of the risk reserve.

Change Orders - If an event occurs that was not anticipated on the Risk Register, the RE and PD-B negotiate a formal change order. The RE shall be responsible for the administration of change orders in accordance with the Standard Specifications and the Resident Engineer's Manual. The Project Manager shall be responsible for tracking and coordinating all change orders. The RE shall coordinate with the Project Manager during the development of a change order and shall notify the Project Manager immediately upon evidence that a change situation may exist so that tracking can begin.

Project Disputes - All project disputes and claims should be managed in accordance with the Standard Specifications and any project partnering agreement. The RE shall coordinate with the Project Manager during the development of all written correspondence related to project disputes and claims.

QA/QC for PD-B - This responsibility is performed as it would be for a Design Bid Build (DBB) project.

Measurement and Payment - Contract pay items are made through cost and resource loaded schedule administered like a DB project and shall be defined in the respective construction contract.

I: Sample Scope of Work for PD-B Contractors

EXHIBIT B SCOPE OF WORK

2.0 Scope of Design-Builder's Work

Design-Builder's obligations will generally include all efforts, except for those responsibilities retained by the Department, required to develop, design, and construct the Project as authorized by the Department in accordance with the requirements of the Design-Build Agreement. Work under the Design-Build Agreement will proceed as authorized by amendments and notices to proceed ("**Amendments/NTPs**") issued by the Department as described in the Design-Build Agreement. Immediately following the execution of the Design-Build Agreement and issuance of an initial notice to proceed, the Design-Builder shall commence work for the Planning Phase.

The Department may decline to issue an Amendment/NTP for any phase of the Work. Please refer to the Design-Build Agreement for further and more detailed information regarding the terms of the Design-Builder's obligations.

2.1 Planning Phase

The Design-Build Agreement, particularly with respect to the Planning Phase, is designed to ensure that there is an objective NEPA process, that public officials and citizens have the necessary environmental impact information for federally funded actions before actions are taken, and that Design-Builder does not assume an unnecessary amount of risk in the event the NEPA process results in a significant change in the Project, and that the amount payable by the Department to the Design-Builder does not include significant contingency as the result of risk placed on the Design-Builder associated with significant changes in the Project arising out of the NEPA process. Consistent with 23 C.F.R. Section 636.109, the Design-Build Agreement incorporates (a) provisions ensuring that all environmental and mitigation measures identified in connection with required Environmental Approvals will be implemented, (b) provisions ensuring that no commitments are made to any alternative being evaluated in connection with required Environmental Approvals, and (c) provisions providing for the right to terminate the Design-Build Agreement (with equitable compensation) in the event of Project revisions deriving from the required Environmental Approvals, including in the case that the no-build alternative is selected in connection therewith.

The Department intends to begin environmental document preparation in early 2021. In accordance with Federal requirements, the work of the Design-Builder during this phase will be limited to specific activities in the scope of work and conducted under communication protocols necessary to keep the functions separated. See the preliminary matrix of responsibilities and roles of various participants during the NEPA process set forth in ITP Exhibit C-3.

The Design-Builder scope of work for the Planning Phase is expected to include the following:

- Preliminary design / preliminary engineering, as requested by the Department to develop additional alternatives
 - Scope excludes preparation of NEPA documents
- Site investigations, subsurface utility investigations, geotechnical studies
- Third-party coordination for Right of Way, railroad, and utilities (anticipated to be led by the Design-Builder under Department oversight)
- Preliminary constructability analysis
- Cost and schedule estimates related to preliminary engineering
- Project management plan development
 - Management plan for Preconstruction Phase
 - Design standards

- Preliminary construction management plan
- QA/QC plan
- Subcontracting plan
- Estimating plan for GMP
- DBE outreach
- Development of Preconstruction Phase Amendment/NTP

A preliminary schedule for the NEPA process is set forth in ITP Exhibit C-2.

The Design-Builder's compensation for the Planning Phase will be at fully loaded hourly rates based on those submitted with Proposal, but subject to a reasonableness evaluation by the Department, plus reasonable and documented reimbursable expenses. The total compensation for this phase will be capped at a not-to-exceed (NTE) amount set by the Department, subject to adjustment in accordance with the Design-Build Agreement. The fully loaded hourly rates and NTE amount will be documented in the Design-Build Agreement at execution.

2.2 Preconstruction Phase

As more fully set forth in the Design-Build Agreement, following completion of the NEPA process, the Department will either negotiate an Amendment/NTP to authorize the Design-Builder to proceed with work for the Preconstruction Phase, with agreed scope, schedule, and compensation terms, or will terminate the Design-Build Agreement.

The Design-Builder scope of work for the Preconstruction Phase is expected to include the following:

- Final Design Services
 - Design to 60-75% for purposes of GMP development
 - Development of Work Package breakdown
 - Final design and development of Construction Documents (drawings and specifications)
 - Design of utility adjustments and relocations
 - Right of Way acquisition support services, if required by the Department
 - Any remaining site investigations and surveys
 - Address NEPA commitments
- Pre-construction Services
 - Subcontractor bidding and selection
 - Cost estimation
 - Permitting
 - Construction schedule development
 - Third-party coordination for Right of Way, railroad, and utilities (anticipated to be led by the Design-Builder under Department oversight)
 - Constructability reviews
 - Procurement of long-lead items, as authorized by the Department
 - Development of overall Guaranteed Maximum Price
 - Development of Work Order(s) for individual Work Packages
 - Risk register and mitigation plans

Compensation for this phase is expected to be at the fully loaded hourly rates established for the Planning Phase, subject to adjustment as agreed by the Department in the Preconstruction Phase Amendment/NTP, plus reasonable and documented reimbursable expenses. In the Department's discretion, a lump sum for preconstruction phase services may be established in lieu of hourly rates. The total compensation for this phase will be capped at an NTE amount set by the Department, subject to adjustment in accordance with

the Design-Build Agreement. The fully loaded hourly rates, NTE amount, and any lump sums will be documented in the Preconstruction Phase Amendment/NTP.

2.3 Construction Phase

Authorization to proceed with any Construction Work will also require an Amendment/NTP in accordance with the Design-Build Agreement, which will be contingent on the Department and Design-Builder agreeing to a Guaranteed Maximum Price (GMP) and schedule for such Work. The Design-Builder will perform construction of the Project subject to an agreed plan/breakdown that may include the following elements:

- Early Work: Work Package authorizations issued prior to the establishment of overall GMP will be limited to work that has independent value to the Department (such as utility adjustments or relocations) and will be developed on a case-by-case basis where schedule considerations dictate.
- Individual Work Packages broken down by schedule and procurement considerations and in the sum equal in value to the overall GMP.
- All packages to include Construction Phase design support.

II: Sample Scope of Work for ICE Consultants



General Scope of Work Independent Cost Estimating Services (2019-2024)

A. CONSTRUCTION COST ESTIMATING AND SCHEDULING

- 1) Provide independent cost estimates and associated cost and resource loaded schedules during the preconstruction phase, using contractor style (production-based) methodologies and production-based heavy civil estimating software platforms. Cost estimates and the associated schedules are typically expected to occur at three pricing milestones during the design phase (30%, 60%, and 90%). In addition, provide a final estimate and associated cost and resource loaded schedule for construction. The Consultant's final estimate will need to be completed and submitted by the bid/letting date. The bid/letting date will occur when the Department and the PD-B agree that the Project has been designed to a sufficient level of detail to allow the PD-B to accurately bid and construct the Project.
- 2) Provide summary and detailed cost breakdowns and translate production-based estimates into the ARDOT unit price estimate format, using ARDOT standards with a demonstrated familiarity of Arkansas labor laws and federal wage rates.
- 3) Attend price reconciliation meetings between the Department and the PD-B at the 30%, 60%, and 90% pricing milestones. The price reconciliation meetings are expected to take place at the Department's Central Offices in Little Rock and be two days in duration for each pricing milestone. The Consultant's responsibility at these meetings is to gain a common understanding of bidding assumptions (including means and methods, equipment, material costs, and risk assignment) and advise the Project Team (Department staff, Design Engineers, PD-B) if there are more cost-effective ways of accomplishing the work.
- 4) Provide feedback on risk management which may include risk identification, assessment, cost quantification, and assignment of the probability of occurrence. Formal risk workshops are anticipated to coincide with design/constructability reviews and estimating workshops at each pricing milestone (30%, 60%, and 90% designs). ICE will manage the risk register.
- 5) Provide assistance to the Project Team with respect to determining cost impacts of: project phasing, labor availability, mobilization and site access, sequence of design and construction, and availability and procurement of equipment and materials.
- 6) Review and assess the PD-B's bid/price proposal for recommendation in award of a construction contract.
- 7) Attend and participate in the following meetings:
 - a. Initial Kickoff Meeting anticipated to take place at the Department's Central Offices in Little Rock.
 - b. Estimate Coordination, Design/Constructability Review, and Risk workshops anticipated to take place at the Department's Central Offices in Little Rock prior to each pricing milestone (30%, 60%, 90% designs,



and as directed by the Department). These workshops are anticipated to occur in conjunction with each other over a 2-3 day period for each pricing milestone.

- 8) Participate remotely in the following meetings:
 - a. Regular Project Team meetings/conference calls to be held every week, or as directed by the Department, during the preconstruction phase of the project to discuss work in progress, work completed, upcoming priorities, issues, risks, schedule review and update, and any budget or contract issues. The Department may request that the Consultant attend these meetings in person if necessary to resolve recurring issues.
 - b. Bid/price proposal analysis and award recommendation meeting.
- 9) Maintain meeting notes, actions items, and decisions made.
- 10) The construction of this project will be state and federally funded. The Consultant will be expected to engage in DBE outreach, including interviewing potential DBEs, to estimate the cost of construction while meeting the specified goal(s).
- 11) Review the PD-B Contractor's construction schedule at each Opinion of Probable Construction Cost (OPCC) milestone (anticipated to be at 30%, 60%, and 90% designs). Provide written analysis and recommendations to improve its usefulness to the Project Team. Demonstrate practicality in approach and concentrate remarks and discussions on critical path and high-risk activities as identified in the Risk/Opportunity Register that will be developed during the Risk Workshops and maintained by the Department.

III: Sample Template for ICE Services Task Order



On-Call Independent Cost Estimating Services (2019-2024)
Task Order No. #

Job No. (#####), (Project Name),
No. (####)

Date: [See Doc Express Document Signing History]

WHEREAS, the Arkansas State Highway Commission and (Company Name) entered into a Master Agreement for Independent Cost Estimating (ICE) Services on (Date)

WHEREAS, the master agreement allows individual task orders to be issued; and

WHEREAS, the services to be provided under this individual task order are Title I Services;

NOW THEREFORE, the following applies to the task order:

I. THE CONTRACT CEILING PRICE AND TITLE I SERVICES CEILING PRICE FOR THIS INDIVIDUAL TASK ORDER IS

II. THE MULTIPLIER FOR THIS INDIVIDUAL TASK ORDER IS #.### (FY2021).

III. DESCRIPTION OF PROJECT AND SCOPE OF WORK

SEE ATTACHMENT A-1

IV. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY THE ICE CONSULTANT

See Attachment A-1

V. INFORMATION TO BE PROVIDED BY THE OWNER

See Attachment A-1

VI. DELIVERABLES

See Attachment A-1

VII. COMPLETION DATE FOR THIS INDIVIDUAL TASK ORDER IS (DATE).

VIII. SEE ATTACHMENT A-2 FOR JUSTIFICATION OF COST AND FEES.

IN WITNESS WHEREOF, the parties execute this Task Order No. #, to be effective upon the date set out above.

ARKANSAS STATE HIGHWAY
COMMISSION

BY: _____

BY: _____
Director

Disclaimer:

This Task Order is being electronically signed. The Info Tech DocExpress Document Signing History will be located on the final page of the executed Task Order. This document will have all dates and electronic signatures applicable to the execution and certifications of this Task Order.



**Independent Cost Estimating (ICE)
Services
Task Order
No. #**

Job No. #####, Alternative Project Delivery
Manual (S) FAP No. #####
(company
name)

I. DESCRIPTION OF THE PROJECT

The Arkansas Department of Transportation (ARDOT) has determined it is necessary to...

II. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY THE ICE

A. (scope of work)

III. INFORMATION AND SERVICES TO BE PROVIDED BY THE OWNER

The Department shall provide a copy of...

IV. SPECIAL CONDITIONS OF THE WORK

All work performed by the Consultant shall comply with all applicable Federal, State, and local laws, regulations, and ordinances.

Construction specifications shall be the current edition of the Department's Standard Specifications for Highway Construction.

V. DELIVERABLES

1) (deliverables)

VI. COMPLETION DATE FOR TASK ORDER IS (date).

IV: Sample Innovations Log

INNOVATION LOG



(PROJECT NAME)
(PROJECT NUMBER)
(DATE)

[illegible]

V: Typical Planning Phase Schedule

Planning Phase Schedule

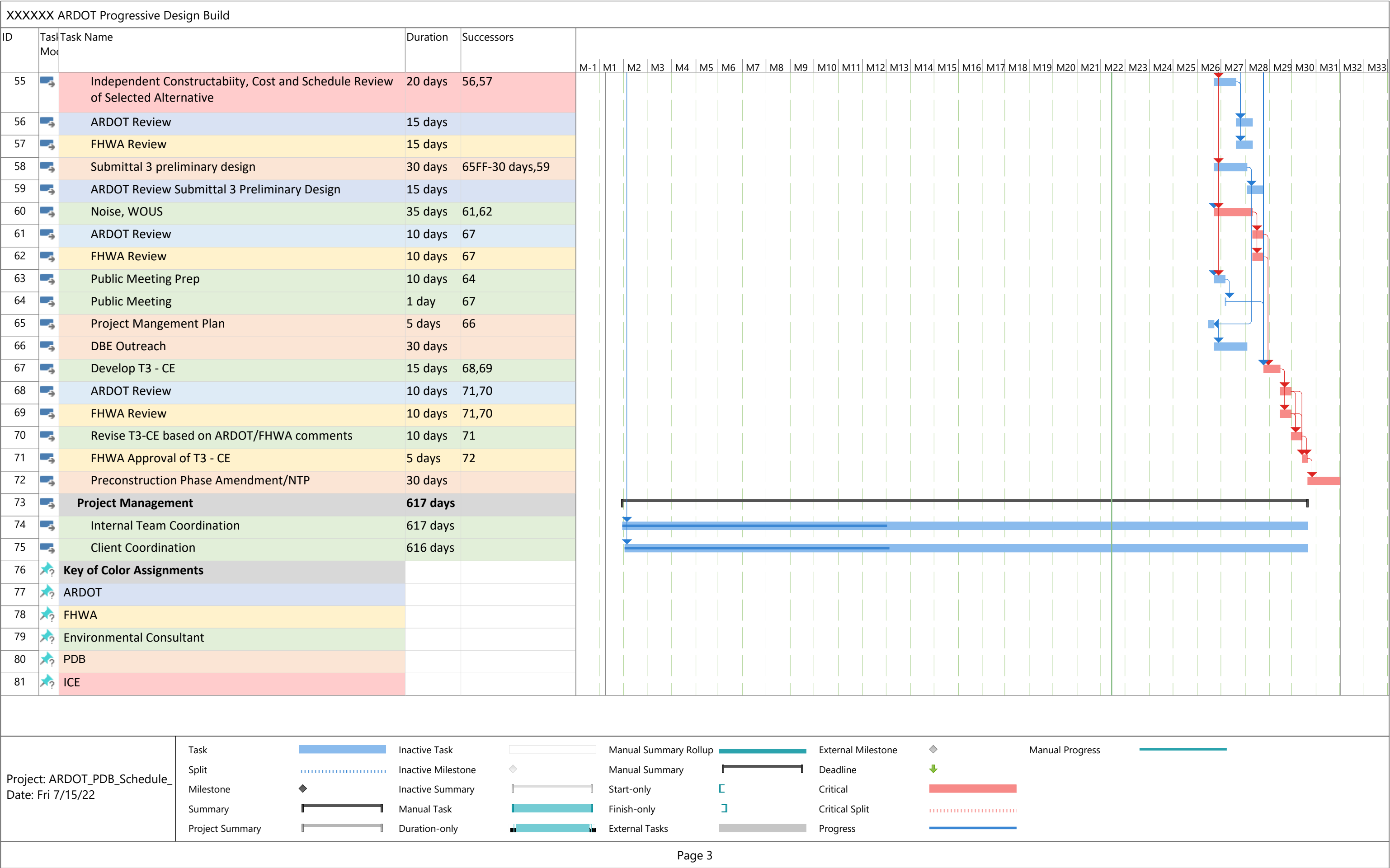
[illegible]

XXXXXX ARDOT Progressive Design Build

ID	Task Mod	Task Name	Duration	Successors	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20	M21	M22	M23	M24	M25	M26	M27	M28	M29	M30	M31	M32	M33	
29		ARDOT Review	10 days																																				
30		NEPA Process	306 days																																				
31		Determine Level of Env. Documentation	1 day	32																																			
32		Develop NEPA Classification Memo	30 days	33,34																																			
33		ARDOT Review	5 days	67																																			
34		FHWA Review	5 days	35,67																																			
35		Develop Environmental ROE Letter and Mailing List	55 days	36,37																																			
36		ARDOT Review	5 days																																				
37		FHWA Review	5 days	38																																			
38		Submittal 1 preliminary design	30 days	39,40,41																																			
39		ARDOT Review Submittal 1 Preliminary Design	15 days	42,44,46																																			
40		Site investigations, subsurface utility investigations, geotechnical studies	30 days	49																																			
41		Third Party Coordination of ROW, Railroad and Utilities	30 days																																				
42		Conduct Detailed Traffic Analysis	30 days	43,60																																			
43		ARDOT Review Traffic Analysis	10 days	51																																			
44		Submittal 2 preliminary design	35 days	45																																			
45		ARDOT Review Submittal 2 Preliminary Design	15 days	63,54,55,58,60																																			
46		Cultural, Hazmat, Air Quality, Community, Habitat	30 days	47,48																																			
47		ARDOT Review	10 days	67																																			
48		FHWA Review	10 days	67																																			
49		Drainage/Hydraulic Analysis	30 days	50																																			
50		ARDOT Review Drainage/Hydrualic Analysis	10 days																																				
51		Develop Traffic Report	15 days	52,53																																			
52		ARDOT Review Traffic Report	10 days	67																																			
53		FHWA Review Traffic Report	10 days	67																																			
54		Constructability, Cost and Schedule Review of Selected Alternative	20 days	56,57																																			

Project: ARDOT_PDB_Schedule_
Date: Fri 7/15/22

Task		Inactive Task		Manual Summary Rollup		External Milestone		Manual Progress	
Split		Inactive Milestone		Manual Summary		Deadline			
Milestone		Inactive Summary		Start-only		Critical			
Summary		Manual Task		Finish-only		Critical Split			
Project Summary		Duration-only		External Tasks		Progress			

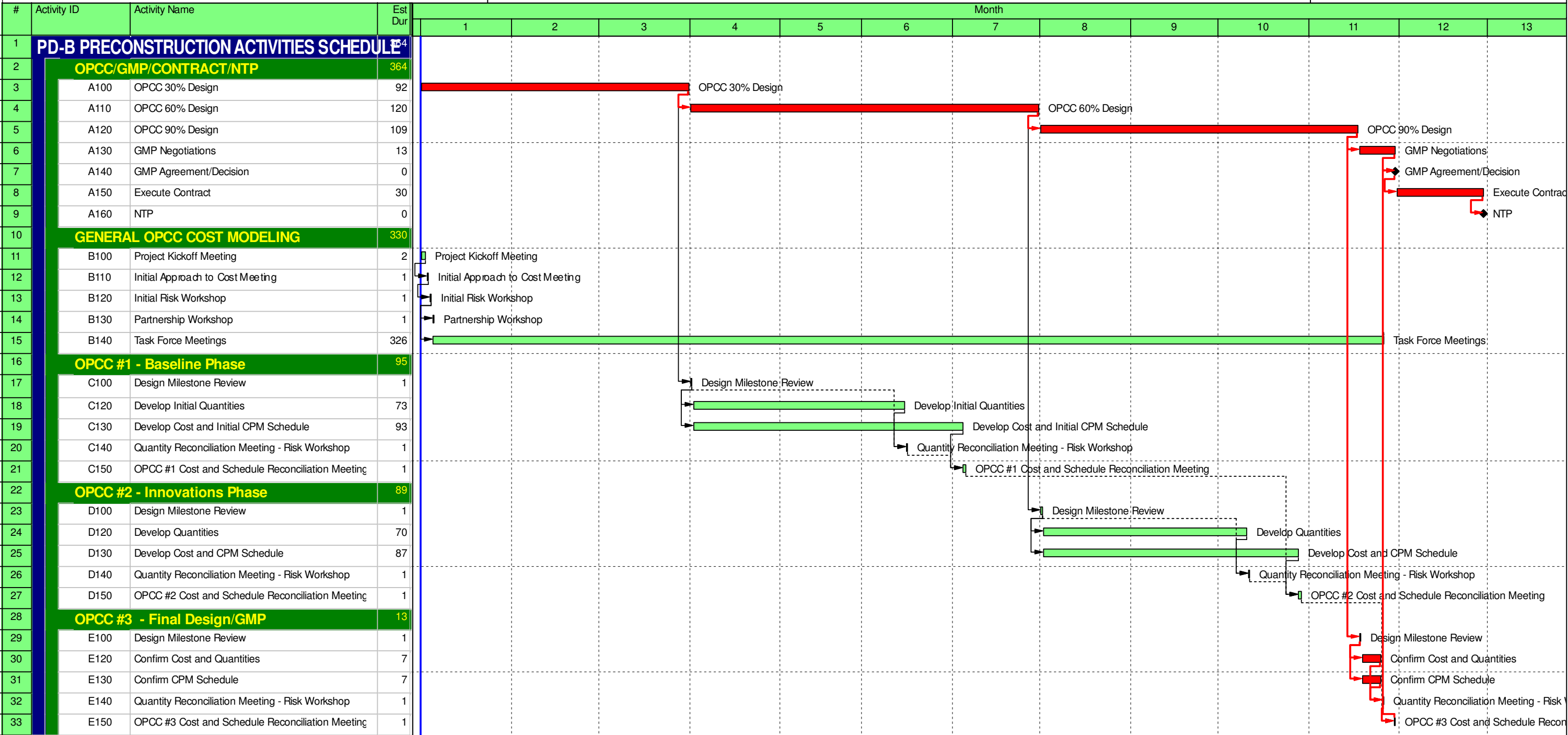


VI: Typical Preconstruction Schedule

PD-B PRECONSTRUCTION ACTIVITIES
SCHEDULE

Alternative Delivery Typical Preconstruction Schedule

29-Nov-21
Page 1 of 1




- Remaining Level of Effort
- Remaining Work
- Critical Remaining Work
- Milestone



VII: Sample OPCC Price Comparison From

OPCC COMPARISON FORM

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<div>  <div> <div>(PROJECT NAME)</div> <div>(PROJECT NUMBER)</div> <div>(DATE)</div> </div> </div>										
Item	Description	UoM	Qty	CM/GC		ICE		% Difference	Price Delta	Divergence (in/out of range)
				Unit Price	Total	Unit Price	Total			
210210	UNCLASSIFIED EXCAVATION	CY	138,017	\$ 16.00	\$ 2,208,272.00	\$ 17.00	\$ 2,346,289.00	-6.25%	\$ (138,017.00)	Outside Range
210433	SELECT GRANULAR BACKFILL	CY	34,722	\$ 74.00	\$ 2,569,428.00	\$ 55.00	\$ 1,909,710.00	25.68%	\$ 659,718.00	Outside Range
210601	COMPACTED EMBANKMENT	CY	175,547	\$ 22.00	\$ 3,862,034.00	\$ 17.00	\$ 2,984,299.00	22.73%	\$ 877,735.00	Outside Range
303107	AGGREGATE BASE COURSE (CLASS 7)	TON	22,969	\$ 42.00	\$ 964,698.00	\$ 35.00	\$ 803,915.00	16.67%	\$ 160,783.00	Outside Range
309005	PORTLAND CEMENT CONCRETE BASE (5" UNIFORM THICKNESS)	SY	440	\$ 88.00	\$ 38,720.00	\$ 73.00	\$ 32,120.00	17.05%	\$ 6,600.00	Outside Range
309008	PORTLAND CEMENT CONCRETE BASE (8" UNIFORM THICKNESS)	SY	5,268	\$ 108.00	\$ 568,944.00	\$ 73.00	\$ 384,564.00	32.41%	\$ 184,380.00	Outside Range
309022	PORTLAND CEMENT CONCRETE BASE (3" UNIFORM THICKNESS)	SY	1,091	\$ 14.00	\$ 15,274.00	\$ 73.00	\$ 79,643.00	-421.43%	\$ (64,369.00)	Outside Range
401011	TACK COAT	GAL	18,105	\$ 4.00	\$ 72,420.00	\$ 4.00	\$ 72,420.00	0.00%	\$ -	Within Range
405161	MINERAL AGGREGATE IN ACHM BASE COURSE (1 1/2")	TON	29,751	\$ 95.00	\$ 2,826,345.00	\$ 93.00	\$ 2,766,843.00	2.11%	\$ 59,502.00	Within Range
405412	ASPHALT BINDER (PG 70-22) IN ACHM BASE COURSE (1 1/2") (MINIMUM BID \$120.00)	TON	1,210	\$ 145.00	\$ 175,450.00	\$ 143.00	\$ 173,030.00	1.38%	\$ 2,420.00	Within Range
406161	MINERAL AGGREGATE IN ACHM BINDER COURSE (1")	TON	14,574	\$ 100.00	\$ 1,457,400.00	\$ 107.00	\$ 1,559,418.00	-7.00%	\$ (102,018.00)	Outside Range
406412	ASPHALT BINDER (PG 70-22) IN ACHM BINDER COURSE (1") (MINIMUM BID \$120.00)	TON	653	\$ 155.00	\$ 101,215.00	\$ 143.00	\$ 93,379.00	7.74%	\$ 7,836.00	Outside Range
407162	MINERAL AGGREGATE IN ACHM SURFACE COURSE (1/2")	TON	39,106	\$ 117.00	\$ 4,575,402.00	\$ 107.00	\$ 4,184,342.00	8.55%	\$ 391,060.00	Outside Range
407452	ASPHALT BINDER (PG 76-22) IN ACHM SURFACE COURSE (1/2") (MINIMUM BID \$120.00)	TON	2,104	\$ 165.00	\$ 347,160.00	\$ 143.00	\$ 300,872.00	13.33%	\$ 46,288.00	Outside Range
412001	COLD MILLING ASPHALT PAVEMENT	SY	31,158	\$ 5.00	\$ 155,790.00	\$ 6.00	\$ 186,948.00	-20.00%	\$ (31,158.00)	Outside Range
502001	REINFORCING STEEL FOR PAVEMENT (BARS)	LBS	372,970	\$ 2.00	\$ 745,940.00	\$ 2.00	\$ 745,940.00	0.00%	\$ -	Within Range
503013	CONTINUOUSLY REINFORCED CONCRETE PAVEMENT (13" UNIFORM THICKNESS)	SY	9,815	\$ 143.00	\$ 1,403,545.00	\$ 86.00	\$ 844,090.00	39.86%	\$ 559,455.00	Outside Range
504001	APPROACH SLABS	CY	781	\$ 588.00	\$ 459,228.00	\$ 545.00	\$ 425,645.00	7.31%	\$ 33,583.00	Outside Range
504261	APPROACH GUTTERS	CY	81	\$ 1,088.00	\$ 88,128.00	\$ 1,124.00	\$ 91,044.00	-3.31%	\$ (2,916.00)	Within Range
505001	PORTLAND CEMENT CONCRETE DRIVEWAY	SY	1,424	\$ 105.00	\$ 149,520.00	\$ 68.00	\$ 96,832.00	35.24%	\$ 52,688.00	Outside Range
	Subtotal				\$ 22,784,913.00		\$ 20,081,343.00	11.87%	\$2,703,570.00	Outside Range
	Contractor Fee		1%		\$ 227,849.13		\$ 200,813.43	11.87%	\$ 27,035.70	Outside Range
	Total				\$23,012,762.13		\$20,282,156.43	11.87%	\$2,730,605.70	Outside Range
	Risk Register	LS	1	\$850,000.00	\$ 850,000.00	\$850,000.00	\$ 850,000.00	0.00%	\$ -	Within Range
	Budget Total				\$ 23,862,762.13		\$ 21,132,156.43	11.44%	\$2,730,605.70	Outside Range

NOTE: The information in this spreadsheet is intendend to provide details on the information typically included in the OPCC Comparison Form. It does not imply that these bid items or values would be approved on any specific project. This is an example and for information only.

VIII: Sample Quantity Reconciliation Form

[illegible]

IX: Sample Risk Register

RISK REGISTER


<div><div><div>AR</div><div>DOT</div></div></div> <div>DAILY OVERHEAD RATE: \$ 10,000.00</div> <div>RISK RESERVE: \$ 80,000.00</div> <div>TIME IMPACTS: 4.5 Days</div>												PROJECT NAME: (PROJECT NAME) PROJECT NUMBER: (#####-##) DATE: (DATE)		
RISK #	RISK NAME	DESCRIPTION	STATUS (Active or Retired)	OWNER	CHAMPION(S)	PROBABILITY	COST IMPACT	WEIGHTED COST	TIME IMPACT	WEIGHTED TIME	MITIGATION STRATEGY	RESOLUTION	TRIGGER TO ENGAGE RISK RESERVE	
T1	Adjacent Project Coordination	Adjacent projects could impact MOT and increase cost/time.	Retired	PD-B	(name)	25%	\$ -	\$ -	0	0	Carry projected cost impact in risk register to give us flexibility. Will know more about timing as we approach final design.	Retired: No significant impacts from adjacent projects are anticipated.	N/A	
T2	Escalation - Project Delays	Current market conditions could cause cost increases if the project is delayed	Retired	PD-B	(name)	25%	\$ -	\$ -	0	0	Carry contingency in risk register initially. Risk item will be retired once we receive sub and material bids. Coordinate with Subs to ensure timeframes are understood. Review possibility of early work package for material procurement.	Retired: Contingency has been zeroed out. Final sub and materials bids included any anticipated escalation risks. GMP bid incorporated the final sub and materials bids.	N/A	
T3	Railroad - Flagging	Are we going to need RR flaggers? Are they available?	Retired	Owner	(name)	100%	\$ -	\$ -	0	0	Coordinate duration and quantity of flaggers needed with RR.	Retire risk: ArDOT pays cost for RR flaggers directly. Flaggers are available for project.	N/A	
T4	Unknown Utilities	Unexpected construction conflicts with exisiting utilities	Active	PD-B	(name)	25%	\$ 100,000.00	\$25,000.00	14	3.5	Carry contingency in the risk register. Potentially use force account payment. (3/1/2021 Update) Air bridging or matting over existing utilities could add cost and time.	Contractor will be paid on a force account basis for relocation of the utility in conflict. Time impacts will be awarded only if the utility conflict impacts the project critical path.	Contractor discovers a conflict with an existing underground utility that was not identified during preconstruction phase.	
T5	Unsuitable Soil Disposal	Unknown site conditions - contaminated materials, unsuitable soils that would need to be hauled off and disposed.	Active	PD-B	(name)	10%	\$ 100,000.00	\$10,000.00	10	1	Contaminated material would be a cost for removal and disposal. Provisional sum at \$150 per cubic yard... (updated 3/1/2021).	Use provisional sum. Time impacts will only be awarded if the project critical path is impacted.	Contaminated or unsuitable soils are discovered during construction and ARDOT instructed the PD-B to remove and dispose of material.	
T6														
T7														
T8														
T9														
T10														
T11														
T12														
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T21														
T22														
T23														
T24														
T25														

NOTE: The information in this spreadsheet is intended to provide details about the information typically included in a Risk Register. It does not imply that these risk items or values would be approved on any specific project. This is an example and for information only.

X: GMP Cost Template

GMP COST TEMPLATE

Hide these columns and save as PDF before distributing

<div><div></div><div>(PROJECT NAME) (PROJECT NUMBER) (DATE)</div></div>										
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	Total				\$ 23,012,762.13		#####	11.87%	\$ 2,730,605.70	Outside Range
	Risk Register	LS	1	\$ 850,000.00	\$ 850,000.00	\$ 850,000.00	\$ 850,000.00	0.00%	\$ -	Within Range
	Budget Total				\$ 23,862,762.13		\$ 21,132,156.43	11.44%	\$ 2,730,605.70	Outside Range

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XI: Risk Management Plan



RISK MANAGEMENT PLAN

Alternative Delivery Project Administration PD-B

Project Name: XXXXX

Contact: (name) Date: (date)

Submitted for ARDOT: Review and Comment

Key Terms

Risk – is the threat or opportunity that can create cost, schedule, or other indirect impacts to a project

Threat – is the negative side of a risk that should be identified, analyzed, and managed through design and construction to mitigate the impacts of the risk event.

Opportunity - is the positive side of a risk that should be identified, analyzed, and developed through design and construction that optimizes cost, schedule, and overall value impacts.

Mitigation – the activities and effort to further research, analyze, and resolve risk through detailed mitigation plans or through retirement.

Retired – Retired risks have either been accepted as project cost or mitigated through design

Special Provisions – Language that specifically addresses the special conditions of a contract pay item

Provisional Sums – Items with a known scope of work with an undefined quantity that can provide mitigation for many project risks

Risk Contingency Budget – The bucket of money set aside to pay for risks that are realized in project construction.

Risk Owner – The risk owner is typically ARDOT or the PD-B. If the risk item is going to be priced in the cost estimate, then the PD-B is typically the owner. If the risk item is going to be mitigated by carrying a risk contingency, then ARDOT is typically the owner.

Risk Champion – The champion is a member of the project team who is the most qualified to execute the risk mitigation strategies.

ARDOT Roles & Responsibilities

- Identify risk items that affect cost, schedule or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Assign risk champions who are responsible for risk mitigation efforts
- Work through risks and assign ownership of risks
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop early construction packages
- Develop provisional sum items
- Review contract documents that address risk register and implementation of the risk register in construction

PD-B Contractor Roles & Responsibilities

- Identify risk items that affect cost, schedule or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Assign risk champions who are responsible for risk mitigation efforts
- Generate accurate cost and schedule impacts
- Work through risks and assign ownership of risks
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop early construction packages, if beneficial to the project
- Develop provisional sum items
- Review contract documents that address risk register and implementation of the risk register in construction

Designer Roles & Responsibilities

- Identify risk items that affect cost, schedule, or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Assign risk champions who are responsible for risk mitigation efforts
- Work through risks and assign ownership of risks
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop plan sets and special provisions for early construction packages
- Develop provisional sum items

ICE Roles & Responsibilities

- Build and maintain Project Risk Register
- Identify risk items that affect cost, schedule, or other impacts that affect the project
- Collaborate with the team to produce the project risk register
- Generate accurate cost and schedule impacts
- Actively participate in workshops and task force meetings
- Implement mitigation strategies (avoidance, design mitigation, acceptance)
- Develop early construction packages to maintain severability and to avoid added costs
- Develop provisional sum items
- Review contract documents that address risk register and implementation of the risk register in construction

RISK MANAGEMENT Process and Tools

Workshops and Task Force meetings

- The initial risk workshop includes an extensive group of team members who assist in the development of the initial risk register. During this meeting, the champions, task force groups, risk descriptions, and risk ownership are identified or assigned.
- Following the initial risk workshop, the risk register will be progressed during task force meetings, via monthly email communications from ICE to the risk champions, and at subsequent risk workshop meetings. A risk workshop meeting is typically held a few weeks prior to each design milestone OPCC meeting.
- During Task Force meetings is when most of the mitigation strategy development and collaboration takes place. We work on prioritizing risk and innovation items and work towards a resolution.

Risk Workshop Process

- Initial Risk Workshop - A draft initial risk register is compiled by ICE prior to the meeting. The draft register includes a list of risk items and a brief risk description. During the initial risk workshop, the ICE projects the risk register on a screen. The team discusses each risk item and the ICE updates the register in the process. Updates include identifying the risk owner, champion, initial mitigation strategy, and any anticipated cost and time impacts (including the probability of occurrence).
- Risk workshops at each design milestone – A risk workshop is typically held a few weeks prior to each design milestone OPCC meeting. The purpose of these intermittent risk workshops is to make sure the PD-B and ICE estimators are aligned on risk assumptions relative to the cost estimates. During these intermittent risk workshops, the ICE projects the current risk register on a screen for the team to review. The risk Champions provide updates to the risk items, and the team discusses/updates the mitigation strategies.
- Final Risk Register – At approximately the same time the GMP is submitted to ARDOT, the risk register is finalized. The last step in finalizing the risk register is completing the risk trigger and risk resolution columns. Risk triggers clearly define the event(s) that lead to using the risk register contingency. Risk resolutions define the process that will be used when that risk item occurs during construction.

Risk Tracking (Risk Register)

- The initial risk register is compiled by ICE using the input of the project team.
- Initial entries are compiled from indirect communication. (emails, proposal information, etc.).
- The risk workshop is where the team reviews the risk register to develop risk descriptions, owners, cost impacts, schedule impacts, and potential mitigation strategies.
- Risks are tracked and updated at the task force meetings.
- A risk item can be retired when the risk has been:
 - Accepted into the estimate
 - Designed out of the project
 - Designated as a provisional sum
- Risk items that are not retired will continue into construction. The risk register is referenced into the contract, and it becomes part of the contract documents. The risk register helps the construction team understand the risk mitigation strategy that should be employed when that risk item is triggered.

Risk Champions and Communication

- **Champions** are assigned specific risk items on the risk register.
 - A Risk Champion is a member of the PD-B team who is best suited to lead the efforts required to mitigate a particular risk item.
 - A Risk Champion should be actively engaged in following through with the identified risk mitigation strategies.
 - If the mitigation strategy listed is not the best strategy to mitigate the risk item, the Risk Champion should find a new strategy and implement it.
 - The Risk Champions are not on an island by themselves. The PD-B delivery method encourages collaboration. You have access to the entire design team, contractor, ICE, and ARDOT resources. Use them all, as appropriate.
 - A Risk Champion reports progress on risk mitigation efforts in a monthly email, and they report the status of the risk items assigned to them at each risk workshop.
 - All of the other columns STATUS, PROBABILITY, COST IMPACT, and TIME IMPACT will be updated by the PD-B team at the risk workshops and Task Force Meetings.
- **Communication & Prioritization** - Taskforce meetings take place as needed to mitigate risks and to develop innovations. The risk champions will engage in the task force meetings and keep the team apprised of updates to the mitigation efforts. They will make assignments to the team on individual tasks that assist in the mitigation efforts. Risk mitigation can be prioritized based on a variety of measurements and is addressed specifically in the task force meetings.

Risk Planning and Mitigation Tools

- **Preconstruction investigations** are activities that can further define the scope and probability of a risk and can lead to optimization and refinement. These can include public outreach, traffic studies, environmental studies, geotechnical, seismic, groundwater, local agency/stakeholder outreach.
- **Early Construction Packages** can alleviate potential risks of delays for high impact issues such as utility relocation, foundations, site mitigation, soil treatments, work outside of traffic impacts, etc.
- **Design optimization** like realignments, asphalt vs. concrete paving analyses, construction phasing, additional geotechnical exploration, etc.
- **Construction acceleration** – weekend shutdowns, double shifts, added crews (resources)

Budgeting/Scheduling for Contingency

- **Estimated cost impacts** – We should involve our construction estimators in the pricing of likely project impacts. This helps to get the guesswork out of the costs. These costs should be based on the best available information and rates and can be mitigated by adding provisional sums and risk contingency budgets.
- **Probability** – If a risk has a 100% probability, it should be included in the base cost estimate and retired status in the risk register. For all other items, there should be a probability of occurrence assigned to the project risk. This probability helps us prioritize our mitigation efforts on high-impact/high probability issues.
- **Critical Path Impacts** – schedule impacts should be carefully considered when analyzing project risk impacts. Many issues can cause delays, however, delay impacts will not be awarded unless the risk item impacted work that is on the critical path.

Risk Resolution (Reporting)

- **Adopted into Construction Estimate** – costs associated with risk have a high probability and have a high level of certainty for scope and/or quantity. Risk can be moved to a “Retired” status when the costs have been integrated into the base construction estimate.
- **Provisional sums** can be used for certain bid items that qualify for over/underruns. Items with a low level of scope/quantity confidence can be estimated as the most probable quantity and adjusted to actuals in the field.
- **Included in Risk Register** – risk items can continue into construction as an active risk, as long as the risk register identifies appropriate risk triggers and resolutions.
- **Retired Risks** are tracked and archived on the risk register for future reference.

Construction Contract Risk Allocation

- Risk register is included in the contract documents to assist with design to construction continuity. The contract language should be clear and concise on how the risk triggers will be administered.

Field Management of Risk Register

- The field management of the risk register is defined in the construction contract. The contract language defines the process of how the risk register is used during construction and it should be clear on timelines and expectations.

XII: Definition of Open Book Estimating/Fair-Price Overview

Sample Open Book Estimating/ Fair Price Overview

September 13, 2021

Fair Price Overview

PD-B project goals include working collaboratively as a team to maximize scope, value, and quality within the project budget. This is accomplished by emphasizing collaboration and transparency, while creating value through integrity, fairness, and accountability. The primary deliverable of a successful preconstruction phase on a PD-B project is an accurate estimate of construction cost that represents a fair market price. This estimate would incorporate risk strategies and innovations that were developed throughout the design process. A clear and effective estimating process gives the Owner confidence that the project is being delivered for the right price while giving the Contractor confidence that the project will be profitable.

With the above in mind, there are several different approaches PD-B team could take to arrive at a fair market price. Each project is unique, however, some guiding principles and practices that apply to all PD-B projects to protect the integrity and maximize the value of the process. These include:

1. A collaborative team environment that fosters communication, accountability, and trust
2. An independent construction estimating (ICE) team that is familiar with the scope, schedule, and risks of the project and is involved in key team meetings and aware of decisions
3. Effective risk and opportunity/innovation workshops
4. Interactive design process to incorporate mitigation strategies and innovations into the design
5. Plan and specification reviews and quantity reconciliation meetings at major milestones
6. Pre-estimating meetings to discuss and document assumptions for bid items and M&P
7. Opinions of Probable Construction Cost (OPCC) at various milestones wherein the ICE is blinded and a range established to identify items that are in discrepancy
8. Reconciliation meetings to review differences in the assumptions of those items
9. Protect and maintain the independent estimate of the ICE
10. Minimize the number of formal bids submitted

This document is intended to clearly describe the steps of the fair price approach and to define the pricing instructions so that all members of the PD-B team understand how the strategy will be implemented.

Process

1. Initial Approach to Cost Meeting

Before any pricing begins, the project team will meet to discuss and agree on how the team will develop and evaluate price. This establishes the “rules” by which the PD-B estimating process will be conducted. In addition to reviewing the overall fair price strategy, the team will understand how certain elements of price will be handled. The following instructions will be discussed:

- definition of “fair-market” price
- acceptable percentage of difference between the Contractor and ICE (divergence factor)
- expectation of PD-B cost versus low bid
- overhead and profit margins
- labor and equipment rates
- subcontractor quotes and self-performed work
- number of OPCCs and bid submittals

2. **Risk and Opportunity Workshop/Constructability Review/Quantity Reconciliation Meeting**

The project team will hold a risk and opportunity workshop to identify and prioritize risks, discuss possible risk mitigation strategies, and explore risk sharing concepts. The workshop will seek to quantify risks and predict probabilities of occurrence in an effort to predict a total project contingency figure. The meeting will focus more on risk mitigation and how the risks would affect bid items.

In addition to the risk and opportunity workshop, the team will also discuss constructability review comments and quantities. The plans will be reviewed to ensure that the risk mitigation strategies and opportunities stemming from the risk/opportunity workshop have been incorporated. This review will also include quantity takeoffs, verification, and reconciliation to ensure all bidding parties have agreed to bid quantities. A key element of these reviews is the limitations of operations specification which will describe the segment and schedule requirements for the project. This will be helpful to the estimating teams as they each prepare their separate construction schedules.

3. **Blinded OPCC Estimates**

After the Risk/Constructability/Quantity meeting, each estimating team will prepare an OPCC estimate based on a pre-formatted Excel spreadsheet (bid schedule). The Contractor and ICE will each prepare a production-based estimate. Each team will use their own construction schedule in developing its estimate. For this estimate, indirect items, profit and risk will be broken out separately. Once the OPCC estimates are complete, each team will submit their spreadsheet to a designated Price Facilitator. This person will combine the OPCCs in order to compare the costs for each item and highlight any items that vary from any other estimate by more than the divergence factor. The total cost of each OPCC will also be compared to ensure that the OPCCs are within the project budget. The Price Facilitator will then return the spreadsheet to the project team.

4. **OPCC Meeting**

After the team receives the OPCC comparison report from the Price Facilitator, the team will meet and discuss the pricing approach and assumptions for items where the ICE and Contractor costs are separated by more than the agreed divergence factor (typically 5%). Costs will not be discussed. Rather, the factors that contribute to the costs are shared and discussed. The goal of these meetings is to clarify and resolve differences where possible between estimators. Each estimator determines for themselves if and how they might adjust their estimate. The goal is to have the total project cost from the PD-B and ICE to be within 5% at the final GMP, and the total project costs including risks to be under the project budget.

XIII: Sample PD-B RFP

Arkansas Department of Transportation

Request for Proposals

Project Name

Progressive Design-Build Project

Project Number

Final RFP issued January 20, 2021
Addendum #1 issued February 12, 2021

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Exhibit B	Project Description and Scope of Work
Exhibit C	Environmental/Planning Information
Exhibit C-1	Planning Study
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Form O	Proposal Security
Form P	Proposer Registration
Form Q	RFC Form

INSTRUCTIONS TO PROPOSERS

(Request for Proposals:)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“**RFP**”), as may be amended, is issued by the Arkansas Department of Transportation (the “**Department**”) to seek competitive proposals (individually, a “**Proposal**” and collectively, “**Proposals**”) for a progressive design-build contract that will consist of a Progressive Design-Build Agreement and related documents (the “**Design-Build Agreement**” or “**PDBA**”). The Design-Build Agreement will provide that the successful Proposer (“**Design-Builder**”) shall develop, design, and potentially construct the

(the “**Project**”). The form of Design-Build Agreement is included in Volume II of the RFP. The Department is procuring the Project, and will enter into the Design-Build Agreement, on behalf of the Arkansas State Highway Commission. All firms or assemblies of firms desiring to enter into the Design-Build Agreement (individually, a “**Proposer**” and collectively, “**Proposers**”) are invited to submit Proposals. Proposers must comply with these Instructions to Proposers (“**ITP**”) during the procurement and in their responses to the RFP. Proposers shall also take into consideration the Project goals identified in Section 1.3 below in drafting their Proposals.

The RFP requires each Proposer to be prepared to act as the Design-Builder for the Project if the Proposer is selected.

All forms identified in this ITP are found in Exhibit F unless otherwise noted. All times in this ITP are Central Standard Time (CST) or Central Daylight Savings Time (CDT), as applicable. Capitalized terms and acronyms not otherwise defined herein are defined in Exhibit A hereto or Exhibit A of the Design-Build Agreement, as applicable.

1.2 RFP Documents

1.2.1 Documents Comprising the RFP

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented:

- (a) Volume I – this ITP (including exhibits and forms); and
- (b) Volume II – the Design-Build Agreement.

1.2.2 Addenda

The Department reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or Procurement Process at any time before the Proposal Due Date shown in Section 1.5 (or, if Proposal Revisions are requested pursuant to Section 5.10, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP.

1.2.3 Errors

If any mistake, discrepancy, deficiency, ambiguity, error, or omission is identified by a Proposer at any time during the Procurement Process in any of the documents supplied by the Department, Proposer shall notify the Department of the recommended correction in writing in accordance with Section 2.3.

1.3 Project Goals

The Department's goals for the Project are identified below:

- Reduce both peak hour and railroad crossing related congestion and resulting impediments to emergency services in the Project area;
- Realize the benefits of progressive design-build project delivery, such as risk mitigation through early contractor involvement, collaborative project development; and reducing the overall schedule for delivery of the Project;
- Uphold the trust of Stakeholders and the public in delivering the Project; and
- Deliver the Project within the Department's budget.

1.4 Project Description and Status

The Department is proposing to obtain environmental clearance for and to design and construct interchange improvements where

The improvements may include grade separations at the railroad. The Department has concluded that harnessing private-sector creativity through a progressive design-build approach is the best way to ensure cost-effective and expedited delivery of this Project and provide needed congestion relief and other benefits to the public.

The Department intends to begin document preparation under the National Environmental Policy Act (NEPA) in early 2021. The Department intends to benefit from the use of the progressive design-build delivery method through early contractor involvement in the project development process. However, federal regulations prohibit private entities from preparing a NEPA document or having any decision-making responsibility in the environmental review process. Therefore, the Department will retain those responsibilities, and the input of the Design-Builder during this initial Planning Phase will be limited to producing studies, providing information related to the environmental process, or, more generally, providing viewpoints of key project-related issues.

The Department anticipates a Finding of No Significant Impact (FONSI) for the Project would be obtained in the fourth quarter of 2022. Upon issuance of the FONSI, the Department may authorize the Design-Builder under the Design-Build Agreement to proceed to the Preconstruction Phase, through issuance of an Amendment/NTP establishing the compensation, schedule, and deliverables for this phase. During the Preconstruction Phase, the Design-Builder will work collaboratively with the Department to produce final designs and provide preconstruction services, including bidding and cost proposal development for the Construction Phase.

At the end of the Preconstruction Phase, the Design-Builder will be given an opportunity to submit a Guaranteed Maximum Price (GMP) proposal for construction of the Project. Provided that the Department and the Design-Builder are able to reach agreement on the GMP proposal, the Department and the Design-Builder will enter into one or more Amendments/NTPs authorizing the Design-Builder to proceed with Construction Work on the Project, which work may be authorized through individual Work Packages based on a collaboratively developed phasing approach.

The Department has retained an independent cost estimator for this Project (the “ICE”) from the Department’s ICE Services On-Call list. The ICE will develop independent cost estimates for the Project at the same milestones as the Design-Builder, as described in more detail in the form of Design-Build Agreement (including Exhibit E thereto). The purpose of the ICE’s involvement in the Project will be to validate the cost proposals submitted by the Design-Builder at each pricing milestone. The Design-Builder will coordinate with the ICE throughout the Project.

Refer to Exhibit B for additional Project information and the scope of Work for the Design Builder and Exhibit C for information regarding the environmental process for the Project, including the planning study, a preliminary schedule of activities, and a preliminary matrix outlining the responsibilities of various parties with respect to the NEPA process.

1.5 Procurement Schedule

The following represents the current anticipated schedule for the procurement. Further key dates, including dates otherwise referenced in this RFP, will be provided in subsequent iterations of the procurement schedule.

<u>EVENT</u>	<u>DATE and TIME</u>
Issue draft RFP	December 28, 2020
Proposer RFC Deadline for draft RFP	January 14, 2021, 2:00 p.m.
Issue RFP	January 20, 2021
Last date for Proposer team registration	January 22, 2021, 2:00 p.m.
Proposer RFC Deadline on RFP	January 29, 2021, 2:00 p.m.
Virtual one-on-one meetings with Proposers	February 4-5, 2021
Issue RFP Addendum #1	February 12, 2021
Last date for issuance of Addenda and Department responses to Proposer RFCs	February 12, 2021
Proposal Due Date	February 22, 2021, 2:00 p.m.
Anticipated dates for interviews	March 3, 2021 and/or March 5, 2021
Date of anticipated award of PDBA	March 17, 2021

Where the RFP provides a deadline or due date for submission of documents, correspondence or other materials to the Department, the submission will only be considered timely if the Department receives the submission by the date and, if applicable, the time identified. Except as otherwise noted, all submissions to the Department required or permitted by this RFP must be made by email to the Department’s Authorized Representative, using the appropriate forms, if applicable, provided in this RFP.

1.6 Funding Sources

The Department’s plan of finance for the Project contemplates that the Department will fund the design and construction of the Project using a combination of federal and State funds. Payments will be made by the Department in accordance with the Design-Build Agreement.

1.7 Federal Requirements

1.7.1 General Obligations

In order to preserve the ability of the Department to use federal funding for the Project, the Procurement Process and the Design-Build Agreement must comply with applicable federal Laws.

1.7.2 DBE Requirements

The Department has determined that Disadvantaged Business Enterprise (“**DBE**”) requirements will apply to the design and construction of the Project, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of the Department as service providers, vendors, contractors, subcontractors, advisors, and consultants. The Department has adopted the definition of DBE set forth in 49 CFR § 26.5. Proposers’ and the Design-Builder’s DBE compliance obligations shall be governed by all applicable federal DBE regulations, including 49 CFR Part 26, as well as applicable requirements set forth in the Design-Build Agreement.

The DBE participation goal for the Project will be established by the Department after execution of the Design-Build Agreement, based on more fully developed plans for the Project, but prior to commencement of the Construction Phase. Prior to the Construction Phase Amendment/NTP, the Design-Builder will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving the Department’s DBE participation goals for the Project, including Design-Builder’s exercise of good faith efforts. The Design-Builder will be required to comply with its DBE Performance Plan and other applicable requirements in preparing and submitting its GMP proposal for the Construction Work. The Design-Builder will also be required to provide DBE commitments in the form required by the Department as DBE subcontractors are identified, in accordance with the Design-Build Agreement and the approved DBE Performance Plan. Requirements for the DBE Performance Plan and DBE compliance are set forth in the Design-Build Agreement.

Each Proposer shall submit a certification concerning DBE requirements (Form G) with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

The Procurement Process intended to be used by the Department is described below; *provided* that the Department reserves the right, in its sole discretion, to modify the Procurement Process to comply with applicable Law and/or to address the best interests of the Department and the State of Arkansas, including canceling the procurement.

The Department may issue one or more draft versions of this RFP. After any such draft RFP releases, and receipt of Proposers’ questions and comments with respect thereto, the Department plans to issue a final RFP. The final RFP will include the Department’s methodology for selection of the Design-Builder, as well as the form of Design-Build Agreement that the Department intends to enter into with the selected Proposer. Following receipt and evaluation of Proposals, the Department intends to shortlist Proposers for interviews. Following evaluation of the Proposers and Proposals following the interviews, the Department may select a Proposer for conditional award based on the Department’s determination of apparent best value, to finalize a DBA for award and execution. If the Department and the apparent best value Proposer

do not execute a DBA, the Department may award the Project to the next highest rated Proposer. Alternatively, the Department may modify and re-issue the RFP, or terminate the procurement.

If an award is made, the Department will execute a Design-Build Agreement with the responsible Proposer offering a Proposal that meets the standards set by the Department and that is determined by the Department to provide the best value to the Department and to be in the best interest of the State of Arkansas.

2.2 Authorized Representatives and Proposer Registration

The Department has designated the following individual to be its authorized representative for the procurement (the “**Authorized Representative**”):

Alternative Project Delivery Administrator
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209
E-mail: alternativedelivery@ardot.gov

All official Project communications will be provided from the Department’s Authorized Representative.

Each Proposer team shall timely register with the Department by submitting Form P by email to the Department’s Authorized Representative. Proposers are strongly encouraged to register prior to the deadline established in the procurement schedule set forth in Section 1.5 above. Any change in a Proposer team’s organization after its registration is subject to Section 3.5. The Department reserves the right to reject any Proposal submitted by a Proposer or Proposer team that did not timely register pursuant to this Section 2.2 or that failed to timely seek approval of any post-registration change in its organization pursuant to Section 3.5.

As part of Form P, each Proposer will identify a point of contact (“**Procurement Point of Contact**” or “**PPC**”). The PPC will be responsible for initiating or receiving all communication with the Department and must be delegated the full authority of the Proposer to communicate with the Department throughout the Procurement Process. Following registration, all Proposer submissions and communications with the Department should be made through the PPC.

The Department will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified in this ITP.

2.3 Rules of Contact

The rules of contact described herein apply from release of the draft RFP until selection of the best-value Proposer or until the formal cancellation of the procurement by the Department. Proposers. Each associated Component Firm must comply with all applicable Laws and refrain from lobbying any Governmental Authority in connection with the Procurement Process. During the Procurement Process, no employee, member, agent, advisor, or consultant of any Proposer or a Component Firm may undertake any ex-parte communications, directly or indirectly, regarding this procurement with any representative of the State, Department, or FHWA, including their staff, advisors, contractors, or consultants, except for communications expressly permitted by this RFP.

After a Proposer’s submission of its Form P, neither the Proposer nor any Component Firm thereof may communicate with another Proposer or Component Firm associated with another Proposer with regard to the Project, the Proposal, or any other Proposer’s Proposal, except that a Proposer may communicate with

an individual or Component Firm that is included in more than one Proposer organizations, so long as those Proposers have an established, documented protocol to ensure that such individual person or firm will not act as a conduit of information between the respective Proposer organizations.

2.4 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by the Department prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived mistake, discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which Proposer fails to understand. Proposers shall submit written requests for clarification, including questions and comments regarding the ITP and form of Design-Build Agreement and requests to correct errors, (“RFCs”) in accordance with this Section 2.4. The Department will consider RFCs in issuing the final RFP and in drafting Addenda, if any, to the RFP. The Department also may elect, at its discretion, to respond to RFCs through written responses. Any written responses to RFCs given by the Department will be for the information of the Proposers only and will not become part of the Design-Build Agreement, except to the extent that the Department, in its discretion, may incorporate the substance of a response into, as appropriate, the ITP documents and/or the form of Design-Build Agreement, whether in the final RFP issuance or by means of an Addendum to the RFP.

The Department will only consider RFCs if submitted by a registered Proposer through its PPC by email to the Department’s Authorized Representative in accordance with the requirements described below.

RFCs shall be submitted prior to the dates specified in Section 1.5 as “**RFC Deadlines**” using Form Q. In completing Form Q, Proposers shall identify and provide contact information for their PPC and, if applicable, shall specify the relevant document (e.g., the ITP Exhibit, form of Design-Build Agreement, etc.), including the relevant page and section number, for reference. With respect to each RFC Deadline specified in Section 1.5, Proposers should submit all questions at one time and in one submission.

No RFCs will be considered confidential unless the Department, in its discretion, determines otherwise. If any question is determined by the Department to be confidential, the response will be transmitted exclusively to the applicable Proposer; *provided, however*, that if the Department determines that it is appropriate to provide a general response, the Department will modify the question to remove any information that the Department determines is confidential before issuing the general response.

Except during one-on-one meetings, no telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project.

2.5 Pre-Proposal One-on-One Meetings

The Department intends to offer each registered Proposer the opportunity for an optional virtual one-on-one meeting with the Department prior to the Proposal Due Date to discuss issues and clarifications regarding the RFP. One-on-one meetings will be held on the dates set forth in Section 1.5 (and/or on any such other dates that may be designated by the Department in writing to Proposers). The Federal Highway Administration (FHWA), other Stakeholders, and consultants to the Department may also participate in one-on-one meetings.

During one-on-one meetings, Proposers may ask questions and the Department may provide responses for informational purposes. Any responses provided by the Department during one-on-one meetings may not be relied upon; *provided, however*, that the Department may, in its discretion, and subject to Section 2.4 above, respond in writing to questions or comments raised in one-on-one meetings and/or incorporate the substance of its responses into the RFP by Addenda. The Department reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that the Department

determines, in its sole discretion, such disclosure would reveal a Proposer's confidential business strategies, intellectual property, or technical solutions. The Department shall maintain the confidentiality of information related to Proposers and their Proposals as required to comply with this Section 2.5 and applicable Law.

Additional information regarding the one-on-one meetings will be provided by the Department to registered Proposers.

2.6 Confidentiality/Public Information Act Disclosure Requests

2.6.1 Confidentiality Rules

The Procurement Process will be conducted in accordance with the Arkansas **"Freedom of Information Act of 1967,"** as amended through A.C.A. § 25-19-101 *et seq.* ("FOIA"). Proposers are encouraged to familiarize themselves with FOIA, the federal Freedom of Information Act, and any other Laws applicable to the disclosure of documents submitted in connection with this RFP and to the matter of confidentiality and public information. The Department will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under such Laws or as to the interpretation of such Laws, or as to the definitions of proprietary, privileged, or confidential trade secrets or commercial or financial information.

To the extent consistent with FOIA, all records related to this Procurement Process, including, but not limited to, Proposals and any records created during the evaluation and selection process, will remain protected records until the Design-Build Agreement has been executed by all necessary officials of the Design-Builder and the Department, except for the Department's right to publicly disclose certain information about the Proposals, such as the name and Component Firms of each Proposer. Proposers are advised that the information contained in Form B-1 (Identification of Proposer and Principal Participants), Form E (Conflict of Interest Disclosure Statement), and the Executive Summary (described in Exhibit E, Section 1.0) of each Proposal may be publicly disclosed by the Department at any time, in the Department's sole discretion. After execution of the Design-Build Agreement, or in the event that the procurement is cancelled by the Department, the Department shall have the right to publicly disclose any and all portions of all the Proposals as the Department determines appropriate in accordance with applicable Law. Proposal materials will not be returned to the submitting party, except as determined by the Department in accordance with applicable Laws.

Nothing contained in this RFP shall modify or change the obligations of the Department under FOIA or other applicable Law. Determinations regarding the confidentiality of Proposal information or other materials submitted as part of this Procurement Process will be made by the Department in accordance with applicable Law. Under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

2.6.2 Observers During Evaluation

Proposers are advised that observers from federal or other agencies, as well as Department consultants, may observe the Proposal evaluation process and will be permitted to review the Proposals after the Proposal Due Date. The Department has agreed to allow FHWA officials and their outside advisors, access to the Proposals. Outside observers (other than FHWA officials) will be required to sign the Department's standard confidentiality agreement.

2.7 Improper Conduct and Non-Collusion

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form D).

SECTION 3.0 PROPOSER TEAM ORGANIZATION

3.1 Organizational Conflicts of Interest

The regulations contained in 23 CFR Part 636, Subpart A, and, in particular, in Subsection 636.116, regarding organizational conflicts of interest apply to this Project and the RFP. Proposers are advised that these rules may preclude certain firms and their subsidiaries and Affiliates from participating on a Proposer team. The Department has identified the following non-exhaustive list of firms that are believed to have an organizational conflict of interest: HNTB Corporation; Mayer Brown LLP; and Innovative Contracting and Engineering, LLC.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest (as defined in the above-mentioned regulations) is thereafter discovered, Proposer must make an immediate and full written disclosure to the Department that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Department may, at its sole discretion, cancel the procurement, disqualify Proposer with a conflict, or take other action as necessary to mitigate the conflict. If Proposer was aware of an organizational conflict of interest prior to the award of the Design-Build Agreement and did not disclose the conflict to the Department, the Department may pursue remedies under the Design-Build Agreement, including termination of the Design-Build Agreement.

3.2 Debarment or Suspension

No firm may participate in any Proposer organization as a Principal Participant or a Major Participant to the extent that such firm is currently debarred, suspended, disqualified, or removed from bidding (including having been removed from bidding by the Department on account of pending liquidated damages on other projects) or performing work for the State of Arkansas, the federal government or more than three state governments or is subject to any proposed, pending, or past debarment, suspension, or similar actions, in the past three years prior to the Proposal Due Date. Each Proposer will be required to acknowledge and certify that all Principal Participants and all Major Participants meet the requirements of this section at the time of Proposal submission.

3.3 Business Integrity

The Department considers the integrity of all firms and personnel involved in the Project to be of high importance. No Principal Participant, Major Participant, nor any owner, officer, partner, director, or financial controller of such firms, or respective employee involved in the Project, may participate as a part of a Proposer team if such firm or person cannot meet the requirements of Section 5.2.1(c).

Each Proposer will be required to acknowledge and certify in its Proposal Letter (Form A) that all Principal Participants and all Major Participants and their respective employees meet the requirements of Section 5.2.1(c) at the time of Proposal submission and to submit Form C in accordance with the requirements set forth in Exhibit D.

3.4 Department Prequalification

All Major Participants responsible for construction services on the Project must be prequalified prior to the Proposal Due Date in accordance with the Department's Standard Specifications Edition of 2014, Section 102. Information concerning Prequalification may be found on the Department website at:

http://www.arkansashighways.com/ProgCon/General/Prequalification%20Questionnaire_2015.pdf.

The Proposer should allow a minimum of two weeks for the Department to process a Prequalification application. Information on the Department Prequalification process and copies of the Prequalification questionnaire are available from the Construction Contract Procurement Section of the Department Program Management Division. The Proposer is responsible for ensuring all Major Participants responsible for construction services on the Project are prequalified with the Department prior to the Proposal Due Date. Failure by the Proposer to meet the requirements of Prequalification may result in the Proposer being disqualified from the Procurement Process.

3.5 Changes in Proposer's Organization

Except as provided in the Design-Build Agreement and in this Section 3.5, Proposer's organization as identified in its Proposer registration (Form P) and subsequently in its Proposal must remain the same for the duration of the Project unless otherwise approved in writing by the Department. If a Proposer wishes to make changes in the team members identified in its registration with the Department, including, without limitation, additions, deletions, reorganizations, and/or role changes in or of any of the foregoing, Proposer shall submit to the Department a written request for approval of the change from the Department as soon as possible, but in no event later than the last date for Addenda set forth in Section 1.5. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion.

SECTION 4.0 PROPOSAL REQUIREMENTS

4.1 General Provisions Regarding Proposals

4.1.1 Proposal Contents

The instructions and requirements for the Administrative Proposal, the Technical Proposal, and the Financial Proposal are set forth in Exhibits D, E, and F, respectively. Each component of the Proposal shall be organized in the order listed in the respective Exhibit and shall be clearly indexed. Any failure to provide all the information and all completed forms (Exhibit G) in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions, or assumptions may result in the Department's rejection of the Proposal or giving it a lower rating.

4.2 General Submittal Requirements

Each Proposal shall include an Administrative Proposal, a Technical Proposal, and a Financial Proposal meeting the requirements set forth in Exhibits D, E, and F, respectively. The Proposal shall be submitted in recyclable, low-cost, sealed containers in the format and manner set forth in Section 4.3. Proposals shall be written in the English language and U.S. Customary units.

4.2.1 Proposal Due Date

The completed Proposal shall be delivered no later than the Proposal Due Date and time specified in Section 1.5 to the address specified in Section 4.2.5 below.

4.2.2 Signatures Required

The Proposal Letter (Form A) shall be executed by all Principal Participants, and shall be accompanied by evidence of signatory authorization as specified in Form A. Signatures on documents included in the original Technical and Financial Proposals may be original (handwritten) or electronic (digital) signatures, except that the signatures on the Proposal Security must be original. Electronic signatures must be applied by an authorized representative using Adobe Sign or DocuSign and be accompanied by a written statement acknowledging the intent of the signatory, and that of the party on whose behalf the signatory is signing, that the signature be binding.

4.2.3 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to, or deviations from, the requirements of the RFP. If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the ITP Exhibits, or contains an alteration or deviation or is non-compliant in any manner, the Department may disqualify the Proposal from further consideration, in its sole discretion. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

4.2.4 Format

Hardcopy submittals must be bound in one or more binders or, in the case of the Financial Proposal and Proposal Security, envelopes, each of which shall be labeled to indicate the binder's or envelope's contents and the name of the Proposer. Electronic copy submittals shall be submitted on a single USB flash drive including searchable PDFs (preferably with an electronic table of contents) with a file size no greater than 100 MB, with separate PDFs for each of the Administrative Proposal, Technical Proposal, and Financial Proposal (or components thereof, if necessary to meet file size requirements or as expressly permitted in this Section 4).

Printed lines may be single-spaced with the type font size being no smaller than 12-point, other than in organizational charts, tables, and figures, which may be prepared using 10-point font size type. The use of 11 by 17-inch foldouts for tables and organizational charts is acceptable in the main body of the Technical Proposal. Each 11 by 17-inch foldout will be considered one page. Double-sided printed paper is encouraged for hardcopy submittals.

4.2.5 Additional Requirements for Proposal Delivery

The completed Proposal shall be submitted and delivered in a sealed box or other container no later than the Proposal Due Date and time specified in Section 1.5. The Proposal is to be delivered to the Department at the following address:

Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209
Attn: , Alternative Project Delivery Administrator.

The required hardcopy originals and duplicates of the Administrative Proposal, Technical Proposal, Financial Proposal, and the USB drive containing the requisite electronic copies of each, shall be submitted in a single box or container labeled "[Proposer's Name]: Proposal for the PDB Project." The original hardcopy Administrative, Technical, and Financial Proposals shall be clearly identified as "original."

4.3 Proposal Contents and Organization

4.3.1 Administrative Proposal

The binder containing the original Administrative Proposal (as described in Exhibit D) shall be clearly labeled “[Proposer Name]: Original Administrative Proposal for the PDB Project.” Proposer shall also provide one duplicate hardcopy of the Administrative Proposal, labeled “[Proposer Name]: Copy of Administrative Proposal for the PDB Project.” Both the original and duplicate hardcopies of the Administrative Proposal should exclude hardcopies of the Proposal Security (which must be submitted according to the requirements set forth in Section 4.5 below).

Proposer shall also provide one electronic copy of the complete Administrative Proposal (including the Proposal Security) in PDF format on the USB flash drive. The Proposal Security and the corporate / partnership / joint venture / limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and/or limited liability company operating agreements) may be submitted in separate PDF(s) with appropriate file names to distinguish them from the PDF of the rest of the Administrative Proposal.

No page limits apply to the Administrative Proposal.

4.3.2 Technical Proposal

The binder containing the original Technical Proposal (as described in Exhibit E) shall be clearly labeled “[Proposer Name]: Original Technical Proposal for the PDB Project.” Proposer shall also provide one duplicate hardcopy of the Technical Proposal, labeled “[Proposer Name]: Copy of Technical Proposal for the PDB Project.”

Proposer shall also provide one electronic copy of the Technical Proposal in PDF format on the USB flash drive.

All pages of the Technical Proposal (both hardcopies and electronic copies) shall be sequentially numbered. Components of the Technical Proposal shall comply with applicable page limits specified in Exhibit E. No page limits apply to Technical Proposal appendices and exhibits. Note, however, that the Department does not commit to review any information in appendices and exhibits other than those required to be provided, and the technical evaluation process will focus on the body of the Technical Proposal and any required appendices and exhibits.

4.3.3 Financial Proposal

The Financial Proposal shall be submitted in two separate parts, enclosed in separate envelopes: (1) the Price Proposal (Form N, including Attachment 1 thereto); and (2) the Surety letter.

The envelope containing the Price Proposal shall be clearly labeled “[Proposer Name]: Financial Proposal/Price Proposal for the PDB Project.” One original hardcopy (stamped or otherwise labeled “original”) and one duplicate hardcopy shall be included in the Price Proposal envelope.

The Financial Proposal shall also contain a letter from a surety company that satisfies the requirements of Exhibit F, Section 2.0. One original hardcopy and one duplicate hardcopy of the Surety letter shall be included in an envelope labeled “[Proposer Name]: Financial Proposal/Surety Letter for the PDB Project.”

Proposer shall also provide one electronic copy of each of the Price Proposal and the Surety letter in separate PDFs on the USB flash drive.

4.4 Proposal Validity

Proposals shall be valid for a period of 60 days after the Proposal Due Date. No Proposer may withdraw its Proposal within the 60-day period, unless notified by the Department that (a) no Design-Build Agreement for the Project will be awarded by the Department pursuant to the RFP; (b) the Department has awarded the Design-Build Agreement to another Proposer and has received the executed Design-Build Agreement and other required documents; (c) the Department does not intend to award the Design-Build Agreement to the Proposer; or (d) such Proposer is not the apparent best-value or next highest ranking Proposer.

If the next best Proposer is notified during the 60-day period that it is selected for negotiations, such Proposer shall be automatically deemed to have extended the validity of its Proposal for the period until 120 days after the Proposal Due Date. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.5 Proposal Security and Forfeiture

The Proposer shall provide one original and one duplicate hardcopy of the Proposal Security with the Administrative Proposal in a separate envelope labeled “[Proposer Name]: Proposal Security for the PDB Project.” An electronic copy of the Proposal Security shall be provided on the USB flash drive as described in Section 4.3.1.

The dollar amount of the Proposal Security to be submitted with each Proposal shall be \$50,000. By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (a) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal except as specifically permitted hereunder; (b) it is selected for negotiations, but fails to negotiate in good faith with the Department as set forth in Section 6.2; or (c) it is selected as the preferred Proposer, but fails to provide the documents required under Section 6.2.

4.6 Withdrawals and Late Submittals

Proposer may withdraw its Proposal at any time prior to the time due on the applicable Proposal Due Date by means of a written request signed by the Proposer’s PPC. Such written request shall be submitted to the Department by email to the Department’s Authorized Representative. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that such new Proposal is received before the time due on the Proposal Due Date.

Proposals received after the time due on the Proposal Due Date may be rejected without consideration or evaluation. It is a Proposer’s sole responsibility to see that its Proposal is received as required by this RFP.

4.7 Ownership of Proposal

All written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to the Department during this Procurement Process, whether included in the Proposal or otherwise submitted, become the property of the Department upon delivery to the Department, and will not be returned to the Proposer.

4.8 Proposal Costs Not Reimbursable

The Department will not provide any Proposer with reimbursement for any costs incurred in connection with this procurement, and the Proposer is solely responsible for all costs and expenses, of any nature, associated with responding to this RFP and submitting a Proposal, including attending one-on-one meetings, submitting RFCs regarding the RFP Documents, and providing any other pre-Proposal submittals, supplemental information, or Proposal revisions to the Department.

SECTION 5.0 EVALUATION PROCESS

The Department's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement. The Proposal evaluation process will consist of the steps outlined herein.

5.1 Evaluation Method (Best Value Trade-off Process)

The evaluation process will proceed as follows: (1) a review of each Proposal for responsiveness and pass/fail criteria; (2) a review and a qualitative evaluation of the Technical Proposals, resulting in a Technical Proposal score for each; (3) establishment of a competitive range of Proposals, based on a ranking of responsive and passing Proposals by Technical Proposal score, resulting in a shortlist of Proposers to be invited for interviews with the Department; (4) interviews with shortlisted Proposers and a qualitative evaluation of interview performance, resulting in an interview score for each shortlisted Proposal; (5) determination of the overall technical ranking of shortlisted Proposals, based on the combined Technical Proposal and interview scores; (6) review of Price Proposals for reasonableness and a tradeoff analysis (which may include both quantitative and qualitative factors) of the Price Proposals relative to the technical ranking and scores of the shortlisted Proposals; and (7) finally, ranking of the shortlisted Proposals by the value they offer to the State, based on the tradeoff analysis, resulting in a determination as to the Proposal offering the best value. The process may include requests for clarifications or Proposal Revisions in accordance with Sections 5.9 and 5.10, respectively.

5.2 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Proposals will be reviewed by the pass/fail and responsiveness subcommittee. They will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below.

5.2.1 Administrative Proposals

Administrative Proposals will be evaluated based on the following pass/fail or responsiveness criteria:

- (a) The Administrative Proposal includes all forms described by Exhibit D;
- (b) The Proposer has provided evidence of its legal organization, or if the Proposer is unincorporated, the Proposer has provided evidence of the legal organization of the Principal Participants;
- (c) No Principal Participant or Major Participant, nor any owner, officer, partner, director, or financial controller of such firms, nor any of their respective employees involved in the Project, has, in the past three years prior to the Proposal Due Date:
 - (1) Been convicted or included as the defendant in a criminal or civil judgment rendered against the firm or relevant individual by a court of competent jurisdiction in any matter

involving fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty;

(2) Been indicted or otherwise criminally or civilly charged by a Governmental Authority with fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; or

(3) Participated as a prime contractor or equity partner in (i) a contract that was terminated for cause or default by the State of Arkansas or the federal government or (ii) contracts that were terminated for cause or default by two or more other Governmental Authorities;

(d) The Proposal includes a Proposal Security as required pursuant to Section 4.5; and

(e) All Major Participants responsible for construction services on the Project are prequalified in accordance with Section 3.4 prior to the Proposal Due Date.

5.2.2 Technical Proposals

Technical Proposals will be evaluated based on the following pass/fail or responsiveness criteria:

(a) The Technical Proposal includes all forms described by Exhibit E;

(b) The Technical Proposal includes all other information required pursuant to Exhibit E; and

(c) The Major Participants included in the Proposal have not changed since the Proposer's registration with the Department, except with the Department's prior written approval.

5.2.3 Financial Proposals

Financial Proposals will be evaluated on a pass/fail basis based on the Financial Proposal's inclusion of a Surety letter responsive to all of the criteria set forth in Exhibit F Section 2.0.

5.2.4 Department Right to Exclude Proposals from Consideration or to Waive Mistakes

Those Proposals that are not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and Proposer will be so advised. The Department may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation or omission. The Department reserves the right to waive minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Proposals.

5.3 Evaluation of Technical Proposals

After completion of the pass/fail and responsiveness review, each Technical Proposal will be evaluated to determine its ability to meet or exceed the Project goals, values, and requirements and will be scored in the following categories, for a total maximum Technical Proposal score of 1000 points:

(a) Organization and Experience (400 points maximum); and

(b) Project Approach (600 points maximum).

The evaluation criteria for each category are described below. Each of the evaluation criteria will be evaluated and scored as noted. The Department will add the points awarded for each evaluation factor to determine the Technical Proposal score.

5.3.1 Organization (100 points)

The Proposer team's organization will be evaluated based on the extent to which such organization:

- (a) Demonstrates an understanding of the progressive design-build delivery method;
- (b) Demonstrates an efficient structure that is capable of effective coordination and collaboration with the Department, its consultants, and Stakeholders;
- (c) Identifies sufficient personnel to perform the Work; and
- (d) Is likely to facilitate successful delivery of the Project.

5.3.2 Firm Experience (100 points)

The Proposer's experience will be evaluated on the basis of the demonstrated competency, capability, and capacity of the Proposer team to successfully deliver a project of similar size, scope, and complexity using alternative project delivery methods, particularly progressive design-build delivery. Specifically, the Department will evaluate the extent to which the Proposer's experience:

- (a) Demonstrates an understanding of the progressive design-build delivery method; and
- (b) Demonstrates relevant experience that will improve the likelihood of a successful project.

Experience on completed projects will be given more weight than projects in progress.

The information provided in the Technical Proposal regarding the Major Participants' project experience will be used as deemed appropriate by the Department for the evaluation of such firms' technical experience and capability. At its discretion, the Department may elect to use other information provided in the Proposal, including reference information and disclosures, to make inquiries about or otherwise further examine the Proposer's technical experience and capability and may take into account such inquiries and examinations in assessing the criteria above.

5.3.3 Key Personnel Experience (200 points)

The Proposer will be evaluated on the background, experience, and past performance of its required and Proposer-identified Key Personnel on projects of similar size, scope, and complexity. Key Personnel will be evaluated based on the extent to which:

- (a) The extent to which the required Key Personnel meet or exceed minimum requirements for qualifications and experience; and
- (b) The extent to which the Proposer-identified additional Key Personnel provide experience that is likely to facilitate and improve successful delivery of the Project.

The information provided in the Technical Proposal regarding the Proposer's Key Personnel, including the Forms M, will be used as deemed appropriate by the Department to assist in the evaluation of the Key Personnel qualifications and experience. At its discretion, the Department may elect to use other information provided in the Proposal, including reference information and disclosures, to make inquiries about or otherwise further examine the Proposer's technical qualifications and capability and may take into account such inquiries and examinations in assessing the criteria above.

5.3.4 Project Approach (600 points)

The Proposer's Project Approach with respect to each of the Planning Phase (300 points), the Preconstruction Phase (200 points), and the Construction Phase (100 points) will be evaluated on the extent to which each:

- (a) Demonstrates an understanding of the Project and progressive design-build delivery;
- (b) Demonstrates an understanding of the scope of work in Exhibits B and E;
- (c) Demonstrates an efficient and effective plan for coordination and collaboration with the Department, the Department's consultants, and Stakeholders in connection with the Project;
- (d) Demonstrates an approach that effectively engages project personnel;
- (e) Demonstrates a level of effort that aligns with the proposed Planning Phase NTE amount (*Planning Phase Project Approach only*);
- (f) Provides a Proposer alternative that meets the Project's purpose and need and is not inconsistent with the Department's goal of cost-effective and timely delivery (*Planning Phase Project Approach only*); and
- (g) Reflects proposed exceptions to the form of Design-Build Agreement set forth in the Administrative Proposal (*Preconstruction Phase and Construction Phase Project Approaches only, as applicable*).

5.4 Competitive Range

The term "competitive range" means a list of the passing and responsive Proposals that are most highly ranked by the Department based on the initial Technical Proposal scores and that are judged by the Department to be reasonably susceptible of being selected for award.

5.5 Interviews

The Department will shortlist Proposers in the competitive range identified by the Department pursuant to Section 5.4 to move forward in the Procurement Process. Shortlisted Proposers will be required to attend a technical interview with the Department as described in this Section 5.5.

Each shortlisted Proposer team may bring to its interview any material that Proposer believes may assist the Department in evaluating the team's qualifications. Each team will be required to attend the interview with the following Key Personnel: Project Manager, Design Manager, Construction Manager, and Project Controls Manager.

The presentation, case study exercises, and question and answer (Q&A) period will last approximately one hour and will be qualitatively evaluated and scored by the Department out of a maximum of 1000 points. The format of the interview will be as follows:

- (a) Introductions and Presentation of Project Approach: 10 minutes (200 points)
- (b) Presentation of Proposer Alternative and Q&A: 15 minutes (300 points)
- (c) Case Study: 15 minutes (300 points):
 - (1) 10 minutes for Proposer to work as a team on the case study; and

- (2) Five minutes for Proposer to present solutions and findings to the Department interview panel.

Note: The Department's selection panel will be in the room watching the team work together and collaborate. Proposer may call on the Department selection panel for more information as needed, but this will be included in the 10 minutes allotted to team's work on the case study.

- (d) Q&A with the Department's selection panel: 15 minutes (200 points)
- (e) Closing: 5 minutes

Proposers will be evaluated on their interview performance and ability to work as a team based on the following criteria:

- (a) Team technical expertise;
- (b) Team collaboration and cohesiveness;
- (c) Ability to problem solve;
- (d) Presentation of solutions; and
- (e) Ability to utilize the skills of all team members.

5.6 Evaluation of Financial Proposals

The Financial Proposal of each shortlisted Proposal will be evaluated to determine its ability to meet or exceed the Project goals, values, and requirements.

5.6.1 Price Proposal – Reasonableness

The reasonableness of the Proposer's schedule of fully loaded hourly rates and proposed subcontract sums for the Planning Phase provided in accordance with Exhibit F, Section 3.0 will be evaluated as to the extent to which such amounts are consistent with market rates and provide value to the Department relative the services being provided.

5.6.2 Price Proposal – Proposed Planning Phase NTE Amount

The Price Proposal will be evaluated as to the extent to which Proposer's indicative cost estimate for the Planning Phase provided in accordance with Exhibit F, Section 3.0 (which estimate intended to provide the basis for the Planning Phase NTE amount under the PDPA, subject to the Department's determination as to the reasonableness of that amount) is consistent with Proposer's Planning Phase Project Approach and provides value to the Department relative to the value of the services being delivered by Proposer during the Planning Phase.

5.7 Evaluation Criteria

In evaluating the Proposals and interview performance pursuant to the criteria in Sections 5.3, 5.5, and 5.6 above, the Department will utilize a 0-5 rating system as set forth below (*provided, however, that Financial Proposals will not receive point scores but will be evaluated using a tradeoff analysis as described in Section 5.8 below*).

Rating	Criteria for Rating	
5	<p>Technical: The submitted information significantly exceeds the listed requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project) and/or is significantly superior to the information provided by other Proposers. There are multiple strengths. There are no identified weaknesses.</p> <p>Financial: The submitted information significantly exceeds the listed requirements and demonstrates exceptional value for ARDOT.</p> <p>Interview: The Proposer demonstrates an exceptional understanding of the subject and demonstrates an approach with unique, innovative, and/or well-proven methods that exceed stated requirements and objectives of the Project.</p>	90%-100% of available points.
4	<p>Technical: The submitted information exceeds the listed requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project) and/or is superior to the information provided by other Proposers. There are some strengths and only minor/potential weaknesses that can be readily corrected.</p> <p>Financial: The submitted information exceeds the listed requirements and demonstrates good value for ARDOT.</p> <p>Interview: The Proposer demonstrates a good understanding of the subject and demonstrates an approach that meets the stated requirements and objectives of the Project.</p>	70%-89% of available points.
3	<p>Technical: The submitted information generally meets the listed requirements/objectives and/or is generally comparable to the information provided by other Proposers. The number of strengths and weaknesses is generally balanced.</p> <p>Financial: The submitted information generally meets the listed requirements and demonstrates reasonable value for ARDOT.</p> <p>Interview: The Proposer demonstrates a general understanding of the subject and demonstrates an approach containing some weaknesses/deficiencies regarding the stated requirements and objectives of this Project.</p>	50%-69% of available points
2	<p>Technical: The submitted information minimally meets the listed requirements/objectives and/or is minimally comparable/inferior to the information provided by other Proposers. The number and weaknesses exceed the number of strengths.</p> <p>Financial: The submitted information minimally meets the listed requirements and demonstrates minimal value for ARDOT.</p> <p>Interview: The Proposer demonstrates a minimal understanding of the subject and demonstrates an approach containing moderate weaknesses/deficiencies regarding the stated requirements and objectives of this Project.</p>	30%-49% of available points
1	<p>Technical: There is some question regarding whether the submitted information meets the listed requirements/objectives and/or it is generally inferior to the information provided by other Proposers. The number and weaknesses significantly exceed the number of strengths.</p>	0%-29% of available points

	<p>Financial: There is some questions regarding whether the submitted information meets the listed requirements and does not appear to demonstrate value for ARDOT.</p> <p>Interview: The Proposer demonstrates a lack of understanding of the subject and demonstrates an approach with a high likelihood of failure that does not align with the stated requirements and objectives of this Project.</p>	
0	<p>Technical: The submitted information is not responsive to the requirements/objectives and creates a substantial risk of project failure.</p> <p>Financial: The submitted information is not responsive to the requirements/objectives and creates a substantial risk of project failure.</p> <p>Interview: The Proposer demonstrates an approach that creates a substantial risk of project failure.</p>	No points

5.8 Tradeoff Analysis

When determining which Proposal provides the best value to the State, the Technical Proposal and interview scores will have a substantially higher relative importance than the Price Proposal. After the interviews, the Department will rank the shortlisted Proposals based on the combined Technical Proposal and interview scores. Following such ranking, the Department will perform a fully integrated tradeoff analysis of the shortlisted Proposals, resulting in a ranking of the shortlisted Proposals in order of overall best value to the State. In performing this tradeoff analysis, the Department will consider the facts and circumstances of the Project and Procurement Process and the evaluation factors set forth in this RFP, including the evaluation criteria set forth above and the value of the Price Proposal (including the proposed Planning Phase NTE amount and the reasonableness of the fully loaded hourly rates), and will utilize its technical judgment and discretion in considering strengths, weaknesses, and deficiencies of each Proposal. The highest ranked Proposal upon conclusion of the tradeoff analysis will be recommended for award.

5.9 Requests for Clarification

The Department may (but is not obligated to) at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify any aspect of its Proposal. Any requests for clarification will be made by the Department by email to the Proposer's PPC and will be delivered to the Department by email to the Department's Authorized Representative unless otherwise directed by the Department. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by the Department) from receipt of the request. The scope, length, and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, the Department.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.10 Requests for Proposal Revisions

The Department may, at any time after receipt of Proposals and prior to execution of the Design-Build Agreement, determine that it is appropriate to request changes to the Proposals ("**Proposal Revisions**"). Before requesting any such Proposal Revisions, the Department will engage in separate discussions (either in writing or in person through one-on-one meetings) with each Proposer and in accordance with

the procedures for proposal revisions described in 23 CFR Part 636.501 *et seq.* The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. Any such Proposal Revisions will be required to be delivered by the PPC to the Department by email to the Department's Authorized Representative unless otherwise directed by the Department.

Upon receipt of Proposal Revisions, the Department will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.11 Recommendation to Commission

The Department will make a recommendation to the Commission regarding the rankings of the Proposals and identification of the best value Proposal and the preferred Proposer. The Commission will evaluate the recommendations and will determine whether to proceed with award of a Design-Build Agreement to the preferred Proposer or to take any other action. The Commission's decision to award the Design-Build Agreement to the preferred Proposer, as well as the rankings, will be made in a public hearing and will be considered a public announcement of intent to award the Design-Build Agreement by the Commission. The Commission's decision regarding award of the Design-Build Agreement shall be final.

SECTION 6.0 POST-EVALUATION PROCESS AND EXECUTION

6.1 Incorporation of Proposal and Finalization of the Design-Build Agreement

If authorized by the Commission, the Department will proceed with the best value Proposer, based on the selection criteria outlined in Article 5, to finalize the Design-Build Agreement. By submitting its Proposal, each Proposer commits to enter into the form of Design-Build Agreement included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of Design-Build Agreement indicates is required from the Proposal, and subject to negotiation of any exceptions that the Proposer expressly identified in its Administrative Proposal. The Department may agree, in its sole discretion, to limited negotiations with the best value Proposer to clarify any remaining issues regarding scope, schedule, or any other information provided by that Proposer. Any decision to commence limited negotiations is at the Department's sole discretion.

If a Design-Build Agreement satisfactory to the Department cannot be negotiated with the best value Proposer, the Department will, formally and in writing, end negotiations with that Proposer and take action consistent with the direction provided by the Commission. Such action may include: (a) requiring the next best value Proposer to enter into the Design-Build Agreement in the form included in the RFP, without variation except to fill in blanks and include information that the form of the Design-Build Agreement indicate is required from the Proposal, and subject to negotiation of any exceptions that the Proposer expressly identified in its Administrative Proposal; (b) rejection of all Proposals; (c) issuance of a request for Proposal Revisions to Proposers; or (d) proceeding to the next best value Proposer to attempt to negotiate a Design-Build Agreement with that Proposer in accordance with this Section 6.1. If option (d) is selected, the Proposer that submitted the next best value Proposal will be considered the best value Proposer for purposes of this section.

In the event the Department elects to commence negotiations with a Proposer, such Proposer will be deemed to have failed to engage in good faith negotiations with the Department and shall forfeit its Proposal Security as set forth in Section 4.5 if Proposer (x) fails to attend and actively participate in reasonably scheduled negotiation meetings with the Department or (y) insists upon terms or conditions for any documents to be negotiated or provided by Design-Builder hereunder that are inconsistent with form of Design-Build Agreement and any exceptions expressly identified by Proposer in its Administrative Proposal.

6.2 Post-Selection Deliverables

As a condition precedent to execution of the Design-Build Agreement, the successful Proposer shall deliver the following to the Department within five Business Days after notification of award:

(a) Evidence of authority to transact business in the State of Arkansas for all members of Proposer's team that will transact business in the State, dated no earlier than 30 days prior to the Proposal Due Date.

(b) If not previously submitted, a copy of the final organizational documents for Design-Builder and, if Design-Builder is a limited liability company, partnership or joint venture, for each member or partner of Design-Builder. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal. If Design-Builder is a joint venture, attach a letter from each joint venturer stating that the joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations of Design-Builder under the Proposal and under any contract arising therefrom.

(c) Certificates of insurance accompanied by one or more committed letters from insurance brokers confirming that coverage will be placed in accordance with the project documents.

During the negotiation period, as a condition to execution of the Design-Build Agreement, the Proposer shall deliver drafts of the deliverables identified in Section 6.3 for pre-approval by the Department.

6.3 Execution and Delivery of Design-Build Agreement

The following are conditions precedent to execution of the Design-Build Agreement: (1) successful completion of negotiations (if any), (2) receipt by the Department of all of the documents required to be provided prior to execution of the Design-Build Agreement under this Section 6.3, (3) execution of the Design-Build Agreement by the Department, and (4) any other conditions required by the Commission.

Proposer shall deliver the documents listed below to the Department concurrently with the executed Design-Build Agreement as a condition to execution of the Design-Build Agreement by the Department. On or before the date that the Department delivers the execution sets of the Design-Build Agreement to Proposer, the Department shall notify Proposer regarding the number of originals and copies required to be delivered.

(a) For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.

(b) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Design-Build Agreement by Design-Builder and, if Design-Builder is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to the Department.

(c) A written opinion of counsel for Design-Builder, which counsel shall be approved by the Department (which may be in-house or outside counsel), in a form satisfactory to the Department, in its sole discretion.

(d) Evidence that Design-Builder and its Major Participants hold all licenses required for performance of the work under the Design-Build Agreement.

(e) A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond and Payment Bond, each in the amount of \$40 million and in the forms attached to the Design-Build Agreement, and a Retainage Bond in the form attached to the Design-Build Agreement. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Design-Build Agreement and issuance of the Construction Phase Amendment/NTP; *provided, however*, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Design-Build Agreement or form thereof set forth in the RFP, but excluding any changes or information reflected in the Proposal.

(f) Any other requirements identified by the Department during pre-award negotiations.

6.4 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest feasible time after execution of the Design-Build Agreement. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and Design-Build Agreement award.

Debriefings shall:

(a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) Provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of any evaluation committee, but may include a summary of the rationale for the selection decision and Design-Build Agreement award.

SECTION 7.0 PROTESTS

This section sets forth the exclusive protest remedies available with respect to the RFP (a "**Protest**"). By the submission of a Proposal, the Proposer expressly recognizes the limitation on its rights to file a Protest to only those rights and provisions contained herein. The Proposer expressly waives all other rights, remedies, and agrees that this Section 7 sets forth all rights and remedies of the Proposer regarding Protests. This provisions included in the RFP are provided in consideration of such waiver and agreement by the Proposer. If a Proposer disputes, or does not follow the exclusive protest remedies set forth in the

RFP, the Proposer must indemnify, defend, and hold harmless the Department, its directors, officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such Proposer action. The submission of a Proposal by a Proposer is deemed to include the Proposer's irrevocable and unconditional agreement with respect to such indemnification obligation.

7.1 Written Protests Only

A Protest from a Proposer must be submitted to the Department in writing and contain all information described below in Section 7.2. The written Protest must be mailed to the following person (the "**Protest Official**") at the following address:

Arkansas Department of Transportation
10324 Interstate 30
Attn: , Assistant Chief of Administration
Little Rock, AR 72209

Any Protest not received in writing by the Protest Official within seven days of the action on which the Protest is based will be considered null and void and will not be considered for investigation or resolution. In addition, any Protest may be filed only after the respective Proposer has first discussed the nature and basis of the Protest with the Department's Authorized Representative in an effort to resolve the matter through discussion.

The Protest Official may, in his discretion, discuss the written Protest with the respective Proposer prior to issuance of the Protest Official's written decision. The Proposer shall possess, and maintain throughout the Protest process, the burden of proof regarding the Protest by clear and convincing evidence. No hearing will be assembled on the Protest and the Protest Official will resolve the Protest in a written decision issued to the protesting Proposer. The Proposer may appeal the decision of the Protest Official by filing a written appeal as described in Section 7.4.

It is the Proposer's sole responsibility to deliver the Protest to the Protest Official at the location noted and for obtaining a written receipt appropriate to the means of delivery at the time of delivery. The Department bears no liability, and accepts no responsibility, for a Proposer not meeting the appropriate deadline(s) for any such Protest or appeal.

7.2 Protest Contents

A Protest must include the following:

1. The name and address of the Proposer;
2. The Project name and number (No. 110651);
3. A detailed statement of the nature of the Protest;
4. All factual and legal documentation in sufficient detail to establish the merits of the Protest. Any Protest information and documentation provided under oath could result in a penalty of perjury, should the information be proven to be inaccurate, whether intentional or unintentional.

The Proposer must demonstrate or establish a clear violation of a specific Law or regulation, or impropriety within the Procurement Process. The Protest Official will not be obligated to postpone the

public announcement of award or execution of the Design-Build Agreement in order to allow the respective Proposer an opportunity to file or correct a Protest or appeal, unless otherwise required by Law.

7.3 Protest Process

Upon receipt, the Protest Official will promptly make a determination, in writing, regarding the validity of the Protest and whether or not the Procurement Process should be delayed or the Department should reconsider the selection of the preferred Proposer. If the Department determines that a delay in the Procurement Process is appropriate, all Proposers will be notified of the delay.

The Proposer agrees that if an appeal of the Protest Official's decision is not submitted within seven days of the Protest Official's written decision, the decision of the Protest Official will be deemed to be final action and non-appealable. Any appeal within seven days will be handled as described in Section 7.4 below.

7.4 Rights of Appeal

If the Proposer disagrees with the written decision of the Protest Official, the Proposer may appeal the decision by submitting a written appeal to the Department Deputy Director & Chief Operating Officer within seven calendar days after receipt of the decision of the Protest Official. The written Appeal must be mailed to the following address:

Arkansas Department of Transportation
10324 Interstate 30
Attn: , Deputy Director & Chief Operating Officer
Little Rock, AR 72209

The Deputy Director & Chief Operating Officer will provide a final decision on the Protest, either concurring with the decision of the Protest Official or amending the decision and will notify the respective Proposer in writing in a prompt manner of its decision.

If the Protest is not resolved after the appeal to the Deputy Director & Chief Operating Officer, the Proposer may continue the Protest only by appeal of the final decision in the same manner as provided in A.C.A. §25-15-207 for declaratory judgment regarding the validity or applicability of a rule. The Department's decision after review of the appeal by the Deputy Director & Chief Operating Officer will constitute final action by the Department. If the Proposer appeals the final action by the Department, the Department may, in its sole discretion, proceed with the Procurement Process, unless otherwise directed or ordered by a judicial authority.

SECTION 8.0 DEPARTMENT RIGHTS AND DISCLAIMERS

In addition to the reserved rights articulated throughout the RFP, the Department reserves the right, in its sole and absolute discretion, to do the following: (a) reject any or all Proposals; (b) issue a new RFP; (c) cancel, modify, or withdraw the RFP; (d) appoint an evaluation team to review Proposals and seek the assistance of outside technical experts in the Proposal evaluation; (e) revise and modify, at any time before the Proposal Due Date, the RFP; (f) extend the Proposal Due Date; (g) seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposal on one or all the Proposers; and (h) refuse to receive or open a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based on, but not limited to, any of the following: (1) failure on the part of a Principal Participant or Major Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing

contracts; (2) violation of the terms of the RFP on the part of a Principal Participant or Major Participant; (3) issuance of a notice of debarment or suspension to a Principal Participant or Major Participant; (4) submittal by the Proposer of more than one Proposal under the Proposer's own name or under a different name; and (5) existence of a conflict of interest or evidence of collusion in the preparation of a proposal, proposal, or bid for any design or construction project by a Principal Participant or Major Participant.

The issuance of the RFP is not a commitment by the Department to enter into the Design-Build Agreement, nor does it obligate the Department to pay for any costs incurred in preparation and submission of the Proposal or in anticipation of the Design-Build Agreement. By submitting a Proposal, a Proposer disclaims any right to seek compensation for such costs from the Department. By submission of a Proposal in response to the RFP, the Proposer thereby specifically acknowledges acceptance of the above rights and disclaimers.

EXHIBIT A

DEFINITIONS AND ACRONYMS

“Addenda/Addendum” means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

“Administrative Proposal” means the proposal materials submitted by a Proposer providing the information requested in ITP Exhibit D.

“Affiliate” means (i) any person, organization or firm that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Proposer or any Principal Participant; or (ii) any organization or firm for which 10 percent or more of the interest in such organization or firm is held directly or indirectly, beneficially or of record, by (a) the Proposer; (b) any Principal Participant; or (c) any Affiliate under part (1) of this definition.

“Authorized Representative” has the meaning set forth in ITP Section 2.2.

“Business Day” means days on which the Department is officially open for business.

“Certificate of Authorization” means the certificate issued by the State Board that firms practicing or offering engineering services in the State are required to obtain under A.C.A. § 17-30-303.

“Commission” means the Arkansas State Highway Commission.

“Component Firm” means any firm associated with a Proposer that is contemplated by the Proposer to perform Work on the Project, including the Proposer, Principal Participants, Major Participants, Designers, and subcontractors that perform design or construction activities.

“Construction Manager (CM)” means the individual employed by the Proposer or a Principal Participant, who is designated as having the lead responsibility for managing the construction on the Project.

“Day” or **“day”** shall mean calendar days unless otherwise expressly specified.

“Design-Build Agreement” means the design-build agreement for the design and construction of the Project, as further set forth in Volume II of the RFP, together with associated documents, including any technical provisions attached thereto.

“Department” means the Arkansas Department of Transportation.

“Design-Builder” has the meaning set forth in ITP Section 1.1.

“Design Manager” means the individual employed by a Lead Designer, and satisfying the requirements of such position, designated as having with the lead responsibility for managing the design on the Project.

“Designers” means a professional engineering firm who has obtained a current valid Certificate of Authorization from the State Board and provides professional engineering services for the Design-Builder on the Project up to and including providing signed-sealed final design plans and specifications for the Project.

“Disadvantaged Business Enterprise” or **“DBE”** has the meaning set forth in 49 CFR Part 26.

“FHWA” means the Federal Highway Administration.

“Financial Proposal” means the financial proposal submitted by a Proposer providing the information requested in ITP Exhibit F.

“Governmental Authority” means any (a) Federal, State, or local government, and any political subdivision of any of them, and (b) any interstate, governmental, quasi-governmental, judicial, public, regulatory, statutory instrumentality, administrative agency, authority, body, or entity of, or formed by, any such government or subdivision thereof; in each case other than the Department.

“ICE” has the meaning set forth in ITP Section 1.4.

“Instructions to Proposers” or **“ITP”** means the documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

“Key Personnel” means the individuals designated by a Proposer pursuant to ITP Ex. E, Section 4.0.

“Lead Designer” means the Component Firm(s) designated on Form B to bear primary and lead responsibility for design services on the Project. The Lead Designer must be the Proposer, a Principal Participant, or Major Participant, and perform a minimum of 15% of the design services on the Project. If multiple Lead Designers are designated by the Proposer, the areas of primary responsibility must be clearly defined on Form B and in the executive summary of the Proposal.

“Major Participant” means any Component Firm for a Proposer that is contemplated to be responsible for performing more than 15% of the design or more than 20% of the construction of the Project.

“Post-Selection Deliverables” has the meaning set forth in ITP Section 6.2.

“Principal Participant” means, with respect to a Proposer, any of the following entities: (i) any joint venture, partner, or firm holding an interest in the Proposer if the Proposer is a joint venture, partnership or other form of unincorporated legal entity; and/or (ii) any person or firm holding (directly or indirectly) a 15% or greater interest in the Proposer if the Proposer is a corporation, limited liability company or other form of incorporated legal entity; or (iii) parent company or Affiliate of the Proposer or another Principal Participant that will provide financial support to such firm (guarantor) to meet the financial obligations of the Design-Build Agreement.

“Procurement Point of Contact” or **“PPC”** means the authorized representative of the Proposer identified as the sole representative for communication with the Department.

“Procurement Process” means the entire process by which the Department offers to outside parties an opportunity to undertake the Project, including the RFP, beginning with the release of the RFP and ending with the selection of the Design-Builder to design and construct the Project.

“Professional Engineer” means individual licensed by the State Board to practice engineering in the State.

“Project” has the meaning set forth in ITP Section 1.1.

“Project Controls Manager (PCM)” means the individual employed by the Proposer, a Principal Participant, or Major Participant satisfying the requirements of such position, designated as having the lead responsibility for managing scheduling controls for the Project and responsible for planning, scheduling, cost controls, contract change management, and monitoring/managing project controls and scheduling personnel.

“Project Manager (PM)” means the individual employed by the Proposer, or a Principal Participant, who is designated as having the lead responsibility for managing the Proposer (and Design-Builder) organization including authority to provide full direction and control for the Project.

“Proposal” means a Proposer’s complete response to the RFP, including (a) a Technical Proposal and (b) a Financial Proposal.

“Proposal Due Date” means the deadline (date and time) for submission of Proposals identified in ITP Section 1.5.

“Proposal Revisions” have the meaning set forth in ITP Section 5.10.

“Proposal Security” means the proposal bond as described in ITP Section 4.5 and ITP Ex. D, Section 1.3.

“Proposer” means the entity submitting a Proposal for the Project in response to the RFP.

“Protest” has the meaning set forth in ITP Section 7.0.

“Protest Official” has the meaning set forth in ITP Section 7.1.

“Request for Proposals” or **“RFP”** means the set of documents identifying the Project and the work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer/Design-Builder. The RFP includes the ITP and form of Design-Build Agreement.

“RFC” means Proposer written requests for clarification as described in ITP Section 2.4.

“RFC Deadline” has the meaning set forth in ITP Section 2.4.

“Stakeholder” means parties that may have a stake in the Project by virtue of their location or funding, including utility providers affected by the Project, adjacent landowners, the City of West Memphis, Arkansas and the West Memphis-Marion Area Transportation Study, the United States Department of Transportation/FHWA, and their respective officers, directors, and employees.

“State” means the State of Arkansas.

“State Board” means the Arkansas Board of Licensure for Professional Engineers that has the responsibility to regulate, license, and monitor the practices of Professional Engineers in the State.

“Surety” means the individual or entity committing to provide any of the bonds identified in the RFP.

“Technical Proposal” means the technical proposal submitted by a Proposer providing the information requested in ITP Exhibit E.

“USDOT” means the United States Department of Transportation.

For definitions of other initially capitalized terms, please refer to the Design-Build Agreement.

EXHIBIT B

PROJECT DESCRIPTION AND SCOPE OF WORK

1.0 Project Description

The Department is proposing to obtain environmental clearance for, design, and construct interchange improvements where

. The improvements may include grade separations at the railroad.

The Department has prepared a preliminary scoping review of the Project for planning purposes in preparation for the environmental clearance process. The review identified three potential build alternatives in addition to the no-build alternative. *See* the planning study attached to the RFP as ITP Exhibit C-1. These alternatives or others yet to be identified may be carried into the process for further analysis. An alternative proposed by the Design-Builder, whether prepared in response to this RFP as described in ITP Exhibit E or developed during the Planning Phase, may be among those considered.

The scoping review found that due to the confluence , the railroad, and the interstate frontage roads at this location and development in the project area, substantial recurring delays occur during peak hours within the Project area. These conditions are expected to worsen in the future.

When trains cross the Project area, traffic in all directions must stop, resulting in long unexpected delays. Furthermore, no arterial grade separations exist in West Memphis, so emergency response services are occasionally disrupted. Field railroad counts in early 2019 indicated that an average of five trains use this crossing per day. Average blockage times are about five minutes, and additional time is required for a return to normal conditions. Most of the trains cross during daylight hours. The field data shows that non-recurring delays occur due to trains.

Implementation of the Project is expected to reduce congestion delays and disruptions to emergency services through improvements to the interchange that will enhance traffic flow and reduce the effects of railroad operations.

The Department intends to procure a progressive Design-Builder under a single Design-Build Agreement with three separately authorized phases as follows and as more fully described in Section 2.0 below:

1. Planning Phase
2. Preconstruction Phase
3. Construction Phase

The Planning Phase is anticipated to commence in the first quarter of 2021 and conclude by the fourth quarter of 2022. The Preconstruction Phase and Construction Phases, if authorized, would follow based on schedules to be developed during the course of the project. Although the phases are generally consecutive, the Department may authorize certain elements of the Work to proceed early in order to optimize the overall schedule.

2.0 Scope of Design-Builder's Work

Design-Builder's obligations will generally include all efforts, except for those responsibilities retained by the Department, required to develop, design, and construct the Project as authorized by the Department in accordance with the requirements of the Design-Build Agreement. Work under the Design-Build Agreement will proceed as authorized by amendments and notices to proceed ("**Amendments/NTPs**") issued by the Department as described in the Design-Build Agreement.

Immediately following execution of the Design-Build Agreement and issuance of an initial notice to proceed, the Design-Builder shall commence work for the Planning Phase.

The Department may decline to issue an Amendment/NTP for any phase of the Work. Please refer to the Design-Build Agreement for further and more detailed information regarding the terms of the Design-Builder's obligations.

2.1 Planning Phase

The Design-Build Agreement, particularly with respect to the Planning Phase, is designed to ensure that there is an objective NEPA process, that public officials and citizens have the necessary environmental impact information for federally funded actions before actions are taken, and that Design-Builder does not assume an unnecessary amount of risk in the event the NEPA process results in a significant change in the Project, and that the amount payable by the Department to the Design-Builder does not include significant contingency as the result of risk placed on the Design-Builder associated with significant changes in the Project arising out of the NEPA process. Consistent with 23 C.F.R. Section 636.109, the Design-Build Agreement incorporates (a) provisions ensuring that all environmental and mitigation measures identified in connection with required Environmental Approvals will be implemented, (b) provisions ensuring that no commitments are made to any alternative being evaluated in connection with required Environmental Approvals, and (c) provisions providing for the right to terminate the Design-Build Agreement (with equitable compensation) in the event of Project revisions deriving from the required Environmental Approvals, including in the case that the no-build alternative is selected in connection therewith.

The Department intends to begin environmental document preparation in early 2021. In accordance with Federal requirements, the work of the Design-Builder during this phase will be limited to specific activities in the scope of work and conducted under communication protocols necessary to keep the functions separated. See the preliminary matrix of responsibilities and roles of various participants during the NEPA process set forth in ITP Exhibit C-3.

The Design-Builder scope of work for the Planning Phase is expected to include the following:

- Preliminary design / preliminary engineering, as requested by the Department to develop additional alternatives
 - Scope excludes preparation of NEPA documents
- Site investigations, subsurface utility investigations, geotechnical studies
- Support for preliminary Right of Way acquisition activities at the request of the Department, which may include preparation of parcel surveys, Right of Way plans, and appraisals
- Other third-party coordination for railroad and utilities (anticipated to be led by the Design-Builder under Department oversight)
- Preliminary constructability analysis
- Cost and schedule estimates related to preliminary engineering
- Project management plan development
 - Management plan for Preconstruction Phase
 - Design standards
 - Preliminary construction management plan
 - QA/QC plan
 - Subcontracting plan
 - Estimating plan for GMP
- DBE outreach
- Development of Preconstruction Phase Amendment/NTP

A preliminary schedule for the NEPA process is set forth in ITP Exhibit C-2.

The Design-Builder's compensation for the Planning Phase will be at fully loaded hourly rates based on those submitted with Proposal, but subject to a reasonableness evaluation by the Department, plus reasonable and documented reimbursable expenses. The total compensation for this phase will be capped at a not-to-exceed (NTE) amount set by the Department, subject to adjustment in accordance with the Design-Build Agreement. The fully loaded hourly rates and NTE amount will be documented in the Design-Build Agreement at execution.

2.2 Preconstruction Phase

As more fully set forth in the Design-Build Agreement, following completion of the NEPA process, the Department will either negotiate an Amendment/NTP to authorize the Design-Builder to proceed with work for the Preconstruction Phase, with agreed scope, schedule, and compensation terms, or will terminate the Design-Build Agreement.

The Design-Builder scope of work for the Preconstruction Phase is expected to include the following:

- Final Design Services
 - Design to 60-75% for purposes of GMP development
 - Development of Work Package breakdown
 - Final design and development of Construction Documents (drawings and specifications)
 - Design of utility adjustments and relocations
 - Right of Way plans
 - Any remaining site investigations and surveys
 - Address NEPA commitments
- Pre-construction Services
 - Subcontractor bidding and selection
 - Cost estimation
 - Permitting
 - Construction schedule development
 - Right of Way acquisition support, including acquisition process management and negotiations, title services, appraisal services, relocation assistance, and property management
 - Other third-party coordination for railroad and utilities (anticipated to be led by the Design-Builder under Department oversight)
 - Constructability reviews
 - Procurement of long-lead items, as authorized by the Department
 - Development of overall Guaranteed Maximum Price
 - Development of Work Order(s) for individual Work Packages
 - Risk register and mitigation plans

Compensation for this phase is expected to be at the fully loaded hourly rates established for the Planning Phase, subject to adjustment as agreed by the Department in the Preconstruction Phase Amendment/NTP, plus reasonable and documented reimbursable expenses. In the Department's discretion, a lump sum for preconstruction phase services may be established in lieu of hourly rates. The total compensation for this phase will be capped at an NTE amount set by the Department, subject to adjustment in accordance with the Design-Build Agreement. The fully loaded hourly rates, NTE amount, and any lump sums will be documented in the Preconstruction Phase Amendment/NTP.

2.3 Construction Phase

Authorization to proceed with any Construction Work will also require an Amendment/NTP in accordance with the Design-Build Agreement, which will be contingent on the Department and Design-Builder agreeing to a Guaranteed Maximum Price (GMP) and schedule for such Work

The Design-Builder will perform construction of the Project subject to an agreed plan/breakdown that may include the following elements:

- Early Work: Work Package authorizations issued prior to establishment of overall GMP will be limited to work that has independent value to the Department (such as utility adjustments or relocations) and will be developed on a case-by-case basis where schedule considerations dictate.
- Individual Work Packages broken down by schedule and procurement considerations and in sum equal in value to the overall GMP.
- All packages to include Construction Phase design support.

EXHIBIT C
ENVIRONMENTAL/PLANNING INFORMATION

Exhibit C-1	Planning Study
Exhibit C-2	Preliminary NEPA Process Schedule
Exhibit C-3	Preliminary NEPA Responsibility Matrix

**EXHIBIT C-1
PLANNING STUDY**

[See separate document]

EXHIBIT C-2
PRELIMINARY NEPA PROCESS SCHEDULE

[See separate document]

EXHIBIT C-3
PRELIMINARY NEPA RESPONSIBILITY MATRIX

NEPA APPROACH FOR PDB

Progressive Design-Builder	ARDOT	FHWA	Environmental Consultant	Independent Cost Estimator
Procurement of Progressive Design-Builder	Review schedule		Develop schedule	
	Review public involvement plan	Review public involvement plan	Prepare public involvement plan	
			Review of previous data and field reconnaissance	
	Establish design criteria			
	Review constraints map	Review constraints map	Develop constraints map	
			Update draft purpose and need (based on ARDOT <i>Job 110651 – Planning Recommendations</i>)	
	Review traffic operations and safety analysis methodology	Review traffic operations and safety analysis methodology	Develop traffic operations and safety analysis methodology	
Develop additional alternatives	Review additional alternatives	Review additional alternatives	Review additional alternatives	
			Conduct initial traffic analysis	
			Conduct initial safety analysis	
	Review draft purpose and need	Review draft purpose and need	Update draft purpose and need based on traffic and safety analyses	
	Review alternatives	Review alternatives	Prepare alternatives	

Progressive Design-Builder	ARDOT	FHWA	Environmental Consultant	Independent Cost Estimator
	analysis methodology memo	analysis methodology memo	analysis methodology memo	
Support refinement of alternatives	Review/approve alternatives refinement	Review/approve alternatives refinement	Refine alternatives	
		Determine Level of Environmental Documentation		
			Establish Conservative ROW Footprint	
Support railroad coordination	Railroad Coordination		Support railroad coordination	
Develop 30 percent NEPA schematic	Review 30 percent NEPA schematic		Support 30 percent NEPA schematic	
Review detailed traffic analysis	Review detailed traffic analysis		Conduct detailed traffic analysis	
Conduct drainage/hydraulic analysis	Review drainage/hydraulic analysis		Review drainage/hydraulic analysis	
Preliminary ROW and Utilities	Review ROW and Utilities		Review ROW and Utilities	
Support preparation of public meeting materials	Review public meeting materials	Review public meeting materials	Prepare public meeting materials	
Attend/support public meeting	Attend/support public meeting	Attend/support public meeting	Attend public meeting	
Develop 60 percent NEPA schematic	Review 60 percent NEPA schematic		Support 60 percent NEPA schematic	
Constructability and cost review of alternatives	Review constructability and cost review of alternatives	Review constructability and cost review of alternatives	Support/review constructability and cost review of alternatives	Independent constructability and cost review of alternatives
Develop 90 percent NEPA schematic	Review 90 percent NEPA schematic		Support 90 percent NEPA schematic	

Progressive Design-Builder	ARDOT	FHWA	Environmental Consultant	Independent Cost Estimator
Develop 100 percent NEPA schematic	Review 100 percent NEPA schematic		Support 100 NEPA percent schematic	
Develop Final NEPA schematic	Review Final NEPA schematic		Support Final NEPA schematic	
Review and confirm discussion of design elements in environmental technical reports	Review and comment on environmental technical reports	Review and comment on environmental technical reports	Prepare environmental technical reports	
Review and confirm discussion of design elements in draft environmental assessment	Review and comment on draft environmental assessment	Review and comment on draft environmental assessment. FHWA approval of draft environmental assessment	Prepare draft environmental assessment	
	Public Review Period and Statewide Clearinghouse Review			
Support design public hearing materials preparation	Review design public hearing materials	Review design public hearing materials	Prepare design public hearing materials	
Attend/support design public hearing	Attend/support design public hearing	Attend/support design public hearing	Prepare for and attend design public hearing	
Review final environmental assessment/FONSI	Review and comment on final environmental assessment/FONSI	Review and comment on final environmental assessment/FONSI	Prepare final environmental assessment/FONSI	
	Review Notice of Availability	Review Notice of Availability	Issue Notice of Availability	
	Receive FONSI	Issue FONSI		
Support noise workshop if needed	Support noise workshop if needed		Prepare for and attend noise workshop if needed	

EXHIBIT D
ADMINISTRATIVE PROPOSAL INSTRUCTIONS

1.0 Transmittal Package

1.1 Proposal Letter (Form A)

The Administrative Proposal shall include the Proposal Letter (Form A). Proposer shall attach to the Proposal Letter the documents and information described in the Section entitled “Additional Information To Be Provided With Proposal Letter” of Form A; *provided, however*, that Proposer may attach to the original Form A an envelope including two certified copies of the required organizational documents in lieu of providing organizational documents with each of the copies of the Administrative Proposal.

1.2 Informational Forms (Forms B) and Legal Information

The Administrative Proposal shall include a signed statement by the Proposer attesting that all Major Participants responsible for construction services on the Project are currently prequalified with the Department.

The Administrative Proposal shall include a completed chart on Form B-1, including the names, contact information, role in the organization, licensing information, and description of Work (if applicable) for Proposer and Principal Participants.

The Administrative Proposal shall include a completed Form B-2 providing information about Proposer and its team as specified therein.

The Administrative Proposal shall include a completed Form B-3 providing information regarding (i) each Major Participant (excluding Principal Participants); (ii) each firm that will provide engineering, architectural, surveying, planning, quality assurance, and/or other professional services valued at \$500,000 or more for development of the Project; and (iii) all other subcontractors identified by Proposer as of the Proposal Due Date.

The Administrative Proposal shall include copies of organizational documentation described in the section entitled “Additional Information to Be Provided with Proposal Letter” of Form A for Proposer, Design-Builder and Principal Participants, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award or if Proposer intends to form an affiliated entity to be the Design-Builder, Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A) for such proposed entity.

1.2.1 Responsible Proposer Questionnaire (Form C)

Each Proposer will be required to acknowledge and certify in Form A that all Principal Participants and all Major Participants and their respective employees meet the requirements of ITP Section 5.2.1(c) as of the time of Proposal submission and include in the Administrative Proposal Form C, the “Responsible Proposer Questionnaire,” with respect to the Proposer, each Major Participant, and each Principal Participant. As noted on the form, it may be provided by Proposer on its own behalf and on behalf of each Major Participant and Principal Participant, or it may be provided by Proposer on its own behalf and the individual Major Participants and Principal Participants on their own behalf. The form executed by Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by

Major Participants and Principal Participants shall be signed by an authorized representative of such Major Participant and Principal Participant and the Administrative Proposal shall include evidence of signature authorization for each such individual.

1.2.2 Non-Collusion Affidavit (Form D)

The Administrative Proposal shall include Form D, certifying that the Proposal is not the result of and has not been influenced by collusion.

1.2.3 Organizational Conflict of Interest Disclosure (Form E)

The Administrative Proposal shall include a certification on Form E describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest.

1.2.4 Debarment and Suspension Certificate (Form F)

The Administrative Proposal shall include a certification on Form F with respect to the Principal Participants and Major Participants.

1.2.5 DBE Requirements (Form G)

The Administrative Proposal shall include a Certification of DBE Goal Attainment or Good Faith Efforts (Form G) confirming that Proposer will obtain DBE commitments equal to or exceeding the DBE participation goal or will exercise good faith efforts to substantiate its attempts to meet the goal.

1.2.6 Certification Regarding Equal Employment Opportunity (Form H)

The Administrative Proposal shall include Form H, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports. A Form H in respect of the Proposer, each Major Participant and all known subcontractors shall be provided, whether in a single Form H executed by the Proposer or in multiple forms executed by the respective entities.

1.2.7 Certification Regarding Buy America (Form I)

The Administrative Proposal shall include Form I, regarding Buy America requirements.

1.2.8 Certification Regarding Use of Contract Funds For Lobbying (Form J)

The Administrative Proposal shall include Form J, executed by Proposer, all members or joint venture members of Proposer, and all of the other Major Participants, including Principal Participants, certifying that no federal appropriated funds have been or will be paid for lobbying activities, and no other funds have been paid or will be paid to influence governmental decisions regarding this Project.

1.2.9 Certification Regarding Ineligible Contractors (Form K)

The Administrative Proposal shall include Form K, certifying that Proposer and its subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended, or ineligible from doing transactions with the Federal Government or any of its agencies and making other certifications as described on Form K.

1.2.10 Certification Regarding Restriction of Boycott of Israel (Form L)

The Administrative Proposal shall include Form L executed by Proposer and each Major Participant, certifying that, in accordance with Arkansas Code Annotated § 25-1-503, Proposer and each such Major Participant do not and will not boycott Israel during the term of the Design-Build Agreement.

1.3 Proposal Security (Form O)

The Proposer shall provide one original and one copy of the Proposal Security, in the form of Form O and meeting the requirements set forth in ITP Section 4.5, in a separate envelope labeled “[Proposer Name]: Proposal Security for the PDB Project.”

1.4 Exceptions to Form of Design-Build Agreement

The Administrative Proposal shall contain an outline of all exceptions that Proposer proposes to take to the form of the Design-Build Agreement, which may take the form of (a) a concise issues list identifying specific provisions of the PDBA Documents that Proposer wishes to negotiate and Proposer’s proposed approach to such provisions or (b) a redline mark-up of the PDBA Documents. In each case, Proposer shall identify any exceptions or conditions on which its Proposal is contingent. The Department will not be required to consider any such exceptions or conditions and may accept or reject them in its discretion, subject to applicable law and requirements for a competitive Procurement Process. The Department may reject any Proposal to the extent that it is contingent on conditions and exceptions not acceptable to the Department.

EXHIBIT E

TECHNICAL PROPOSAL INSTRUCTIONS

1.0 Executive Summary

Provide an executive summary (not more than three pages), written as a narrative, in a non-technical style, containing supplemental information for evaluators addressing the Proposer's experience, qualifications, and approach to the Project.

2.0 Organization

The Technical Proposal shall include an organizational chart (not more than two 11" x 17" pages), and a narrative description of such organizational chart (not more than one page), showing Proposer's organization and reflecting relationship structure among Proposer and the Component Firms. The chart and narrative shall identify all Principal and Major Participants and subcontractors responsible for all major Project functions to be performed and describe the functional structure of the organization. The chart shall also include the names, roles, and reporting structure of the Key Personnel and list any other personnel that Proposer proposes for the Project.

3.0 Firm Experience

The Technical Proposal shall include, with respect to the Proposer and each Principal Participant and Major Participant (including the Lead Designer) that is proposed for the Project, evidence, in a narrative form (not more than three pages), of each such firm's competency, capability, and capacity to deliver a transportation project of similar size, scope, and complexity under a progressive design-build delivery method. Describe how the experience of each such firm is relevant to the success of this Project. Describe any experience the firms have in identifying and incorporating innovative concepts into projects. Do not include a narrative description for any firm that is not designated as a Principal Participant, Major Participant, or other lead firm.

4.0 Key Personnel

4.1 Required Key Personnel

The Technical Proposal shall include a completed Form M-1 with respect to each of the required Key Personnel described in the table below.

In or appended to Form M-1, provide information for at least three references for the proposed Project Manager and at least two references for all other Key Personnel, indicating the name, position, agency, reference project(s) by name and date, current phone number, and current email address for each reference. References must be owners or clients for whom the relevant Key Personnel performed relevant work in the 10 years prior to the Proposal Due Date and must not be current employers of the relevant Key Personnel. Proposers are prohibited from identifying a reference that is a current Department employee.

Each individual proposed for a required Key Personnel position must have the minimum qualifications and experience and satisfy the requirements identified in the following chart. With respect to individuals required to be Professional Engineers, licensure by the Arkansas State Board will be required on or before execution of the Design-Build Agreement. For purposes of the Proposal, individuals who are not yet Professional Engineers in Arkansas as of the Proposal Due Date may satisfy a requirement or preference for licensure, as applicable pursuant to the chart below, by submitting evidence of licensure in at least one

other U.S. jurisdiction, accompanied by a written commitment, signed by the individual, to seek licensure by the State Board as a condition precedent to execution of the Design-Build Agreement.

Key Personnel Position	Minimum Qualifications and Experience
Project Manager	The Project Manager (“PM”) must possess a minimum of 15 years’ experience, including a minimum of five years’ design-build experience, in construction and management of design and construction on highway projects that included work of a similar scope, nature, and complexity as required for the Project. The PM is designated as the Department’s point of contact throughout the Project and must be delegated with the authority to make decisions affecting any aspect of the Project. Professional Engineer preferred.
Design Manager	Must be a Professional Engineer as of PDBA execution. The Design Manager (“DM”) must be a direct, full-time employee of the Lead Designer and must possess a minimum of 10 years’ experience in managing design for multidisciplinary highway projects with similar scope, nature, and complexity as required for the Project. The DM experience should include an emphasis on design experience in the design-build context and experience with interstate highways, interstate bridges, bridge widening, and projects of similar scope, nature, and complexity as the Project.
Construction Manager	The Construction Manager (“CM”) must be a direct, full-time employee of a Principal Participant and must possess a minimum of 15 years’ experience in construction and management of construction on highway projects with similar scope, nature, and complexity as required for the Project. The CM experience should include experience with interstate highways, interstate bridges, bridge widening, and projects of similar scope, nature, and complexity as the Project.
Project Controls Manager	The Project Controls Manager (“PCM”) must be a direct, full-time employee of a Principal Participant or Major Participant and must possess a minimum of five years’ experience in project controls and scheduling of transportation projects using Primavera software, on projects of a similar scope, nature, and complexity as the Project.

4.2 Suggested Additional Key Personnel

In the discretion of Proposer, the Technical Proposal may include a completed Form M-2 for each individual that Proposer suggests participate in the Project as additional Key Personnel. As more specifically prescribed on Form M-2, provide a brief explanation as to why the suggested additional Key Personnel position is important to the Project.

5.0 Project Approach

5.1. General

For each of the Planning Phase, Preconstruction Phase, and the Construction Phase, describe the Proposer’s approach to deliver the Work described in Exhibit B and the PDBA Documents. The Technical Proposal shall, as applicable, in the required Project Approach narrative for each phase, describe:

- (a) Proposer’s understanding of the Project goals set forth in Section 1.3 and the approach to help the Department achieve the Project goals;
- (b) Proposer’s approach to coordination and communications with the Department and the Department’s advisors in connection with the Project;

- (c) How Proposer will engage Key Personnel and other resources;
- (d) Proposer's approach to support the Department in working with Stakeholders, such as regulatory agencies, and other third parties, such as railroads and utilities; and
- (e) Proposer's approach to scheduling and quality management for all phases of the Work.

5.2 Planning Phase Approach

In addition to the requirements set forth in Section 5.1, the narrative for the Planning Phase Project Approach (not more than five pages, including the information required pursuant to Section 5.1) shall include:

- (a) A description of Proposer's plan for coordination and collaboration with the Department and the Department's environmental consultant in accordance with ITP Exhibit C-3;
- (b) Proposer's overall approach to delivery of preliminary design and engineering and other Planning Phase services as requested and overseen by the Department (see description of Planning Phase scope of work in ITP Ex. B, Section 2.1); and
- (c) One or more sketch- or concept-level plans developed by Proposer depicting one or more alternatives for the Project that will address the needs and goals discussed in ITP Section 1.3 and ITP Ex. B, Section 1.0 (each such plan is referred to in the ITP documents as the "Proposer's alternative"). The alternative plan shall describe how the proposed improvements would address the issues currently being experienced in the Project area and describe the benefits and advantages of the alternative, including cost, efficiency, constructability, risk management, etc. Drawings that fit on three 11" x 17" pages total for all proposed alternatives may be included in addition to the five pages allowed for the Planning Phase Project Approach.

Proposers are advised that the Department may or may not carry any alternative into the NEPA process for further evaluation. By submitting a Proposal, each Proposer agrees that the Department shall be entitled to use the alternative plan and all related work product contained in its Proposal. Subject to the NEPA process, the Department may present such material to the Design-Builder for possible incorporation into the Project design.

5.3 Preconstruction Phase Approach

In addition to the requirements set forth in Section 5.1, the narrative for the Preconstruction Phase Project Approach (not more than ten pages, including the information required pursuant to Section 5.1) shall describe:

- (a) Proposer's approach to development and delivery of design, including collaboration with the Department and integration of related issues, such as right of way, permitting, railroads, and utilities;
- (b) Proposer's approach to delivery and management of Right of Way acquisition support services;
- (c) Proposer's approach to ensure that the Department receives a fair price for construction, including a description of the major cost components (i.e., cost drivers) for the Project and Proposer's approach to obtaining a fair price for these major cost drivers;

(d) (i) A description of Proposer's approach to competitively soliciting subcontractor quotes and how subcontracting packages will be developed and advertised to the subcontracting community, (ii) a description of Proposer's approach to obtaining reasonable proposals from qualified subconsultants as needed, and (iii) Proposer's approach to openness and transparency in the subcontracting solicitation and selection process;

(e) Proposer's approach to enhancing DBE participation and Equal Employment Opportunities (EEO);

(f) Proposer's approach to risk identification and mitigation during the Preconstruction Phase of the Project, identifying at least two key risks for this Project and proposing at least one mitigation strategy for each identified risk, to be performed during the Preconstruction Phase, to eliminate or minimize the impact of the risk to the Project; and

(g) Any Proposer innovations and the potential impacts of the innovations on risk.

5.4 Construction Phase Approach

In addition to the requirements set forth in Section 5.1, the narrative for the Construction Phase Project Approach (not more than five pages, including the information required pursuant to Section 5.1) shall describe:

(a) Proposer's overall construction management approach, including project controls methods and approach to quality assurance and control;

(b) The scope of work Proposer intends to self-perform to meet self-performance requirements, and the scopes of work that Proposer intends to subcontract, and Proposer's approach to development of Work Packages (including early work packages) that would optimize project delivery;

(c) Proposer's approaches to maintenance of traffic and railroad coordination;

(d) Proposer's approach to risk management during the Construction Phase of the Project, identifying at least two risks for this Project (which may be different from, or the same as, the Project risks identified in the Preconstruction Phase Project Approach) and proposing at least one mitigation strategy for each identified risk, to be performed during the Construction Phase, to eliminate or minimize the impact of the risk to the Project; and

(e) Any Proposer innovations and the potential impacts of the innovations on risk mitigation, time, safety, costs, and quality.

EXHIBIT F FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit E describes the submission format for Financial Proposals and outlines the required information that will comprise the Financial Proposal for the Design-Build Agreement.

Proposer shall submit the information required by this Exhibit F in the organization and format specified herein. Each component of the Financial Proposal shall be clearly titled and identified.

Form N referenced herein is found in Exhibit F, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

2.0 Surety Letter

The Financial Proposal shall include a letter from a surety company that meets the following requirements:

(a) The letter includes a statement that the Proposer is capable of obtaining a performance bond and payment bond for a minimum amount of \$40 million each, and may not state that the Proposer has “unlimited” bonding/security capability;

(b) Such surety company is listed in the current United States Secretary of the Treasury, Fiscal Service, Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies;

(c) Such surety company is rated in the top two categories by two nationally recognized rating agencies or has at least an A minus (A-) or better and Financial Size Category of Class VIII or better rating by A.M. Best and Company, and evidence of the surety company’s rating must be attached to the letter; and

(d) The letter must include a statement that the surety company has read the RFP and has evaluated the backlog and work-in-progress of the Proposer and relevant Component Firms in determining its bonding capacity.

3.0 Price Proposal (Form N and Hourly Rates)

The Proposal shall include a copy of the Price Proposal (Form N) setting forth Proposer’s proposed NTE amount for the Planning Phase Work, including Form N, Attachment 1 providing Proposer’s justification for the NTE amount in accordance with the notes therein.

For purposes of the Price Proposal, Proposers are to assume that 2,000 total hours will be required for the Planning Phase. Those 2,000 hours may be distributed among categories of tasks and personnel as Proposer deems appropriate, consistent with Proposer’s approach to the Planning Phase. Proposers are advised that this 2,000-hour total is provided only for purposes of Proposal evaluation and does not reflect the Department’s assessment of how many hours may reasonably be required of the Design-Builder in the Planning Phase. Accordingly, the NTE amount established under the Design-Build Agreement for the Planning Phase may differ from the NTE amount proposed by the preferred Proposer. Amounts for reimbursable expenses need not be provided in Form N, Attachment 1 and should not be included in the proposed NTE amount on Form N.

Hourly rates shall be provided in the “Labor Costs” table of Form N, Attachment 1 for all required Key Personnel, any additional Key Personnel proposed by Proposer, and other personnel that may be necessary or appropriate for Planning and Preconstruction Phase Work, regardless of whether hours for such personnel are included in the 2,000-hour total assumed for the Planning Phase proposed NTE amount. (The “Hours” and “Amount” columns in the “Labor Costs” table should be left at zero values for personnel not included in the 2,000-hour Planning Phase total.) Personnel categories and roles may be adjusted in Form N, except that the four required Key Personnel must remain unchanged. Hourly rates shall be fully loaded, *i.e.*, fully inclusive of all administrative and overhead costs (whether directly attributable labor or otherwise) and profit. (Note, however, that reasonable and documented reimbursable expenses will be payable by the Department separately from hourly rates.) Subject to the Department’s reasonableness evaluation, hourly rates submitted by the preferred Proposer will be used to establish the hourly labor rates under the Design-Build Agreement and will not be adjusted or escalated over the course of the Project except as agreed by the Department thereunder.

**EXHIBIT G
REQUIRED FORMS**

ARKANSAS DEPARTMENT OF TRANSPORTATION

INSTRUCTIONS TO PROPOSERS—Form A

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: _____, 2021

Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209

Attn: _____, Alternative Project Delivery Administrator

The undersigned (“**Proposer**”) submits this proposal (this “**Proposal**”) in response to that certain Request for Proposals (**RFP**) issued by the Arkansas Department of Transportation (the Department), dated January 20, 2021, as amended, to develop, design, and potentially construct the _____ (the Project), as more specifically described in the RFP Documents. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

In consideration for the Department supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] *[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally” and delete the brackets; otherwise delete the entire phrase]:*

(1) To keep this Proposal open for acceptance initially for 60 days after the Proposal Due Date, and if the undersigned is notified within such 60-day period that it is the next best value Proposer, for an additional 60 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of the Department, in the Department’s sole discretion; and

(2) If this Proposal is accepted, to provide security (including bonds and insurance) for the due performance of the Design-Build Agreement, as stipulated in the RFP.

If selected by the Department as the best value Proposer, Proposer agrees to do the following or, if not the Design-Builder, to cause Design-Builder to do the following: (a) if requested by the Department in its sole discretion, enter into good faith negotiations with the Department regarding the terms of the Design-Build Agreement, in accordance with the requirements of the RFP; (b) enter into the Design-Build Agreement without varying or amending its terms, except if requested by the Department, in its sole discretion, or as agreed by the Department, in its discretion, in connection with negotiation of any exceptions that Proposer has expressly identified in its Administrative Proposal; (c) satisfy all other conditions to award of the Design-Build Agreement; and (d) perform its obligations as set forth in the Instructions to Proposers (ITP), as amended, and the form of Design-Build Agreement, including compliance with all commitments contained in this Proposal.

The following individual is designated as the Proposer Point of Contact in accordance with Section 2.2 of the ITP: _____

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Administrative Proposal, including Proposal Security;
- Technical Proposal; and
- Financial Proposal.

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

[List all Addenda by number and date issued.

Responses issued [list dates on which the Department responded to Proposers' questions regarding the RFP Documents or this procurement.]

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions, or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, the Addenda (if any), and Department responses to questions (as and when posed), and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the Design-Builder and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal; and that it has notified the Department of any deficiencies in or omissions from any RFP Documents or other documents provided by the Department and of any unusual site conditions observed prior to the date hereof.

Proposer acknowledges the requirements of ITP Section 5.2.1(c) and hereby certifies that all Principal Participants and all Major Participants and their respective employees meet such requirements as of the date of this Proposal.

Proposer represents that all statements made in the Proposal are true, correct, and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms.

Proposer understands that the Department is not bound to accept any Proposal that the Department may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer.

Proposer consents to the Department's disclosure of its Proposal pursuant the applicable provisions of law to any Persons in the Department's sole discretion after award of the Design-Build Agreement by the Department. Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.7. Proposer expressly waives any right to contest such disclosures as may exist under applicable law.

Proposer agrees that the Department will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Arkansas.

Proposer's business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

*[Insert appropriate signature block from following pages; note: signatures should be in **blue** ink.]*

1. Sample signature block for corporation or limited liability company:

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____

Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

A. Describe in detail the legal structure of the Proposer/ Design-Builder and Principal Participants.

1. If the Proposer/Design-Builder/Principal Participant is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for Proposer/Design-Builder/Principal Participant and each corporation, in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
2. If the Proposer/Design-Builder/Principal Participant is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Design-Builder/Principal Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
3. If the Proposer/Design-Builder/Principal Participant is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Design-Builder/Principal Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture), in each case certified by an appropriate individual with each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
4. If the Proposer/Design-Builder/Principal Participant is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Design-Builder/Principal Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that this information will be provided prior to award.

Attach evidence to the Proposal and to each letter that the person signing has authority to do so.

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate and authorized officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate and authorized officer of each general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and, if required by its operating agreement, a manager/managing member(s) resolution providing such

authorization, certified by an appropriate and authorized officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate and authorized officer of such joint venture member. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.

- C. The Design-Builder partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to the Department, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to the Department and identify on a cover page where in the agreement the provision can be found. If the Design-Builder is not yet formed, provide draft organizational documents and indicate where the provision is found.

IDENTIFICATION OF PROPOSER AND PRINCIPAL PARTICIPANTS—Form B-1

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e-mail)	ROLE IN ORGANIZATION	Arkansas Contractor License and License Limit (if applicable)	Description of Work/Services To Be Performed By Entity (if applicable)

The above information is true, correct, and accurate.

[Insert Proposer's name]

By: _____

Name: _____

Title: _____

INFORMATION ABOUT PROPOSER ORGANIZATION—Form B-2

- 1.0 Name of Proposer: _____
- 2.0 Type of entity: _____
- 3.0 Proposer's address: _____

Telephone

Email

- 4.0 How many years has the Proposer and each Principal Participant been in its current line of business, and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

- 5.0 Under what other or former names have the Proposer and Principal Participants operated?

Proposer: _____

_____: _____

_____: _____

_____: _____

_____: _____

- 6.0 List all Arkansas professional licenses held by the Proposer and any Principal Participants. Attach copies of all Arkansas licenses. Attach a separate sheet if necessary.

7.0 The Proposal shall include the following information regarding the Surety(ies) committing to provide the bonds in accordance with the Design-Build Agreement:

- (a) Name(s), address(es) and phone numbers of the Surety(ies) that will provide the above-referenced bonds (must be rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best Company, Inc.), and the name(s), address(es) and phone number(s) of the designated agent(s).

- (b) Whether or not each listed Surety has defaulted on any obligation within the past 10 years, and, if so, a description of the circumstances and the outcome of such default.

STATE OF _____)
_____)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) is/are the _____ of _____, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this _____ day of _____, 202_.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

INFORMATION ABOUT MAJOR PARTICIPANTS—Form B-3

[This form will be used to provide information about any Major Participants (excluding Principal Participants) that have been identified as of the Proposal Due Date.]

Proposer Name _____

Entity Name / Contact	Address of Head Office	Telephone / Fax	Specialty / Assignment

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above. The Proposer agrees that it will follow applicable Design-Build Agreement requirements with respect to Subcontractors. Proposer further declares that it has carefully examined the RFP Documents, including the DBE requirements for the Project, acknowledges the requirements thereof, and agrees that Proposer's efforts to obtain participation by Subcontractors can reasonably be expected to accomplish DBE participation goals for the Project once identified in accordance with the Design-Build Agreement.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing declaration is true and correct.

Executed: _____, 2021.

(Signature)

(Name printed)

(Title)

(Proposer)

STATE OF _____)
_____)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the Proposer identified in the foregoing questionnaire, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this _____ day of _____, 202_.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

RESPONSIBLE PROPOSER QUESTIONNAIRE—Form C

PROPOSER NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. Questions

The Proposer/Major Participant shall respond either “yes” or “no” to each of the following questions. If the response is “yes” to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. The Proposer/Major Participant/team member shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. For the Proposer, the term “**affiliate**” shall mean Design-Builder, any Principal Participant, or any entity which owns a substantial interest in or is owned in common ownership with the Proposer, Design-Builder or any Principal Participant, or any such entity in which the Proposer, Design-Builder or any Principal Participant owns a substantial interest. For all other entities providing this form, the term “**affiliate**” shall mean the entity signing the form, any entity which owns a substantial interest in or is owned in common with the entity signing the form, or any entity in which the entity signing the form owns a substantial interest.

Within the past 10 years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

- a) Been disqualified, debarred, removed, or otherwise prevented from bidding or proposing on or completing a federal, state, or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- c) Had filed against it, him or her, any criminal complaint, indictment, or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery,

collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes _____ No _____

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Arkansas governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Arkansas law.

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- f) Been found, adjudicated, or determined by any state court, state administrative agency, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- h) Been assessed liquidated or other damages for failure to complete any contract on time?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

Explain the circumstances underlying any “yes” answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry. Executed _____, 2021.

(Signature)

(Name printed)

(Title)

(Name of Organization)

[Evidence of signature authorization for such individual attached]

NON-COLLUSION AFFIDAVIT—Form D

STATE OF _____)

) ss:

COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

- A. _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.
- B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or a sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against the Department or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and further the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.
- C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Design-Build Agreement or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this _____ day of _____, 2021.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of the entity(ies) making the Proposal.]

CONFLICT OF INTEREST DISCLOSURE STATEMENT—Form E

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers are advised that certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with the Department in connection with the Project procurement and document preparation and the Design-Build Agreement.

1. Disclosure Pursuant to Section 636.116(2)(v) and Rule 9.155

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Builder, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

Proposer should disclose (a) any current contractual relationships with the Department, (b) any past, present, or planned contractual or employment relationships with any Department officer or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any Department officer or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer should also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 2021
Date

DEBARMENT/SUSPENSION CERTIFICATION – Form F

Name of Proposer: _____

Name of Firm: _____

Complete one copy of form to cover all Principal Participants and Major Participants as identified on Form B.¹

1. None of the Proposer, the Principal Participants and the Major Participants¹ are currently debarred, suspended, disqualified, or is currently removed from bidding or performing work, voluntarily or involuntarily, for the State of Arkansas, the federal government or more than three state governments.
2. None of the Proposer, the Principal Participants and the Major Participants¹ have been debarred, suspended, disqualified, or removed from bidding or performing work, voluntarily or involuntarily, the State of Arkansas, the federal government or more than three state governments during the past three years.²
3. None of the Proposer, the Principal Participants, and the Major Participants¹ is subject to any proposed or pending debarment, suspension, or similar actions.

Proposer Certification:

I hereby certify that, to the best of my knowledge, the three above statements are valid, true, and represent a complete and accurate understanding of the condition of the firms represented and identified on Form B as a Principal Participant or Major Participant¹. It is understood and agreed upon that any false acknowledgement, misrepresentation, or inaccuracy may be cause for disqualification of the Proposer from the Procurement Process whether discovered during the Procurement Process or after the Design-Builder selection has been completed.

Proposer's Authorized Representative:

(Printed Name)

(Signature)

Date: _____

(Title)

¹ Note: Firm includes any Affiliate.

² Note: Prior to the Proposal Due Date listed in the Procurement Schedule.

DBE CERTIFICATION—Form G

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

Certification

By signing the Proposal, the Proposer certifies that (1) the DBE goal for the Project, once established in accordance with the Design-Build Agreement, will be met by the Design-Builder obtaining commitments equal to or exceeding the DBE percentage or providing a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the Design-Build Agreement, Design-Builder will submit a DBE Performance Plan meeting the requirements set forth in the Design-Build Agreement.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Security provided by the Proposer will become property of the Department and the Proposer and Principal Participant will be precluded from participating in any re-procurement of the Design-Build Agreement for the Project.

[Name]

[Title]

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION—Form H

The undersigned certifies on behalf of _____ that:
(Name of entity making certification)

(Check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

(Check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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

BUY AMERICA CERTIFICATION—Form I

(To be signed by authorized signatory(ies) of Design-Builder)

The undersigned certifies on behalf of itself and all proposed subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. Proposer shall comply with the Federal Highway Administration (“**FHWA**”) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Design-Build Agreement only if domestic steel and iron will be used on the Project, and which also applies to utility work on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the price under the Design-Build Agreement.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Design-Build Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.
- C. At Proposer’s request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department.

PROPOSER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING—Form J

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “**Disclosure Form to Report Lobbying**,” in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Date: _____, 2021

Signature

Title

Name of Entity

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all partners, members, or joint venturers of the Proposer and all other Major Participants]

CERTIFICATION REGARDING INELIGIBLE CONTRACTORS—Form K

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS**

FINANCED IN PART BY THE U.S. GOVERNMENT

I, _____ hereby certify that
(Name and title of Certifying Officer)

(Name of Proposer)

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency or from participation in the Project;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If any Major Participant is unable to certify to any of the statements in this certification, such prospective Major Participant shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 *et seq.* (Administrative Remedies for False Claims and Statements) are applicable hereto.

Name of Proposer _____

Street Address of Proposer _____

City, State, Zip _____

Telephone Number of Proposer _____

Signature of Certifying Officer _____

Date _____

Note: The above certification merely certifies that a Proposer and its subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended, or declared ineligible from doing transactions with the Federal Government or any of its agencies.

CERTIFICATION REGARDING RESTRICTION OF BOYCOTT OF ISRAEL—Form L

RESTRICTION OF BOYCOTT OF ISRAEL CERTIFICATION

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract valued at \$1,000 or greater with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

By signing below, the Contractor agrees and certifies that they do not boycott Israel and will not boycott Israel during the remaining aggregate term of the contract.

If a company does boycott Israel, see Arkansas Code Annotated § 25-1-503.

Name of Project	
Role on Project	
Contractor name	

Contractor Signature: _____ Date: _____

REQUIRED KEY PERSONNEL EXPERIENCE FORM – Form M-1

Name of Proposer: _____

Note: Provide a separate Form M-1 for each required Key Personnel.

Key Personnel Position	<i>[Insert title here]</i>	<i>[Insert individual's name here]</i>
Project Experience #1	Project Name	
	Project Description	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Explanation regarding the relevance of this experience to the minimum qualifications for the Key Personnel position	
	Reference name, if applicable	
Project Experience #2	Project Name	
	Project Description`	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Explanation regarding the relevance of this experience to the minimum qualifications for the Key Personnel position	
	Reference name, if applicable	

	<i>[Copy and paste as needed to demonstrate additional project experience]</i>	
Summary of Experience	Total number of years' experience in a position relevant to experience required for the Key Personnel Position	<i>[Insert cumulative total years of experience as demonstrated by the above experience that are applicable to the Key Personnel position.]</i>

Reference Information		
Name	Information	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Copy and paste as needed]</i>		

Note: Provide three references for the Project Manager and two references for all Key Personnel. References corresponding to the Project experience set forth above are preferred.

SUGGESTED ADDITIONAL KEY PERSONNEL EXPERIENCE FORM – Form M-2

Name of Proposer: _____

Note: Provide a separate Form M-2 for each proposed Key Personnel position.

Suggested Additional Key Personnel Position	<i>[Insert title here]</i>	<i>[Insert individual's name here]</i>
Explanation regarding the importance of this position with respect to the Project		
Project Experience #1	Project Name	
	Project Description	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Reference name, if applicable	
	<i>[Copy and paste as needed to demonstrate additional project experience]</i>	
Summary of Experience	Total number of years' experience in a position relevant to experience required for the Key Personnel Position	<i>[Insert cumulative total years of experience as demonstrated by the above experience that are applicable to the Key Personnel position.]</i>

Reference Information		
Name	Information	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Copy and paste as needed]</i>		

Note: References for suggested additional Key Personnel are encouraged but not required. References corresponding to the Project experience set forth above are preferred.

PRICE PROPOSAL – PLANNING PHASE NTE AMOUNT – FORM N

Name of Proposer: _____

Proposed Planning Phase NTE Amount: \$_____

Notes:

1. The proposed Planning Phase NTE amount shall be based on an assumed total of 2,000 labor hours required for the Planning Phase.
2. The proposed Planning Phase NTE amount shall be calculated in accordance with the instructions set forth in ITP Ex. F, Section 3.0 and in Attachment 1 hereto.
3. Proposers shall include fully-loaded hourly rates for all appropriate personnel in Form N, Attachment 1. To the extent that such personnel are not anticipated to be engaged in the Planning Phase, additional lines may be inserted in the “Labor Costs” table of Attachment 1 as needed, with the “Hours” and “Amounts” columns left as zero values.

PROPOSAL SECURITY – FORM O

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the *[insert name of Proposer as the Principal and delete this bracketed text]*, as Principal and *[insert name of Surety/Co-Sureties and delete this bracketed text]*, as Surety or as Co-Sureties, each a *[insert organization type]* duly organized under the laws of the state indicated on the attached page, having its principal place of business at the address listed on the attached page, in the state indicated on the attached page, and authorized as a surety in the State of Arkansas, are hereby jointly and severally held and firmly bound unto the Arkansas State Highway Commission (the “**Commission**”) in the sum of \$[●] (the “**Bonded Sum**”).

WHEREAS, the Principal is herewith submitting its Proposal to design and potentially construct the PDB Project through a Design-Build Agreement, which Proposal is incorporated herein by this reference and has been submitted pursuant to the Request for Proposals dated as of January 20, 2021 (as amended or supplemented, the “**RFP**”) issued by the Arkansas Department of Transportation (the “**Department**”), pursuant to authorization provided to the Department by the Commission, in accordance with the Instructions to Proposers, as amended (“**ITP**”) included in the RFP;

NOW, THEREFORE,

1. The condition of this Proposal Bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to the Commission as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the “**Co-Sureties**”) of notice of such forfeiture from the Commission:

- (a) Principal’s receipt of written notice from the Commission that either (i) no Design-Build Agreement for the Project will be awarded by the Department pursuant to the RFP, or (ii) the Department has awarded a Design-Build Agreement for the Project, has received the executed Design-Build Agreement and other required documents, and does not intend to award the contract to the Principal; or
- (b) If the Commission has not previously delivered notice of forfeiture hereunder, failure of the Department to award the Design-Build Agreement to Principal within 60 days (or 120 days if the Department has extended the 60 day period to 120 days pursuant to the terms of the ITP) after the Proposal Due Date.

2. The Principal agrees to pay to the Commission the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within 10 days after occurrence of any of the following events:

- (a) Principal withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the Design-Build Agreement under the ITP, as such time may be extended pursuant to ITP Section 4.6, without the Department’s consent; or
- (b) Principal is selected for negotiations and fails to engage in good faith negotiations with the Department as set forth in ITP Section 6.1;

- (c) Principal is the preferred Proposer and fails to provide the documents required under ITP Section 6.3.

Principal and each Surety agrees and acknowledges that such liquidated damages are reasonable in order to compensate the Commission for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Commission's transportation improvement program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that the Commission would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this Proposal Bond:

- (a) This Proposal Bond shall not be subject to forfeiture in the event that the Department disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.
- (b) If suit is brought on this Proposal Bond by the Commission and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by the Commission in bringing such suit, including, without limitation, reasonable attorneys' fees, and costs as determined by the court.
- (c) Any extension(s) of the time for award of the Design-Build Agreement that Principal may grant in accordance with the Design-Build Agreement or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
- (d) Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address(es):

SIGNED and SEALED this _____ day of _____, 2021.

Principal

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

PROPOSER REGISTRATION – FORM P

INSTRUCTIONS:

1. Submit one PDF copy of Form P on behalf of the Proposer team in accordance with ITP Section 2.2 by email to the Department's Authorized Representative.
2. All Principal Participants and Major Participants that will be Component Firms of Proposer in the Proposal must be listed on this Form P and their respective roles (e.g., Principal Participant, Lead Designer, etc.) identified.
3. An authorized representative of the Proposer must sign this Form P.
4. This Form P must be submitted prior to the last date for Proposer registration set forth in ITP Section 1.5.

Name of Proposer: _____

Date: _____

Component Firms of Proposer:

Firm Name	Role	Contact Information

The following individual is identified as the Proposer's Procurement Point of Contact (PPC), authorized to submit this Form P on behalf of the Proposer and Component Firms:

Name: _____

Title: _____

Firm: _____

Telephone: _____

Email Address: _____

Mailing Address: _____

As Proposer's PPC, I certify that the above information is true, correct, and accurate.

By: _____

Name: _____

RFC FORM – FORM Q

PROPOSER NAME: _____

DATE: _____

PROPOSER PROCUREMENT POINT OF CONTACT:

Name: _____

Telephone: _____

Email: _____

Comments Submitted: [#] – [#]

No. ¹	Document ²	Section ²	Page No. ²	Comment/Question ³
1				
2				
3				

INSTRUCTIONS:

1. Sequentially number comments/questions across the Forms Q submitted by Proposer. To the extent possible, group RFCs in order of relative importance, then by document (e.g., all high priority comments to the ITP first, then high priority comments to the form of Design-Build Agreement, then lower priority ITP comments, etc.). Add additional lines as needed.
2. Identify the relevant RFP Document and section and page number(s) or indicate that the comment/question is general in nature.
3. Do not identify the Proposer in the body of the comment/question.

XIV: Sample Minute Order

ARKANSAS STATE HIGHWAY COMMISSION

MINUTE ORDER

District: Statewide

Page 1 of 1 Page

County: Various

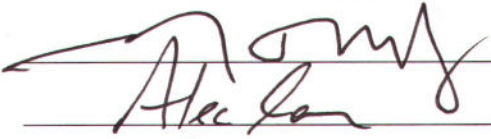
Category: Improvement Project-Arkansas Primary Highway Network (APHN)

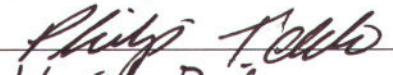
WHEREAS, the Commission has authority to deliver projects using the Construction Manager-General Contractor (CMGC) and Design-Build (DB) alternative project delivery methods; and


WHEREAS, seven projects, shown in the attached list, have been identified as good candidates for the alternative delivery method of procurement.

NOW THEREFORE, the Director is authorized to request proposals, select contractors and enter into any necessary contracts for alternative delivery services.

Approved:

Chairman


Vice-Chairman


Member


Member

DD-COO

Form 19-456
Rev. 1/13/2016

Submitted By:



Deputy Director and Chief Operating Officer

Approved:



Director

Minute Order No.

2019 078

Date Passed

JUL 24 2019

XV: Sample Notification of Award PD-B Services



ARKANSAS DEPARTMENT OF TRANSPORTATION

ArDOT.gov | IDriveArkansas.com | Lorie H. Tudor, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261

Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

July 30, 2021

Mr.
President

Re: Notification of Award-Progressive Design Builder

Dear Mr

The Arkansas Department of Transportation (ARDOT) is pleased to formally notify you that your team has been selected as the Progressive Design Builder (PDB) for the above referenced project contingent upon successful contract negotiation.

We look forward to the opportunity to work closely with your company on our first PDB project. Enclosed is a draft copy of the Progressive Design Build Agreement (PDBA) and scope of work for the Planning Phase for your review. Please provide a fee and man hour estimate for the Planning Phase based upon the attached scope of work. It is our desire that work on the contract documents begin as quickly as possible.

The Department is excited to begin working with your team as we move forward to the next phase of this important project.

Sincerely,

A handwritten signature in blue ink that reads 'Keli Wylie'.

Keli Wylie, P.E.
Alternative Project
Delivery Administrator

c: Director
Deputy Director & COO
Deputy Director & Chief Engineer
Assistant Chief Engineers

XVI: Sample PD-B Master Agreement

Arkansas Department of Transportation

Progressive Design-Build Agreement

Project Name

Project Number

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EXHIBITS

- A Acronyms, Definitions, and Submittals
- B Planning Phase Work Plan
- C Key Personnel and Principal Participants
- D Hourly Rates
- E Fair Pricing Approach
- F Form of Performance Bond.
- G Form of Payment Bond
- H Federal Requirements
- I On-the-Job Training Program
- J Disadvantaged Business Enterprise (DBE) Program

This Progressive Design-Build Agreement (this “Design-Build Agreement”) is entered into as of the date last signed by any party hereto, by and between the Arkansas State Highway Commission, by and through the Arkansas Department of Transportation (hereinafter, the “Department”), and Key, LLC (hereinafter, “Design-Builder”), with reference to the definitions contained in Exhibit A hereto and the following:

RECITALS

- A. The Project involves interchange improvements where
- B. The Arkansas State Highway Commission has authorized the Department to procure and administer the Project.
- C. On January 8, 2021, the Department issued to potential design-builders (“Proposers”) a draft Request for Proposals for the Project, which included the ITP and a draft of this Design-Build Agreement. The Department subsequently issued a number of addendums to the draft RFP, pursuant to the procedures set out in the ITP. On February 19, 2021, the Department issued the final RFP.
- D. On March 1, 2021, the Department received four proposals in response to the RFP. On July 30, 2021, the Department issued a notice identifying the Design-Builder as the successful Proposer to which the Project was awarded.

NOW, THEREFORE, in consideration of the sums to be paid to the Design-Builder by the Department, the foregoing premises and the covenants and agreements set forth herein, the parties hereto hereby agree as follows.

1 CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

Exhibit A hereto contains the meaning of various terms used in the Contract Documents.

1.2 Order of Precedence

Each of the documents listed below (collectively, the “Contract Documents”) is an essential part of this Design-Build Agreement, 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 Design-Build Agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

- 1. Change Orders and amendments to this Design-Build Agreement, including any Amendment/NTP and executed Work Package;

2. The Design-Build Agreement, as executed by the Department and the Design-Builder, including all exhibits;
3. The Technical Provisions (as agreed to during the Preconstruction Phase), other than the Applicable Standards; and
4. Appendices to the Technical Provisions and Applicable Standards.

In the event of conflicting requirements involving any requirement within a Contract Document, the Design-Builder shall comply with the higher or more stringent standard or manner or method of performing the Work, as reasonably determined by the Department.

1.3 Interpretations

In the Contract Documents, where appropriate:

1. The singular includes the plural and vice versa;
2. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to as of the date of execution of this Design-Build Agreement;
3. Words such as “herein,” “hereof,” and “hereunder” refer to the entire document in which they are contained and not to any particular provision or section;
4. Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
5. References to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and
6. Words of any gender used herein include each other gender where appropriate.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. The Design-Builder acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the Contract Documents and to bring to the Department’s attention any conflicts or ambiguities contained therein. The Design-Builder further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the

Person that prepared them, and instead other rules of interpretation shall be used. The Department's answers to the questions posed during the proposal process for this Design-Build Agreement shall in no event be deemed part of the Contract Documents and shall not be binding in interpreting the Contract Documents.

1.4 Referenced Standards, Codes, or Criteria

Except as otherwise specified in the Contract Documents, or otherwise directed by the Department, references to Legal Requirements, standards, codes, or criteria, or to the latest version of Legal Requirements, standards, codes, or criteria, shall mean the version in effect or coming into effect during the performance of the Work. If there is a change in a Legal Requirement after the date of execution of the GMP Amendment/NTP for Construction that increases the Design-Builder's cost or time of performing the Work, the Design-Builder shall be entitled to seek a Change Order for a Relief Event to the extent provided in the Risk Register. If any change in a Legal Requirement after the date of execution of the GMP Amendment/NTP for Construction decreases the Design-Builder's cost or time of performing the Work, the Department shall be entitled to a deductive Change Order equitably decreasing the applicable Compensation Cap and/or shortening the Completion Deadlines.

1.5 Omission of Details; Clarification by the Department

The Design-Builder shall not take advantage of any apparent Error in any Contract Document. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, the Design-Builder shall apply to the Department in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The Design-Builder shall promptly notify the Department of all Errors that it may discover in the Contract Documents, and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby. Except to the extent an Error constitutes a Relief Event pursuant to Section 12, the Design-Builder shall not be entitled to an extension of any relevant Completion Deadline or an adjustment to any Compensation Cap because of an Error in any Contract Document.

1.6 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 Calendar Day that is a Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Sections 5.3 and 5.4 and any other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

1.7 Standards for Review of, Comment on and Approval of Submittals

In all cases where approvals, acceptances or consents are required to be provided by the Department or the Design-Builder hereunder, such approvals, acceptances or consents shall not be withheld unreasonably, except in cases where a different standard is specified. In cases where sole discretion of the Department is specified, the decision is in the sole discretion of the Department and shall not be subject to dispute resolution hereunder.

Notwithstanding the foregoing, any submittals the Design-Builder submits to the Department during the Planning Phase that are related to Environmental Approvals shall be subject to review by the Department in its sole discretion.

1.7.1 Approval

When the Design-Builder is required to submit an item to the Department “for Approval,” the Design-Builder is required to obtain the Department’s written approval of such item and may not proceed to incorporate that item into the Work or the Project without the Department’s written Approval. If the Department does not respond to such a submittal within any required timeframe set forth in the Contract Documents, the Design-Builder shall send to the Department a written notice reminding the Department that it is awaiting Approval (which notice shall be a condition precedent to submitting a Request for Change Order for a Relief Event pursuant to Section 12 hereof).

Any time that the Department denies an Approval, it shall provide an explanation, objection or comment to the Design-Builder. The Design-Builder shall address the explanation and objections or incorporate the comments in revisions, or shall explain to the Department in detail, to the satisfaction of the Department, why it believes it cannot or should not incorporate such comments. Once all comments and objections have been fully resolved to the reasonable satisfaction of the Department, any revised submittal shall then be resubmitted to the Department for Approval. The Design-Builder may not proceed to incorporate any item into the Work or the Project that requires Approval without receiving the Department’s Approval.

The Department may, at its discretion, conditionally Approve of a submittal, allowing the Design-Builder to proceed with the Work related to the Submittal, provided that the Design-Builder addresses minor clarifications or edits identified in such Approval.

1.7.2 Review and Comment

When the Design-Builder is required to submit an item to the Department “for Review and Comment,” the Department shall have an opportunity to review and comment on such submittal. If the Department does not provide any comments within any required timeframe set forth in the Contract Documents, then the Design-Builder may assume that the Department does not have any comments and the Design-Builder may proceed.

The review and comment process does not represent a design hold point and the Design-Builder may proceed at its own risk, regardless of how the Department

responds to a design submittal submitted for review and comment. When responding to a design submittal submitted for review and comment, the Department shall have the option of issuing:

1. A statement of “no comment” in which case the Design-Builder may proceed to the subsequent submittal or “no further comment” in which case the Design-Builder may proceed to issue RFC Documents; or
2. A comment submittal form, in which case the Design-Builder may proceed with the Work without resubmitting the submittal, provided the Design-Builder shall address the Department’s comments in subsequent submittals and fully address all comments to the satisfaction of the Department prior to issuing RFC Documents.

1.8 Federal Requirements

The Project will be funded in part with federal funds.

Notwithstanding anything to the contrary contained herein, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

The Design-Builder acknowledges and agrees that FHWA will have certain approval rights with respect to the Project (including rights to approve the Project design and certain Change Orders), as well as the right to provide certain oversight and technical services with respect to the Project. The Design-Builder shall cooperate with FHWA in the reasonable exercise of FHWA’s duties and responsibilities in connection with the Project.

Federal Requirements prohibit private entities from preparing NEPA documents or from having any decision-making responsibility in the NEPA process. Therefore, notwithstanding anything herein to the contrary, the Department shall retain all NEPA decision-making responsibility. The Design-Builder understands and agrees that, during the Planning Phase before the NEPA process is concluded, it shall be strictly limited to producing studies, providing information related to the environmental process, or, more generally, providing viewpoints on key Project-related issues in accordance with all applicable restrictions of the NEPA process and FHWA policies and rules.

2 OBLIGATIONS OF DESIGN-BUILDER

2.1 Performance Requirements

2.1.1 Performance of Work

The Design-Builder shall complete the Project in accordance with the requirements of the Contract Documents. All materials, services and efforts necessary to complete the

Work and achieve Final Acceptance on or before the Final Acceptance Deadline shall be the Design-Builder's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 13, the costs of all such materials, services and efforts are included in the Contract Price.

2.1.2 Performance Standards

2.1.2.1 Design-Builder. The Design-Builder shall construct the Project in accordance with all applicable Legal Requirements and the Professional Standard of Care, and shall construct the Project as designed, in a good and workmanlike manner, free from defects and in accordance with Good Industry Practice.

2.1.3 2.1.2.2 Engineer of Record. The parties acknowledge that design Work shall be performed by the Design-Builder's Subcontractors and/or the Engineer of Record; provided, however, that the Design-Builder is fully responsible for such parties. All such design shall be in accordance with all applicable Legal Requirements and the Professional Standard of Care.

2.1.4 Performance as Directed

At all times during the term hereof, including during the course of and notwithstanding the existence of any Dispute, the Design-Builder shall perform as directed by the Department to the extent consistent with the Contract Documents in a diligent manner and without delay, shall abide by the Department's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a Dispute arises regarding such performance or direction, the Dispute shall be resolved in accordance with Section 19.

2.2 General Obligations of Design-Builder

The Design-Builder, in addition to performing all other requirements of the Contract Documents, shall:

1. At all times provide a DB Project Manager, Approved by the Department, who: (i) will have full responsibility for the prosecution of the Work; (ii) will act as agent and be a single point of contact in all matters on behalf of the Design-Builder; (iii) will be present at the Site at all times that Work is performed, or be available to appear within a reasonable time period; and (iv) will have authority to bind the Design-Builder on all matters relating to the Project. If the DB Project Manager cannot be present at the Site at any time that Work will be performed, he or she shall assign a substitute reasonably acceptable to the Department to be present in his or her absence.
2. Obtain all Governmental Approvals that are agreed to be the responsibility of the Design-Builder during the Preconstruction Work.
3. Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all

Governmental Approvals, including implementation of all environmental mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.

4. Provide such assistance as is reasonably requested by the Department in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Work, which may include providing information and reports regarding the Work, executing declarations and attending meetings and hearings, and providing testimony regarding the Work, but which shall in no event be deemed to require the Design-Builder to provide legal services.
5. Comply with all requirements of all applicable Legal Requirements, including: (i) the Environmental Laws, including all environmental mitigation and monitoring measures required for the Project, including those set forth in the Technical Provisions, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Materials; (ii) the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., including any amendments, as well as all applicable regulations and guidelines; and (iii) the Federal Requirements, including the limitations set forth therein regarding the Design-Builder's activities during the NEPA Assistance Phase.
6. Comply with all Applicable Standards.
7. Cooperate with the Department and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work.
8. Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating or redeploying the Design-Builder's forces to other work, as appropriate.
9. Pay all applicable Federal, State, and local sales, consumer, use, and similar taxes, property taxes and any other taxes, fees, charges, or levies imposed by a Governmental Person, whether direct or indirect, relating to or incurred in connection with the performance of the Work. Notwithstanding the foregoing, the Design-Builder shall not be treated as the legal or equitable owner of the Site and shall not be liable for property taxes assessed against the Site.
10. Collaborate in good faith with the Department and provide its services in a manner that is in the best interest of the Project.
11. Negotiate all Amendment/NTPs and Work Packages in good faith and in a commercially reasonable manner.

12. Assist the Department, at the Department's request, with the development and execution of Third-Party Agreements.

2.3 Representations, Warranties, and Covenants

The Design-Builder represents, warrants, and covenants for the benefit of the Department as follows:

2.3.1 Maintenance of Professional Qualifications

The Design-Builder and its Subcontractor(s) have maintained, and throughout the term of this Design-Build Agreement shall maintain, all required authority, license status, professional ability, skills and capacity to perform the Work, and shall perform the Work in accordance with the requirements of the Contract Documents.

2.3.2 Governmental Approvals

The Design-Builder has no reason to believe that any Governmental Approval required to be obtained by the Design-Builder under the Contract Documents 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. The Design-Builder shall be responsible for obtaining and maintaining all Governmental Approvals required to be obtained by the Design-Builder, including any renewals and replacements needed during the performance of the Work. If any Governmental Approvals required to be obtained by the Design-Builder must formally be issued in the name of the Department, the Design-Builder shall undertake all efforts to obtain such approvals, subject to the Department's reasonable cooperation with the Design-Builder, including execution and delivery of appropriate applications and other documentation in a form approved by the Department. The Design-Builder shall assist the Department in obtaining any Governmental Approvals, which the Department may be obligated to obtain, including providing information requested by the Department and participating in meetings regarding such Governmental Approvals.

2.3.3 Progression of Work

The Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve all Completion Deadlines and in accordance with the Project Schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts, overtime operations, Sundays and Holidays) as may be necessary to achieve such goals, all at the Design-Builder's own expense, except as otherwise specifically provided in Sections 12 and 13.

2.3.4 Organization

The Design-Builder has all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Design-Builder and each Principal Participant is duly qualified to do business, and is in good standing, in

the State, and will remain in good standing throughout the term of this Design-Build Agreement and for as long thereafter as any obligations remain outstanding under the Contract Documents.

2.3.5 Authorization

The execution, delivery, and performance of this Design-Build Agreement have been duly authorized by all necessary actions of the Design-Builder, and, if applicable, the Design-Builder's members, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person is a party or by which its properties and assets may be bound or affected.

2.3.6 Legal, Valid, and Binding Obligation

This Design-Build Agreement constitutes the legal, valid, and binding obligation of the Design-Builder and, if applicable, of each member of the Design-Builder.

2.3.7 False or Fraudulent Statements and Claims

The Design-Builder recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and the USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to contracts funded with Federal funds. Accordingly, by signing this Design-Build Agreement, the Design-Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to this Design-Build Agreement. In addition to other penalties that may be applicable, the Design-Builder also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Design-Builder to the extent the Federal government deems appropriate.

3 RESPONSIBILITY FOR DESIGN; DISCLAIMER

3.1 Responsibility for all Design

The Design-Builder agrees that it has full responsibility for all design of the Project. The Design-Builder is responsible for correcting any errors, omissions, or other defects in the design of the Project, regardless of the source of such errors, omissions, or defects, without any increase in any Compensation Cap or extension of a Completion Deadline(s).

3.2 Responsibility for Project Information Documents

Except to the extent provided otherwise in Section 12, the Design-Builder understands and agrees that the Department shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Design-Builder-Related Entity by reason of any use of any information contained in

the Project Information Documents or any action or forbearance in reliance thereon. The Design-Builder further acknowledges and agrees that: (i) if and to the extent the Design-Builder or anyone on the Design-Builder's behalf uses any of said information in any way, such use is made on the basis that the Design-Builder, not the Department, has approved and is responsible for said information; and (ii) the Design-Builder is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to change, recreate, verify or supplement said information, and that any use of said information is entirely at the Design-Builder's own risk and at its own discretion.

3.3 Professional Licensing Laws

The Department does not intend to contract for, pay for, or receive any design services that are in violation of any applicable professional licensing laws, and by execution of this Design-Build Agreement, the Design-Builder acknowledges that the Department has no such intent. It is the intent of the parties that the Design-Builder is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to the Design-Builder's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Design-Builder shall "furnish" the design for the Project. The terms and provisions of this Section 3.3 shall control and supersede every other provision of the Contract Documents.

4 PROGRESSIVE DESIGN-BUILD APPROACH

4.1 Progressive Design-Build Approach

4.1.1 Project Phases. The Work shall be performed by the Design-Builder in three phases: (a) the Planning Phase, (b) the Preconstruction Phase, and (c) the Construction Phase:

4.1.1.1 The Planning Phase shall begin upon execution of this Design-Build Agreement and continue until either the Preconstruction Phase Amendment/NTP is executed by the Department and the Design-Builder or the Department exercises its right to terminate this Design-Build Agreement under Section 15.1.1. During the Planning Phase, the Design-Builder shall perform the Planning Phase Work. During performance of Planning Phase Work, any provisions of the Contract Documents which clearly would not apply to Planning Phase Work shall be deemed to be inapplicable.

4.1.1.2 The Preconstruction Phase shall begin upon execution of the Preconstruction Phase Amendment/NTP and continue until either the GMP Amendment/NTP for Construction is executed by the Department and the Design-Builder or the Department exercises its right to terminate this Design-Build Agreement under Section 15.1.1. During the Preconstruction Phase, the Design-Builder shall perform the Preconstruction Phase Work. During performance of Preconstruction Phase Work, any provisions of the Contract Documents which clearly would not apply to Preconstruction Phase Work shall be deemed to be inapplicable.

4.1.1.3 The Construction Phase shall begin upon the earliest date Construction Work is authorized to commence in an executed Work Package or in the GMP Amendment/NTP for Construction and continue until the end of the term of this Design-Build Agreement. During the Construction Phase, the Design-Builder shall perform all Construction Work. If authorized in an executed Work Package, the Construction Phase may begin before the Preconstruction Phase is completed, with the Work of both phases proceeding concurrently. During performance of Construction Phase Work, any provisions of the Contract Documents which clearly would not apply to Construction Phase Work shall be deemed to be inapplicable.

4.1.2 Risk Register.

4.1.2.1 The Design-Builder and the Department shall collaborate to develop a risk register during the Preconstruction Phase (the “Risk Register”). The Risk Register will identify the potential pre-construction and construction risk issues (each, a “Risk Register Event”), it will define mitigation strategies to be used with regard to Risk Register Events, and it will identify probable cost and time impacts to the Project. All Risk Register Events shall be assigned a champion to bear such risk, and shall be categorized as either a Department risk, a Design-Builder risk or a provisional risk to be shared by the parties. All provisional risk items shall designate how the Design-Builder will be compensated upon the occurrence of such Risk Register Event, which may include payment through unit prices for units included in a Provisional Sum where actual required units exceed those included in Provisional Sums. The Design-Builder, the Department and ICE will develop the Risk Register, for approval by the Department, in accordance with the guidelines and principles described in Section 2 of Exhibit E. ICE shall be responsible for maintaining and updating the Risk Register. The Risk Register shall include dates on which the Department gives its written approval of a particular Risk Register Event and the Risk Register Event shall be deemed as being in effect as of that date. The Design-Builder shall not commence any portion of Preconstruction Phase or Construction Phase work involving Risk Register Events until relevant Risk Register Events have been approved by the Department.

4.1.2.2 If a Risk Register Event occurs, the Design-Builder shall give notice to the Department in accordance with Section 12.2.1 and the mitigation strategy identified in the Risk Register will be employed unless the parties agree otherwise in writing based on the particular circumstances. If such a Risk Register Event is a Design-Builder risk, then the Design-Builder shall bear the schedule impact and pay all costs associated with the Risk Register Event and the mitigation strategy. If such a risk item is a Department risk or a provisional risk, then the Design-Builder shall be entitled to seek a Change Order in accordance with Section 12.2.2. If an event occurs which is not identified on the Risk Register, then the Design-Builder shall bear the schedule impact and pay all costs associated with such event and any appropriate mitigation strategy (unless otherwise expressly provided in this Agreement).

4.2 Development of Amendment/NTPs and Work Packages

4.2.1 Open-Book Negotiations

The development of all Amendment/NTPs and Work Packages shall be on an open-book basis, and the Department and ICE shall have the right to access and copy all records, accounts, and other data used by the Design-Builder in connection with the preparation of any draft or final Amendment/NTP or Work Package. Each GMP included in any Work Package or the GMP Amendment/NTP for Construction shall be developed in a cooperative manner in accordance with the guidelines and principles described in Exhibit E.

4.2.2 Preconstruction Phase Amendment/NTP

Toward the end of the Planning Phase, the Department and the Design-Builder shall hold regular meetings to mutually develop the scope of work and pricing estimates for the Preconstruction Phase. Within 30 days following the conclusion of the NEPA process, the Design-Builder shall submit a draft amendment (the “Preconstruction Phase Amendment/NTP”) to the Department in a form agreed to by the parties, which shall include (a) a description of the scope of work to be performed by the Design-Builder during the Preconstruction Phase, including all Project-related plans, reports, and other documents required to be developed by the Design Builder, (b) a projected schedule for the performance of such work, and (c) and the not-to-exceed amount for the Design-Builder’s performance of such work. The Preconstruction Phase Work shall include final design services and pre-construction services, as agreed to by the Department and the Design-Builder in the Preconstruction Phase Amendment/NTP.

The Department shall review the draft Preconstruction Phase Amendment/NTP and provide any feedback, in its discretion. Thereafter, the Department and the Design-Builder shall engage in good faith negotiations to finalize the Preconstruction Phase Amendment/NTP on a timely basis. At the Department’s request, the Design-Builder shall meet with the Department to review and discuss the draft Preconstruction Phase Amendment/NTP and make adjustments at the Design-Builder’s cost in response to comments from the Department. When the parties have agreed to the Preconstruction Phase Amendment/NTP, it shall be executed and the Design-Builder shall be authorized to commence the Preconstruction Phase.

4.2.3 Work Packages and GMP Amendment/NTP for Construction

4.2.3.1 Development of Work Packages

At the request of the Department, the Department and the Design-Builder may, prior to execution of the GMP Amendment/NTP for Construction, agree upon one or more construction work authorizations or trade packages (each such phase or package, a “Work Package”), providing the Design-Builder with authorization to proceed with the Construction Work as set forth therein prior to execution of the GMP Amendment/NTP for Construction. Upon the request of the Department, the Design-Builder shall prepare a draft Work Package for the Department’s review and Approval. Each such draft Work

Package shall address, with respect to the scope of Construction Work authorized by the Work Package, the requirements set forth in this Section 4.2.3 that will also be addressed in the GMP Amendment Proposal, to the extent relevant to the Work Package.

The Department shall review each draft Work Package and provide feedback in its discretion. Thereafter, the Department and the Design-Builder shall engage in good faith negotiations to finalize the Work Package on a timely basis. At the Department's request, the Design-Builder shall meet with the Department to review and discuss the draft Work Package and make adjustments in response to comments from the Department.

4.2.3.2 Development of GMP Amendment Proposal

As described in Exhibit E, throughout the Preconstruction Phase, the Department, ICE, and the Design-Builder shall work together to develop iterative versions of a budget for the Project and opinions of probable construction cost at various milestones. Based on such iterative process, within 30 days following issuance of the Approved 60% Design Documents to the Design-Builder and satisfaction of all conditions to issuance of the GMP Amendment/NTP for Construction set forth in the Preconstruction Phase Amendment/NTP, or earlier as mutually agreed, the Design-Builder shall prepare and submit a proposed GMP Amendment/NTP for Construction (the "GMP Amendment Proposal") in a form agreed to by the parties and in accordance with the requirements of this Section 4.2.3.

The Department shall review the GMP Amendment Proposal and provide any feedback or direction it elects in its discretion including direction to the Design-Builder to continue to participate in value engineering exercises so that the Design-Builder can reduce the cost of the GMP Amendment Proposal. At the Department's request, the Design-Builder shall meet with the Department to review and discuss the GMP Amendment Proposal and make adjustments in response to comments from the Department.

4.2.3.3 Calculation of the GMP

The guaranteed maximum price ("GMP") for each Work Package and the GMP Amendment/NTP for Construction shall be computed as the sum of the following and any other components agreed by the Department and the Design-Builder:

1. In the case of a Work Package, the Design-Builder's reasonable, good faith estimate of the cost of the Work for the Construction Work authorized therein in a format developed pursuant to the protocols in Exhibit E;
2. In the case of the GMP Amendment/NTP for Construction, the GMP amounts reflected in any previously executed Work Packages, as well as the Design-Builder's reasonable, good faith estimate of the cost of the Work for the balance of the Construction Work in a format developed pursuant to the protocols in Exhibit E;

3. The Design-Builder's fee, in a format developed pursuant to the protocols in Exhibit E;
4. Any allowances stipulated by the Department and a statement of their bases (e.g., quantities, unit prices); and
5. Any Alternates approved by the Department.

The backup support for the calculation of any GMP shall be provided to the Department in a manner and in the format developed pursuant to the protocols in Exhibit E.

The Department and the Design-Builder may agree in any Work Package or in the GMP Amendment/NTP for Construction that some or all of the pricing shall be expressed as a lump sum as opposed to a guaranteed maximum price amount.

4.2.3.4 Schedule of Values

Each Work Package and the GMP Amendment Proposal shall include a schedule of values allocating the applicable GMP among the various portions of the Construction Work (the "Schedule of Values") authorized therein. The Schedule of Values shall be in the format developed pursuant to the protocols in Exhibit E.

4.2.3.5 Final Work Packages or Final GMP Amendment/NTP for Construction

If the Department and the Design-Builder agree upon a GMP and other items comprising the Work Package or GMP Amendment Proposal, then they shall execute the Work Package or GMP Amendment/NTP for Construction, which shall set forth (a) in the case of a Work Package, each of the items listed below to the extent they are relevant to the scope of Construction Work authorized by the Work Package and (b) in the case of the GMP Amendment/NTP for Construction, each of the items below:

1. The GMP and its component elements set forth in Section 4.2.3.3 in a spreadsheet format;
2. The Schedule of Values;
3. The Project Schedule, including the Substantial Completion Deadline and the Final Completion Deadline;
4. The parties' respective obligations for obtaining any required Governmental Approvals or new Governmental Approvals;
5. A list of the Design Documents, including all addenda thereto, used in preparation of the GMP, including a list of the clarifications and assumptions made to supplement the information contained in the Design Documents;
6. ROW acquisition responsibilities and schedule;

7. The studies, plans, and reports generated as part of the Preconstruction Phase, including any Site investigation reports, the Utility Map, ROW Plans, Hazardous Materials Report, Project Management Plan, Quality Management Plan, Safety Plan, and DBE Performance Plan.
8. Description of agreed Liquidated Damages and Daily Road User Costs;
9. Any changes to identified Key Personnel positions or the individuals serving in such positions;
10. The Technical Provisions;
11. The Design-Builder's obligations to perform work under any Utility Agreements; and
12. Any other documentation and information required by the Department.

4.3 The Department's Rights

By entering into this Design-Build Agreement, the Department is not obligating itself to authorize Construction Work on any component of the Project or, once a Work Package has been executed in accordance with the terms hereof, to continue to authorize Construction Work on any additional Work Package or other component of the Project. If the Department, in its sole discretion, determines that the parties are unable or unwilling to agree upon any Amendment/NTP, then the Department may, at its election, take one or more of the following actions:

1. Terminate this Design-Build Agreement by providing the Design-Builder with notice of termination under Section 15.1.1 hereof;
2. Direct the Design-Builder to proceed under one or more previously executed Work Packages, in which case the Design-Builder shall remain obligated to complete such Work Package(s) in accordance with the Contract Documents and shall be entitled to receive compensation for completion of authorized Work Package(s) in accordance with the Work Package(s) and Section 11;
3. Direct the Design-Builder to continue to participate in value engineering exercises so that the Design-Builder can submit another GMP Amendment Proposal at a reduced cost. With respect to any such revised GMP Amendment Proposal, the Department shall have the same rights to proceed or to terminate as set forth in Section 4.2 and this Section 4.3; or
4. Solicit bids for the balance of the Work from other contractors and direct the Design-Builder to continue to perform design services under the then-current compensation arrangement, except that the applicable NTE Amount would not apply following such direction.

4.4 Prerequisites for Start of Construction of Any Portion of the Project

The Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Construction Work proposed to be constructed:

1. The Department and the Design Builder have executed the GMP Amendment/NTP for Construction or a Work Package authorizing the Construction Work;
2. All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed;
3. All insurance policies and bonds required to be delivered to the Department hereunder have been submitted to the Department as applicable and remain in full force and effect;
4. All necessary rights of access for such portion of the Project have been obtained;
5. Any additional conditions for construction set forth in the Contract Documents; and
6. Design-Builder has issued Released for Construction Documents for such portion of the Project and (i) the Review and Comment process for such documents has been completed or (ii) pursuant to Section 1.7.2, the Department has conditionally allowed the Design-Builder to continue with the Work related to the documents notwithstanding that the Review and Comment process has not been completed, provided that the Design-Builder address minor clarifications or edits identified in any comments provided by the Department.

4.5 Completion Deadlines

The Project Schedule included in the GMP Amendment/NTP for Construction shall include the Substantial Completion Deadline and the Final Acceptance Deadline. The Design-Builder shall achieve each milestone by the relevant Completion Deadline.

4.5.1 No Time Extensions

Except as otherwise specifically provided in Sections 12 and 13, the Department shall have no obligation to extend any Completion Deadline and the Design-Builder shall not be relieved of its obligation to comply with the Project Schedule and the applicable Completion Deadlines for any reason.

5 CONTROL OF WORK

5.1 Control and Coordination of Work

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

5.2 Safety

The Design-Builder shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of the Department and its consultants, visitors to the Site and members of the public who may be affected by the Work. The Design-Builder shall at all times comply with the Safety Plan. The Design-Builder shall immediately notify the Department if the Design-Builder believes that any Contract Document requirement creates a safety risk.

5.3 Process to be Followed for Discovery of Differing Site Conditions

5.3.1 Notification to the Department

If the Design-Builder becomes aware of any Differing Site Conditions, the Design-Builder shall promptly secure the area and suspend all Work affecting the Differing Site Conditions and shall provide notice to the Department pursuant to Section 12. In such event, the Department will view the location within 10 Business Days of receipt of written notification, and will advise the Design-Builder at that time whether to resume Work affecting the Differing Site Conditions or whether further investigation is required.

5.3.2 Further Investigation

The Design-Builder shall promptly conduct such further investigations, as the Department deems appropriate. Within five Business Days after its initial written notice to the Department, the Design-Builder shall advise the Department of any action recommended to be taken regarding the situation. The Department then will either Approve, or require modification of, the Design-Builder's proposed actions.

5.3.3 Recommence Work

The Department shall have the right to require the Design-Builder to recommence Work in the area at any time, even though an investigation may still be ongoing (so long as such Work is not in violation of any Legal Requirements or Governmental Approvals). The Design-Builder shall promptly recommence Work in the area upon receipt of notification from the Department to do so. On recommencing Work, the Design-Builder shall follow all applicable procedures contained in the Contract

Documents and all other Legal Requirements with respect to such Work, consistent with the Department's determination or preliminary determination regarding the nature of the Differing Site Condition.

5.3.4 Entitlement to Cost and Time Changes

If the Design-Builder encounters a Differing Site Condition that increases the Design-Builder's cost or time of performing the Work, the Design-Builder shall be entitled to seek a Change Order for a Relief Event to the extent provided in the Risk Register.

5.4 Process to be Followed for Discovery of Archaeological Conditions

5.4.1 Notification to the Department

If the Design-Builder becomes aware of any Archaeological Conditions, as a condition precedent to the Design-Builder's right to a Change Order, the Design-Builder shall immediately notify the Department thereof by telephone or in person, to be followed by written notification within 24 hours. The Design-Builder shall immediately stop Work and secure the area. Operations within the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the Department. In such event, the Department will view the location within 10 Business Days of receipt of notification, and will advise the Design-Builder at that time whether to resume Work or whether further investigation is required.

5.4.2 Further Investigation

The Design-Builder shall promptly conduct such further investigations, as the Department deems appropriate. Within five Business Days after its initial notice to the Department, the Design-Builder shall advise the Department of any action recommended to be taken regarding the situation. The notice shall advise the Department what course of action the Design-Builder intends to take with respect thereto and whether the location must be fenced off or whether Work can resume. The Department then will either Approve, or require modification of, the Design-Builder's proposed actions.

5.4.3 Recommence Work

The Department shall have the right to require the Design-Builder to recommence Work in the area at any time, even though an investigation may still be ongoing (so long as such Work is not in violation of any Legal Requirements or Governmental Approvals). The Design-Builder shall promptly recommence Work in the area upon receipt of notification from the Department to do so. On recommencing Work, the Design-Builder shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such Work, consistent with the Department's determination or preliminary determination regarding the nature of the Archaeological Condition.

5.4.4 Entitlement to Cost and Time Changes

If the Design-Builder encounters an Archaeological Condition that increases the Design-Builder's cost or time of performing the Work, the Design-Builder shall be entitled to seek a Change Order for a Relief Event to the extent provided in the Risk Register.

5.5 Process to be Followed for Discovery of Hazardous Materials

Except to the extent provided otherwise in Section 5.5.5, the Design-Builder is not responsible for any Hazardous Materials encountered at the Site that are not disclosed in the Hazardous Materials Report. The Design-Builder shall be responsible for and shall remediate or render harmless all Hazardous Materials disclosed in the Hazardous Materials Report in accordance with the Applicable Standards, subject to Section 6.3.5.

5.5.1 Notification to the Department

If the Design-Builder becomes aware of any Hazardous Materials that are not disclosed in the Hazardous Materials Report, as a condition precedent to the Design-Builder's right to a Change Order, the Design-Builder shall immediately notify the Department thereof by telephone or in person, to be followed by written notification within 24 hours. The Design-Builder shall immediately stop Work and secure the area. Operations within the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the Department. In such event, the Department will view the location within 10 Business Days of receipt of notification, and will advise the Design-Builder at that time whether to resume Work or whether further investigation is required.

5.5.2 Further Investigation

The Design-Builder shall promptly conduct such further investigations as the Department deems appropriate. Within five Business Days after its initial notice to the Department, the Design-Builder shall advise the Department of any action recommended to be taken regarding the situation. The notice shall advise the Department what course of action the Design-Builder intends to take with respect thereto and whether the location must be fenced off or whether Work can resume. The Department then will either Approve, or require modification of, the Design-Builder's proposed actions.

5.5.3 Remediation

The Department will confirm (itself or through experts) whether the discovered condition is in fact a Hazardous Material. If it is, the Department shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless or shall direct the Design-Builder to do so through issuance of a Change Order in accordance with Section 13. Such necessary measures shall include retaining experts to prescribe the remedial measures that must be taken to either remove the Hazardous Materials or render the Hazardous Materials harmless.

5.5.4 Recommence Work

The Design-Builder shall be obligated to resume Work at the affected area of the Project only after the Department has issued a clearance and: (i) the Hazardous Materials have been removed or rendered harmless; and (ii) all necessary Governmental Approvals have been obtained, as reasonably determined by the Department.

5.5.5 Responsibility for Hazardous Materials Introduced by the Design-Builder

Notwithstanding the preceding provisions of this Section 5.5, the Department is not responsible for any spill or release or threatened spill or release or exacerbation of Hazardous Materials (i) attributable to the negligence, willful misconduct or breach of contract by any Design-Builder-Related Entity or (ii) that was brought onto the Site by any Design-Builder-Related Entity. If the Department reasonably determines that any Design-Builder-Related Entity has spilled or released, threatened to spill or release, or exacerbated Hazardous Materials on the Project Site, then any response, removal, cleanup or other remedial action required by applicable Environmental Laws shall be performed by the Design-Builder at its sole cost and expense. Except as to the Design-Builder's initial response to an emergency, any such remedial action(s) shall require the prior Approval of the Department.

5.5.6 Entitlement to Cost and Time Changes

If the Design-Builder encounters a Hazardous Material for which it is not responsible in accordance with this Section 5.5 and the Contract Documents and that increases the Design-Builder's cost or time of performing the Work, the Design-Builder shall be entitled to seek a Change Order to the extent provided in the Risk Register.

5.6 Obligation to Minimize Impacts

The Design-Builder shall ensure that all of its activities and the activities of all Design-Builder-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

5.7 Environmental Protection

In addition to the environmental requirements set forth in the Technical Provisions, the Design-Builder shall comply with all Environmental Laws.

5.8 Quality Management

5.8.1 Design-Builder Quality Management

The Design-Builder shall perform the quality management necessary for the Design-Builder to comply with its obligations under the Contract Documents.

5.8.2 Oversight, Audit, Inspection, and Testing by the Department and Others

All materials and each part or detail of the Work shall also be subject to oversight, audit and testing by the Department and other Persons designated by the Department. When any Third Party, including a Utility Owner, railroad company, unit of government, or political subdivision, is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, audit, inspect and Test the Work. Such oversight, audit, inspection and/or testing does not make such Person a party to this Design-Build Agreement nor will it change the rights of the parties hereto. The Design-Builder hereby consents to such oversight, inspection and testing by the Department and other Persons. Upon request from the Department, the Design-Builder shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.8.3 Obligation to Uncover Finished Work

If a portion of the Work has been covered contrary to the request of the Department or contrary to the requirements of the Contract Documents, it shall be uncovered at the written request of the Department for its observation and replaced at the Design-Builder's sole cost and expense, and the Design-Builder shall not be entitled to any Change Order in connection therewith. If a portion of the Work has been covered which the Department has not specifically requested to observe prior to its being covered or which the Contract Documents do not require to be observed prior to its being covered, the Department may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Contract Documents and the uncovering and restoring of such Work causes an increase in the cost or time of performing the Work, the Design-Builder shall be entitled to seek a Change Order for a Relief Event in accordance with Sections 12 and 13. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work or making good the parts removed and recovery of any delay to the performance of the Work occasioned thereby shall be at the Design-Builder's expense.

5.9 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances, and Approvals

5.9.1 Oversight and Acceptance

The Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, acceptances, Approvals, or approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, audits, reviews, tests, inspections, acceptances, Approvals, and approvals by any Person do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. The Department may reject or require the Design-Builder to remedy any Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with Contract Document requirements at any time

prior to Final Acceptance, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, acceptances, approvals or Approvals were conducted by any Person.

5.9.2 No Estoppel

The Department shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the work performed and materials furnished by the Design-Builder, or from showing that the work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, the Department shall not be precluded or estopped from recovering from the Design-Builder and its Surety(ies) such damages as the Department may sustain by reason of the Design-Builder's failure to comply or to have complied with the terms of the Contract Documents.

5.10 Nonconforming Work

5.10.1 Replacement of Nonconforming Work

The Design-Builder shall correct any Nonconforming Work in the manner and within the time frames required by the Contract Documents.

5.10.2 Nonconforming Work Pay Adjustment

The Department may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment (or reimbursement of a portion of the Construction Compensation, if applicable). In such event, the Department shall be entitled to reimbursement of a portion of the Construction Compensation in an amount determined by the Department. In general, the pay adjustment (or reimbursement) shall equal, at the Department's election: (i) the amount allocated to such Work in the Schedule of Values; (ii) the Design-Builder's cost savings associated with its failure to perform the Work in accordance with the Contract Document requirements; or (iii) the amount deemed appropriate by the Department to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work. In certain events, the Department shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents. Such reimbursement shall be deducted from future payments or, if future payments are insufficient to cover the amount owing, shall be payable to the Department within 30 Calendar Days after Design-Builder's receipt of an invoice therefore.

6 ACCESS TO SITE, UTILITY WORK AND ENVIRONMENTAL COMPLIANCE

6.1 Access to Right of Way Identified on Right of Way Drawings

6.1.1 Obligation to Provide Access to Right of Way

The Department and the Design-Builder shall jointly produce ROW plans (“ROW Plans”) during the Preconstruction Phase identifying the ROW needed to construct the Project. The Department will acquire the ROW identified on the ROW Plans at its own cost on a schedule to be agreed to by the parties and included in the GMP Amendment/NTP for Construction; provided that the Department, in its discretion, may require that the Design-Builder provided acquisition services, the scope of which shall be agreed to by the parties during the Preconstruction Phase and may involve the Design-Builder retaining a ROW consultant (reasonably acceptable to the Department) to assist with such services.

The Design-Builder shall not access any ROW parcel prior to receipt of notice from the Department that Design-Builder has been granted access to such parcel.

6.1.2 Delay in Providing Access

To the extent provided in the Risk Register, the Design-Builder shall be entitled to cost and schedule relief if the Department fails to provide the Design-Builder with access to any ROW by the date identified in ROW acquisition schedule included in the GMP Amendment/NTP for Construction unless such failure is a result of the Design-Builder’s failure to provide acquisition services as required under Section 6.1.1. The Design-Builder shall take appropriate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project.

6.1.3 Access to Right of Way Not Identified in ROW Plans

The Design-Builder shall be responsible at its cost for acquiring any temporary easements, other than those easements identified for use on the Project in the ROW Plans, it determines are advisable to complete the Project or required to construct the Project consistent with the requirements of the Contract Documents. Prior to acquiring any such easements, the Design-Builder must provide the Department with notice of its intent to acquire the easements along with a description of the easements. The Design-Builder must comply with all Legal Requirements when acquiring and using temporary easements.

6.1.4 Failure to Have Necessary Rights of Access

If the Design-Builder enters any property in connection with the Project without having all necessary rights of access, the Department may, in its sole discretion, obtain consent from the landowner for the Design-Builder’s access. The Design-Builder shall be responsible for all costs incurred by the Department as a result thereof and any schedule

impacts as a result thereof. Such reimbursement shall be deducted from future payments or, if future payments are insufficient to cover the amount owing, shall be payable to the Department within 30 Calendar Days after Design-Builder's receipt of an invoice therefore.

6.1.5 Use of State Lands

The Design-Builder may use State-owned land for which the Design-Builder does not otherwise have all necessary rights of access only at the Department's sole discretion and with its prior written consent, and as specified in the conditions for such use. After the use of any such State-owned land, the Design-Builder shall return it to its previous condition, free of any Hazardous Materials or other harmful material brought to the land by any Design-Builder-Related Entity.

6.2 Utility Work

The Design-Builder is responsible for all Utility Relocations necessary to accommodate the design and construction of the Project. The Design-Builder shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Relocations to perform such work timely, in coordination with the Work, and in compliance with the standards applicable to the Work as set forth in the Contract Documents. However, regardless of the arrangements made with Utility Owners, the Design-Builder shall continue to be the responsible party to the Department for timely performance of all Utility Relocations and all related costs so that upon completion of the Work, all Utilities that might impact or be impacted by the Project (whether located within or outside the Site) are compatible with the Project.

In designing and constructing the Project, the Design-Builder shall take all reasonable steps to minimize costs to the Utility Owners and the Department in connection with Utilities to the extent practicable. If the Design-Builder damages any Utilities, it must immediately notify the affected Utility Owner and the Department and comply with its obligations under the Contract Documents.

6.2.1 Utility Agreements

The Design-Builder is responsible for preparing and negotiating all required Utility Agreements with Utility Owners using a form of agreement Approved by the Department. Any material deviations in a Utility Agreement from the Approved form must be Approved by the Department. The Department agrees to cooperate as reasonably requested by the Design-Builder in pursuing Utility Agreements, including engaging in outreach to Utility Owners and participating in negotiation sessions. The Design-Builder shall not enter into any agreement with a Utility Owner that purports to bind the Department in any way. If a conflict occurs between the terms of a Utility Agreement and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Relocations, establish better Good Industry Practice, or use more stringent standards shall prevail between the Design-

Builder and the Department. The GMP Amendment/NTP for Construction shall set forth the Design-Builder's obligations to perform any work under Utility Agreements.

6.2.2 Relief Provided in Connection With Utility Work

6.2.2.1 Reimbursable Utilities Not Identified on the Utility Map

To the extent provided in the Risk Register, the Design-Builder shall be entitled to an adjustment to the Completion Deadlines and applicable Compensation Cap to the extent Utilities that are Reimbursable Utilities are not identified as such on the table accompanying the Utility Map.

6.2.2.2 Unidentified Utilities

To the extent provided in the Risk Register, the Design-Builder shall be entitled to an adjustment to the Completion Deadlines and applicable Compensation Cap to the extent of delays or increased costs resulting from Unidentified Utilities.

6.2.2.3 Uncooperative Utility Owners

If the Design-Builder is unable to execute a Utility Agreement with a Utility Owner within the time frame reasonably scheduled by the Design-Builder for execution of the Utility Agreement, and the Design-Builder demonstrates to the Department's reasonable satisfaction that it has worked in good faith to negotiate such Utility Agreement and has proposed a Utility Agreement on commercially-reasonable terms, then the Design-Builder shall be entitled to cost and schedule relief resulting from such delay, to the extent provided in the Risk Register.

6.2.2.4 Utility Delays

Once the Design-Builder has negotiated a Utility Agreement with a Utility Owner that contains a deadline for Relocation of a Utility by that Utility Owner, the Design-Builder may submit the proposed deadline to the Department for the Department's determination, in its discretion, that the deadline is reasonable. If the Department has agreed that the deadline is reasonable and the Utility Owner fails to Relocate the Utility by the deadline, the Design-Builder shall be entitled to cost and schedule relief resulting from such failure, to the extent provided in the Risk Register.

6.3 Environmental Compliance

In performance of the Work, the Design-Builder shall comply with all requirements of the Hazardous Materials Report and all applicable Environmental Laws and Governmental Approvals issued thereunder, whether obtained by the Department or the Design-Builder. The Design-Builder acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure by the Design-Builder to comply with such requirements.

6.3.1 Mitigation Requirements

The Design-Builder shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project. The Contract Price includes compensation for the Design-Builder's performance of all such mitigation measures, for performance of all mitigation measures arising from New Environmental Approvals that Section 6.3.3 designates as the Design-Builder's responsibility, for mitigation measures required by any Governmental Approvals, and for all other activities to be performed by the Design-Builder as described in the Contract Documents.

6.3.2 New Environmental Approvals to be Obtained by the Department

The Department will be responsible for obtaining any New Environmental Approvals necessitated by a Relief Event. The Design-Builder shall provide support services to the Department with respect to obtaining any such New Environmental Approval.

6.3.3 New Environmental Approvals to be Obtained by Design-Builder

If a New Environmental Approval becomes necessary for any reason other than a Relief Event, the Design-Builder shall be fully responsible for the cost of obtaining the New Environmental Approval, and for all resulting requirements, as well as for any litigation arising in connection therewith and any schedule impact related thereto. All required information for a New Environmental Approval shall be prepared and submitted to the Department to obtain the New Environmental Approval. The Design-Builder shall not contact any agencies or Persons regarding the New Environmental Approval without the prior consent and participation of the Department.

6.3.4 Pre-Existing Site Contamination

It is recognized that the Department may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Materials that are present on the Site. It is further recognized that certain state and federal statutes provide that individuals and firms may be held liable for damages and claims related to Hazardous Materials under such doctrines as joint and several liability and/or strict liability.

To the extent provided in the Risk Register, the Department shall reimburse the Design-Builder for certain costs related to Hazardous Materials.

6.3.5 Generator Number for Hazardous Materials Remediation

Hazardous Materials encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by and carried in the name of the Department or another Person designated by the Department. The Department has exclusive decision-making authority regarding

selection of the destination facility to which Hazardous Materials, other than Hazardous Materials for which the Design-Builder is responsible under Section 18.1.1.7, will be transported, and the Department shall comply with the applicable standards for generators including those found in 40 CFR Part 262, including the responsibility to sign manifests for the transport of hazardous wastes.

As between the Design-Builder and the Department, generator status with respect to Hazardous Materials shall be as set forth below.

1. As between Design-Builder and the Department, the Department shall be considered the generator and assume generator responsibility for hazardous materials other than those Hazardous Materials for which the Design-Builder is responsible under Section 18.1.1.7.
2. The foregoing shall not preclude or limit any rights, remedies, or defenses that the Department or the Design-Builder may have against any Governmental Entity or other Third Party, including prior owners, lessees, licensees, and occupants of any parcel of land that is or becomes part of the ROW.
3. As between the Design-Builder and the Department, the Design Builder shall be considered the generator and assume generator responsibility for those Hazardous Materials for which the Design-Builder is responsible under Section 18.1.1.7.

7 EQUAL EMPLOYMENT OPPORTUNITY; SUBCONTRACTS; LABOR AND KEY PERSONNEL

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Policy

The Design-Builder confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion, sexual orientation, gender identity, disability or genetic information; and that it maintains no employee facilities segregated on the basis of race, color, religion or national origin. The Design-Builder shall comply with the Department's Equal Employment Opportunity Policy, the OJT Requirements, and the Federal Requirements.

7.1.2 Non-Discrimination

The Design-Builder shall comply with all applicable Legal Requirements that enumerate unlawful employment practices including discrimination because of race, color, national origin, sex, age, religion, sexual orientation, gender identity, disability or genetic information, and that define actions required for affirmative action and minority/disadvantaged business programs. The Design-Builder shall not discriminate against any employee or applicant for employment because of race, color, national

origin, sex, age, religion, sexual orientation, gender identity, disability or genetic information. The Design-Builder shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, national origin, sex, age, religion, sexual orientation, gender identity, disability or genetic information. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

7.1.3 Inclusion in Subcontracts

The Design-Builder shall include Sections 7.1.1 and 7.1.2 and the Federal Requirements in all Subcontracts (including purchase orders) on the Project, so that such provisions will be binding upon each Subcontractor working on the Project.

7.2 Disadvantaged Business Enterprises (DBE)

The Design-Builder shall comply with the requirements of Exhibit J and the Design-Builder's Disadvantaged Business Enterprise Program included in Exhibit J, which require that DBEs have a full and equal opportunity to compete fairly in the performance of contracts administered by the Department. The Design-Builder shall either meet the DBE goal for the Project established by the Department during the Preconstruction Phase, or shall make a good faith effort to meet the DBE goal.

7.3 Limitation on Subcontracted Work

The Design-Builder and Principal Participants shall self-perform at least 30% of the construction Work. The percentage of construction Work subcontracted shall be determined by dividing the total dollar value of the Subcontracts for construction Work, excluding any Subcontracts with Principal Participants, but including any Subcontracts under and through Principal Participants, by the total dollar value of the construction Work as a whole.

7.4 Subcontracting Requirements

The Design-Builder shall comply with all applicable requirements of the Contract Documents relating to Subcontracts, and shall ensure that all Subcontractors performing Work on the Project comply with all applicable requirements of the Contract Documents relating to subcontracting. The Design-Builder shall not add, delete, or change the role of, any Principal Participant without the prior written Approval of the Department.

7.4.1 Subcontracts for Planning Phase and Preconstruction Phase Work

Engagement and selection of Subcontractors performing Planning Phase Work or Preconstruction Phase Work shall be coordinated with and Approved by the

Department. Prior to the award of any such Subcontract, the Department may require the Design-Builder to solicit qualifications and proposals from multiple firms for the professional services or other Work required.

Subject to the Department's Approval and the requirements of Sections 7.5 and 7.6, the Design-Builder may negotiate the most favorable price and terms of each such Subcontract; provided that hourly rates of Subcontractors performing such Work will be subject to a review by the Department for reasonableness.

7.4.2 Notice and Award of Subcontracts for Construction Work

All Subcontractors performing Construction Work shall be selected in accordance with the terms and conditions of this Section 7.4.1.

Selection of Subcontractors performing Construction Work shall be coordinated with and Approved by the Department. Prior to the award of any such Subcontracts, the Design-Builder shall meet with the Department to review the Subcontractor selection process and the parties shall agree on protocols for determining when the Design-Builder will self-perform Construction Work as opposed to retaining a Subcontractor for such package. The Design-Builder shall also provide the Department with a list of potential Subcontractors ("bidders") proposed to conduct Construction Work or provide materials or equipment in connection therewith. The Department shall review such list with the Design-Builder prior to solicitation by the Department and may remove or exclude any bidder from consideration.

Prior to awarding any Subcontract for the Construction Work, the Design-Builder shall be required to solicit a minimum of three competitive bids from bidders on the approved list for all Construction Work, including for any materials or equipment supplied in connection with the Work. After analyzing bids, the Design-Builder shall deliver the bids to the Department. The Department will then review with the Design-Builder all bids and will, with the advice of the Design-Builder, determine which bidder(s) will provide the best value for the particular portion of the Construction Work. The subcontracted Work shall be awarded to the bidder providing the best value who is approved by the Department. If the selection process does not meet the requirements of the Contract Documents or is otherwise unsatisfactory to the Department, the Department may direct that no award be made and that a new selection process be undertaken.

Subject to the Department's Approval and the requirements of Sections 7.5 and 7.6, the Design-Builder may negotiate the most favorable price and terms of each Subcontract.

7.4.3 Substitution of Subcontractors

The Design-Builder shall not, without the Approval of the Department, (a) substitute any party as Subcontractor in place of a Subcontractor Approved by the Department or (b) allow the subcontracted Work to be performed by anyone other than the original Subcontractor. Consent for substitution shall only be given if:

1. The Approved Subcontractor, after having reasonable opportunity to do so, fails or refuses to execute a written Subcontract that is based upon the requirements of the Contract Documents and upon the terms of such Subcontractor's written bid or proposal, if applicable;
2. The Subcontractor fails or refuses to perform the Subcontract;
3. The Subcontractor is substantially delaying or disrupting the progress of the Work;
4. The Subcontractor fails or refuses to meet the insurance or bonding requirements set forth in this Design-Build Agreement;
5. Work performed by the Subcontractor is unsatisfactory and not in substantial accordance with the Contract Documents;
6. The Subcontractor is not a responsible contractor in the Department's reasonable determination;
7. The Subcontractor is not licensed pursuant to Legal Requirements; or
8. The Subcontractor becomes bankrupt or insolvent.

In the event the Design-Builder requests a substitution, the Design-Builder shall notify the Department of its desire and reasoning to substitute a Subcontractor and shall provide the Department at least 10 days to respond.

7.5 Assignment of Subcontract Rights

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to the Department: (i) the Department is a third-party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and (ii) all guarantees and warranties, express and implied, shall inure to the benefit of the Department as well as the Design-Builder. Any acceptance of assignment of a Subcontract from the Department, its successor(s), or assign(s) shall not operate to make the assignee(s) responsible or liable for any breach of the Subcontract by the Design-Builder or for any amounts due and owing under the Subcontract included in an invoice paid by the Department.

7.6 Subcontract Terms

Each Subcontract, excluding materials purchase orders and any other contracts for materials entered into with Subcontractors that will not be performing any Work on the Site, shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, and shall include provisions addressing the following requirements as well as any other terms that are specifically required by the Contract Documents to be included therein:

1. Each such Subcontract shall include terms substantially similar to the terms in this Design-Build Agreement to the extent that such terms are relevant to such Subcontract, including an agreement by the Subcontractor to be joined in any dispute resolution proceeding pursuant to Section 19 if such joinder is reasonably necessary to resolve a Dispute.
2. Each such Subcontract must be submitted to the Department for Review and Comment before execution. The Department shall have the right to require changes to Subcontracts to the extent they are not in compliance with Legal Requirements or the requirements of the Contract Documents.
3. Each such first-tier Subcontract shall include terms requiring the Subcontractor to self-perform at least 30% of the subcontracted Work. Each lower-tier Subcontract shall include terms prohibiting the Subcontractor from subcontracting any portion of the subcontracted Work.
4. Each such Construction Phase Subcontract of any tier shall (i) prohibit retainage in excess of 10% of the amount of payment under the Subcontract, (ii) provide that amounts withheld as retainage from Subcontractors must be returned within 30 Calendar Days after the Work required under the Subcontract is satisfactorily completed, (iii) provide that delay or postponement of payment under the Subcontract may only be effected after, as applicable, the Design-Builder or higher-tier Subcontractor has established good cause and that the delay or postponement is in accordance with, as applicable, the Design-Builder's or higher-tier Subcontractor's rights under the Subcontract, and (iv) provide that amounts due under a Subcontract may be withheld from payment to a Subcontractor for the reasons provided in Section 11.3.2.3.
5. Each such Subcontract of any tier shall include payment and other terms in compliance with applicable Legal Requirements.
6. Each such Subcontract of any tier shall include language acknowledging the timing of payments from the Department to the Design-Builder hereunder and the process set forth herein for the submission and review of invoices or Request for Progress Payment applications, as applicable, including the methodology for the calculation of payments.

7.7 Subcontract Data

The Design-Builder shall allow the Department access to all Subcontracts and records regarding Subcontracts, in accordance with Section 23.1.2.

7.8 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, the Design-Builder shall be fully responsible for all of the Work. The Department shall not be

bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the Department.

7.9 Employee Performance Requirements and Key Personnel

7.9.1 Employee Performance Requirements

All employees shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If the Department determines in its reasonable discretion that any Person employed by the Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, then, at the written request of the Department, the Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written Approval of the Department. If the Design-Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the Department may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Design-Builder. Such suspension shall in no way relieve the Design-Builder of any obligation contained in the Contract Documents or entitle the Design-Builder to a Change Order. Once compliance is achieved, the Design-Builder shall be entitled to and shall promptly resume the Work.

7.9.2 Design and Engineering Personnel

All design and engineering Work furnished by the Design-Builder shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State, and by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents in accordance with all Legal Requirements to the extent required by the Professional Standard of Care.

7.9.3 Key Personnel

Exhibit C hereto identifies certain key positions for the Project. The Department may, with the Design-Builder's approval, add key positions at no cost to the Department. The Department shall have the right to review the qualifications of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to Approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. The Design-Builder shall notify the Department in writing of any proposed changes in any Key Personnel, and shall demonstrate to the Department's satisfaction that the replacement Key Personnel is equal to or better than the individual being replaced. The Design-Builder shall not change any Key Personnel without the prior written Approval of the Department.

7.9.4 Representations Regarding Key Personnel

The Design-Builder acknowledges and agrees that the award of this Design-Build Agreement by the Department to the Design-Builder was based, in large part, on the qualifications and experience of the personnel listed in the Proposal, and the Design-Builder's commitment that such individuals would be available to undertake and perform the Work. The Design-Builder represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Key Personnel shall commit the amount of time to their applicable roles as agreed to in the Contract Documents. The Design-Builder shall document such commitment to the Department's satisfaction upon the Department's request.

8 SURETY BONDS

The Design-Builder shall provide to the Department and maintain at all times during the term of this Design-Build Agreement security for faithful performance and completion of the Work as described below (or other assurance satisfactory to the Department in its sole discretion). Each bond required hereunder shall list the Department as obligee and shall be provided by a Surety or Sureties licensed as surety and qualified to do business in the State and having an A.M. Best rating of A-, VII or better. The Surety or Sureties shall be listed in the current United States Department of the Treasury, Fiscal Service, Department Circular 570, *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies*. The bonds may not be in excess of the cumulative underwriting limitation listed in the circular of the underwriting capacities of the Design-Builder's surety companies.

8.1 Performance Bond

Unless otherwise agreed with respect to a Work Package, prior to beginning any construction Work, the Design-Builder shall furnish and deliver a Performance Bond in the form of Exhibit F in the amount of 100% of (a) the Final GMP if the GMP Amendment/NTP for Construction has been executed or (b) the estimated cost of all construction Work as agreed by the Department if the GMP Amendment/NTP for Construction has not yet been executed; provided that in the case of (b), following execution of the GMP Amendment/NTP for Construction, the required Performance Bond amount shall be equal to the Final GMP.

The Performance Bond shall be released at the end of the Warranty term.

8.2 Payment Bond

Unless otherwise agreed with respect to a Work Package, prior to beginning any construction Work, the Design-Builder shall furnish and deliver a Payment Bond in the form of Exhibit G in the amount of 100% of (a) the Final GMP if the GMP Amendment/NTP for Construction has been executed or (b) the estimated cost of all construction Work as agreed by the Department if the GMP Amendment/NTP for

Construction has not yet been executed; provided that in the case of (b), following execution of the GMP Amendment/NTP for Construction, the required Performance Bond amount shall be equal to the Final GMP.

The Payment Bond shall be released one year after Final Acceptance.

8.3 Optional Warranty Bond

Notwithstanding the foregoing, the Department shall release the Performance Bond and Payment Bond required hereunder following Final Acceptance if the Design-Builder provides to the Department a warranty bond in the amount of 20% of the Final GMP in a form Approved by the Department.

8.4 No Relief of Liability

Notwithstanding any other requirements of the Contract Documents, performance by a Surety of any of the obligations of the Design-Builder shall not relieve the Design-Builder of any of its obligations hereunder.

9 INSURANCE

9.1 General Insurance Requirements

The Design-Builder shall procure and keep in effect, or cause to be procured and kept in effect with the Design-Builder as a named insured, as appropriate, the insurance policies outlined herein in accordance with the further requirements of this Section 9. The Design-Builder's insurance shall cover all of the Work under this Design-Build Agreement, whether the Work is performed by the Design-Builder or its Subcontractors. The Design-Builder's insurance shall cover the entire Project within the Project limits as negotiated by the Department and the Design-Builder, regardless of whether the Design-Builder is performing Work on a structure within the Project limits (with the exception of Builder's Risk Insurance). If the insurance required by this Section 9 becomes no longer commercially available, the Department will work with the Design-Builder to find commercially reasonable alternatives to the required coverages that are acceptable to the Department.

9.1.1 Qualified Insurers

All insurance companies providing policies obtained to satisfy the insurance requirements herein must be authorized to conduct business in the State and have a current policyholder's management and financial size category rating of not less than "A-, VII" according to A.M. Best's Insurance Reports Key Rating Guide.

9.1.2 Verification of Coverage

Each time the Design-Builder is required to initially obtain insurance coverage and at each annual renewal, the Design-Builders shall provide the Department with evidence

of insurance in the form of a certificate of insurance. No Work shall start until proof of insurance acceptable to the Department has been submitted and approved.

Such certificate of insurance shall provide for 10 Calendar Days' written notice of cancellation to the Department for nonpayment of premiums, or 30 Calendar Days' written notice of cancellation to the Department if cancelled by the insurer for any other reason, including non-renewal. The Design-Builder shall delete the phrase "will endeavor to" preceding all references to provisions of notice by the insurance company in the evidence of insurance. A certificate of insurance indicating certain specified amendments and attachments shall be acceptable, but the Department reserves the right to request a complete certified copy of the policy, at the Department's sole discretion.

9.1.3 Full Force and Effect

The Commercial General Liability, Excess (Umbrella) Liability, Contractor's Pollution Liability and Professional Liability Insurance coverage requirements will remain in full force and effect until Final Acceptance at which time the Design-Builder shall maintain Completed Operations Insurance throughout the term of all warranties or as otherwise required by the Contract Documents, whichever is greater.

9.1.4 No Recourse

There shall be no recourse against the Department for payment of premiums or payment of deductibles or self-insured retentions or other amounts with respect to the insurance provided by the Design-Builder. This provision does not affect any rights the Design-Builder is entitled to pursuant to Section 13.

9.1.5 Indemnification

The insurance coverage provided hereunder shall support, but shall not limit, the Design-Builder's indemnification obligations under Section 18.

9.2 Design-Builder Provided Insurance

9.2.1 Compliance with Standard Specifications

The Design-Builder shall procure and maintain the insurance policies required by the Standard Specifications.

9.2.2 Additional Insureds

Each policy of Commercial General Liability, Commercial Auto Liability, Excess Liability (Umbrella), and Contractor's Pollution Liability Insurance shall name the State, the Department and the Department's members, agents and employees as additional insureds. Each of such policies shall also contain a separation of insureds condition. The insurance afforded to the additional insureds by the Design-Builder shall be primary and non-contributory insurance. This Section 9.2.2 shall also apply to insurance policies required of Subcontractors as listed in Section 9.3.

9.2.3 Waiver of Subrogation

Design-Builder agrees to waive all rights against the Department and the other parties listed in Section 9.2.2 above for any claims to the extent covered by insurance required herein. Each insurance policy required herein shall include a waiver of subrogation or the insurer's consent to the insured's waiver of recovery in advance of loss. This provision shall also apply to insurance policies required of subcontractors as listed in Section 9.3.

9.2.4 Professional Liability Insurance

The Design-Builder and/or its lead design firm shall procure and maintain, or cause to be procured and maintained, Professional Liability Insurance policies covering the Design-Builder and the lead design firm as follows:

1. Minimum limits of Liability will be \$5 million per claim and an aggregate of \$5 million.
2. Such Professional Liability Insurance shall, if provided through a series of annual practice policies, be continued for a period of five years after Final Acceptance. If such coverage is provided through a Project-Specific Professional Liability Insurance policy, such policy shall include a five-year extended reporting period from Final Acceptance with respect to all events that occurred, but were not reported, during the term of the policy.
3. Any such policies shall protect against any negligent act, error or omission arising out of design, engineering or related professional activities with respect to the Project.
4. Any such policies shall have a retroactive date of no later than the date of execution of this Design-Build Agreement and shall be endorsed to add the Department and the parties listed in Section 9.2.2 as indemnified parties on such policies.
5. Subject to the Department's review and Approval, the Design-Builder may use a Contractor's Protective Professional Indemnity policy and/or a Contractor's Professional Liability Insurance policy, provided the lead design engineer and all Subconsultants maintain professional liability insurance as required herein.
6. All professional Subconsultants shall, unless already covered by a project-specific professional liability policy as allowed herein, procure and keep in force Professional Liability Insurance covering its professional services as follows:

Estimated Total Professional Services Contract Value	Minimum Limits of Insurance
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Greater than \$10 million	\$5 million per claim/aggregate
\$5.1 million to \$9.99 million	\$2 million per claim/aggregate
\$500,000 to \$5.0 million	\$1 million per claim/aggregate
Less than \$500,000	\$500,000 per claim/aggregate

Such insurance to be carried for the period of design and construction and for three years thereafter. Such insurance need not be project-specific.

9.3 Subcontractor Insurance Requirements

At all times during the performance of the Work, the Design-Builder shall cause each Subcontractor that performs Work at the Site to provide:

1. Commercial General Liability Insurance with limits of at least \$500,000 per occurrence and \$1.0 million in the aggregate, with the general aggregate limit to be applicable on a per project basis.
2. Automobile Liability Insurance with limits of at least \$500,000 combined single limit.
3. Workers Compensation and Employer's Liability Insurance with statutory coverage for workers compensation and minimum limits of \$100,000 for employer's liability on a per accident or disease basis. Such coverage shall, if the subcontractor's work is over or adjacent to navigable waters, include extensions for U.S. Longshore and Harbor Workers Compensation Act and Jones Act claims.

The Commercial General Liability and Automobile Liability Insurance policies shall include the Department and the other parties listed in Section 9.2.2 as Additional Insureds on a primary and non-contributory basis. Such policies, and the workers compensation/employer's liability, shall contain a waiver of subrogation in favor of the additional insureds.

10 RISK OF LOSS

10.1 Site Security

The Design-Builder shall provide appropriate security for the Site during the performance of the Construction Work, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at the Site, whether owned by the Design-Builder, the Department, or any other Person. The Design-Builder's obligation to provide security for the Site shall, at any given time, only extend to those parts of the Site to which the Design-Builder has been provided access pursuant to Section 6.1.1.

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Design-Builder

During the performance of the Construction Work, the Design-Builder shall maintain, rebuild, repair, restore, or replace all temporary and permanent Work (including Design Documents, materials, equipment, supplies, and maintenance equipment that are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether the Department has title thereto under the Contract Documents) that is injured or damaged prior to the date of Substantial Completion.

During the performance of the Construction Work, the Design-Builder shall also have full responsibility prior to the date of Substantial Completion for rebuilding, repairing and restoring all property damaged at the Site, whether owned by the Design-Builder, the Department or any other Person. If such damage was caused by the Department or any other Person (other than any Design-Builder-Related Entity), then the Design-Builder's obligation to pay for rebuilding, repairing, and restoring such damage shall be limited to the amount covered by the Builder's Risk Insurance required to be carried by the Design-Builder, including the Design-Builder's obligation to pay any deductibles or self-insured retentions. The Department shall pay to the Design-Builder the costs of rebuilding, repairing, and restoring the damage in excess of such amount by appropriate Change Order.

If the Design-Builder fails to satisfy its obligations to maintain, rebuild, repair or restore any Work or other property at the Site, the Department shall provide notice of such failure to the Design-Builder. If the Design-Builder does not commence and diligently continue to remedy such failure within five Calendar Days following notice, the Department shall have the right to take all steps it deems necessary to satisfy such obligations. The Design-Builder shall reimburse the Department for any costs related to such activities. The Department may deduct such amounts from payments otherwise owing hereunder, or may invoice the Design-Builder. The Design-Builder shall reimburse the Department for any such amounts paid by the Department within 30 Calendar Days after receipt of an invoice from the Department therefore.

The Design-Builder shall at all times keep the Site in a neat and clean condition, including sweeping roadways to prevent excessive accumulation of dirt/mud, performing litter removal, removal of graffiti, and weed control.

10.2.2 Relief from Liability for Maintenance

The Project shall be considered accepted for maintenance purposes as of the date on which Substantial Completion occurs. Notwithstanding the foregoing, all elements of the Work, which will be owned by Persons other than the Department (such as Utility facilities) will be considered accepted for purposes of maintenance responsibility only as of the date of acceptance of maintenance responsibilities by such Persons. Acceptance for maintenance purposes shall not impact the Design-Builder's Warranty obligations.

10.3 Damage to Off-Site Property

The Design-Builder shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. The Design-Builder shall restore damaged, injured or lost property caused by an act or omission of any Design-Builder-Related Entity to a condition similar or equal to that existing before the damage, injury or loss occurred.

10.4 Third-Party Agreements and Department-Obtained Permits

The Design-Builder shall comply with all provisions in the Third-Party Agreements that are applicable to the performance of the Work. The Design-Builder shall also comply with all provisions in the Department-obtained permits.

10.5 Title

The Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the Department for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to the Department, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the Department to the Design-Builder of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, and subject to Section 10.1, the Design-Builder shall retain sole care, custody, control, and risk of loss of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until the Design-Builder is removed from the Project.

11 COMPENSATION AND PAYMENT

11.1 Planning Phase and Preconstruction Phase Compensation

11.1.1 Planning Phase Compensation

The Design-Builder's compensation during the Planning Phase shall be an amount ("Planning Phase Compensation") equal to (a) the hourly rates set forth in Exhibit D for the personnel performing the Planning Phase Work multiplied by number of hours worked by such personnel on the Planning Phase Work, plus (b) actual and documented out-of-pocket reimbursable expenses incurred in performing the Planning Phase Work; provided that in no event shall Planning Phase Compensation exceed the Planning Phase NTE Amount. The Planning Phase NTE Amount shall include an Allowance for out-of-pocket reimbursable expenses.

Payment of Planning Phase Compensation shall be made by the Department in accordance with Section 11.1.3.

11.1.2 Preconstruction Phase Compensation

The Design-Builder's compensation for Preconstruction Work performed during the Preconstruction Phase shall be an amount ("Preconstruction Phase Compensation") equal to (a) the hourly rates set forth in Exhibit D for the personnel performing the Preconstruction Phase Work multiplied by number of hours worked by such personnel on the Preconstruction Phase Work, plus (b) actual and documented out-of-pocket reimbursable expenses incurred in performing Preconstruction Phase Work; provided that in no event shall the Preconstruction Phase Compensation exceed the Preconstruction Phase NTE Amount. The Preconstruction Phase NTE Amount shall include an Allowance out-of-pocket reimbursable expenses.

Payment of Preconstruction Phase Compensation shall be made by the Department in accordance with Section 11.1.3

11.1.3 Payment of Planning Phase Compensation and Preconstruction Phase Compensation

No later than the second day of each calendar month during the Planning Phase and the Preconstruction Phase, the Design-Builder shall invoice the Department for payment of, as applicable, Planning Phase Compensation or Preconstruction Phase Compensation earned in the prior month.

Each invoice shall be supported by such information substantiating the Design-Builder's right to payment as the Department shall reasonably require, including (a) such information regarding the cost of labor and the progress of, as applicable, the Planning Phase Work or Preconstruction Phase Work as the Department may reasonably request, including timesheets; and (b) as applicable, duly executed conditional waivers of liens from the Design-Builder and all Subcontractors, in a form approved by the Department, establishing payment or satisfaction of the payment requested by the Design-Builder in the previous invoice.

Provided that an invoice consistent with the requirements of this Design-Build Agreement is received by the Department not later than the second day of the calendar month, and the Department approves such invoice (which approval shall not be unreasonably withheld), the Department shall make payment in the amount due to the Design-Builder not later than 30 days after the Department's approval of the invoice. The Design-Builder understands and agrees that approval of the invoice by the Department (which approval shall not be unreasonably withheld) is required prior to payment.

If an invoice is received after the date for such invoice set forth in this Section 11.1.3, then payment shall be made by the Department as part of the subsequent payment, provided that the invoice is consistent with the requirements of this Design-Build Agreement and the Department approves such invoice (which approval shall not be unreasonably withheld).

11.2 Construction Compensation

The Design-Builder shall only be entitled to compensation for Construction Work to the extent such Construction Work has been authorized pursuant to an executed Work Package or the GMP Amendment/NTP for Construction. Compensation for such authorized Construction Work (“Construction Compensation”) shall be as described in the applicable Work Package or the GMP Amendment/NTP; provided that in no event shall the Construction Compensation exceed (a) the applicable GMP established pursuant to any Work Package if the GMP Amendment/NTP for Construction has not yet been executed or (b) the Final GMP if the GMP Amendment/NTP for Construction has been executed, subject to any changes to the GMP established pursuant to a Work Package or the Final GMP made by Change Order pursuant to Sections 12 and 13.

11.3 Intentionally omitted

11.4 Savings. If at Final Acceptance the Construction Compensation is less than the Final GMP, the difference shall be savings, which shall accrue 100% to the Department.

11.5 Progress, Invoicing, and Payment of Construction Compensation

11.5.1 Request for Progress Payment

The Design-Builder shall submit a Request for Progress Payment as described in this Section 11.5, or as otherwise agreed by the parties if a different process is agreed to in the GMP Amendment/NTP for Construction, in a form Approved by the Department that includes all of the information required by the Department by the fifth Calendar Day of each month after the start of the Construction Work, or other agreed-upon date, containing the amount claimed to be payable for activities completed and amounts due under executed Change Orders. Payments shall be made for 100% completed activities only.

If multiple Work Packages are executed prior to execution of the GMP Amendment/NTP for Construction, then separate Requests for Progress Payments shall be submitted each month with respect to the Construction Work authorized under each of the Work Packages. Following execution of the GMP Amendment/NTP for Construction, only a single Request for Progress Payment should be submitted each month addressing all Construction Work.

Upon receipt of a Request for Progress Payment, the Department will review the submitted Request for Progress Payment and within seven Calendar Days provide a comment log to the Design-Builder that lists any discrepancies and other amounts intended to be deducted.

The Department and Design-Builder shall meet to review the Request for Progress Payment and the comment log and attempt to resolve any outstanding issues regarding activities for which payment is sought.

The Design-Builder shall submit a revised Request for Progress Payment to address any outstanding issues identified by the Department. If the Design-Builder includes items for payment that remain unresolved, the Department will either (i) notify the Design-Builder that unresolved items in the Request for Progress Payment remain, and request a resubmittal of the Request for Progress Payment, or (ii) deduct those amounts the Department asserts are not eligible for payment, and process the Request for Progress Payment. In such case, the Department shall notify the Design-Builder of any such deductions.

11.5.1.1 Design-Builder Certification of Progress Payment

Each Request for Progress Payment shall be certified by the DB Project Manager and, with respect to a Request for Progress Payment relating to design Work, the Design-Builder's design manager. Such certification shall provide that all amounts being requested are true and correct, the required level of testing and inspection is complete, all certifications of compliance are submitted, the Work is completed in accordance with the Contract Documents, and there is no outstanding Nonconforming Work for which payment is being requested. No Request for Progress Payment will be processed without such certification.

11.5.1.2 Documents Required to be Provided with the Request for Progress Payment

All documents reasonably requested by the Department shall be submitted with each Request for Progress Payment application, including the following. No Request for Progress Payment will be processed without all such documents.

1. Conditional lien releases from each first-tier Subcontractor and Subcontractors of any tier with a contract value greater than \$5 million;
2. A Progress Report; and
3. an updated version of the Project Schedule.

11.5.1.3 Withholding of Payment

The Department will not pay for Work unless the following conditions are met with respect to such Work:

1. Released for Construction Documents are on Site for the Work being performed;
2. Released for Construction Documents have been checked and reviewed, and design documentation has been maintained, in accordance with the Contract Documents;
3. Construction Work has been inspected and sampling and testing conducted in accordance with Contract Documents; and

4. Nonconforming Work is corrected and/or resolved to the satisfaction of the Department.

On any Request for Progress Payment, the Department may withhold amounts otherwise due to Design-Builder for any of the following:

1. Any anticipated or accrued losses, liability, Daily Road User Costs, or other damages for which the Design-Builder is responsible hereunder;
2. The estimated or Actual Cost, as determined by the Department in its sole discretion, of remedying any Nonconforming Work or otherwise remedying any breach of contract by the Design-Builder;
3. The estimated amount, as determined by the Department in its sole discretion, or the amount identified in the Schedule of Values for Work that the Design-Builder is obligated to perform under this Design-Build Agreement that the Design-Builder has failed to perform, whichever is greater;
4. Any other sums which the Department is entitled to recover from the Design-Builder under the terms of this Design-Build Agreement.
5. Failure to comply with any provision within the Contract Documents regarding Key Personnel or to staff the Project adequately and with sufficiently skilled personnel;
6. Failure to maintain construction documentation so that it is complete and records and reports are submitted and/or retained in accordance with Contract Documents;
7. Failure to maintain and track as-built information monthly;
8. Failure to comply with any provision of the Contract Documents regarding Project Schedules;
9. Failure to conduct or attend Project meetings with appropriate personnel, including Key Personnel;
10. Failure to comply with Contract Document requirements regarding the Project Management Plan or the Quality Management Plan, including for management, design, or construction related functions;
11. Failure to comply with contractual, Department, State or Federal Requirements regarding safety;
12. Failure to adequately support the Department's public information efforts as required by the Contract Documents;

13. Failure to provide required types and levels of insurance, in an amount equal to the complete amount otherwise due to the Design-Builder;
14. Noncompliance with any Legal Requirements that result in the Department being subject to citations, fines, and/or other penalties, in an amount equal to such citations, fines, and/or penalties;
15. Material disruptions to the Department's access to the Project site or use of facilities provided for the Department's use;
16. Continued reports of blocked vehicular and/or pedestrian access to properties, in an amount determined by the Department in its reasonable discretion;
17. To pay potential costs of any existing or threatened Disputes, claims by the Department, Liens and stop notices relating to the Project, as determined to be prudent by the Department in its sole discretion;
18. Failure to pay Subcontractors any amounts when due in accordance with the payment requirements described in Section 11.4.1.
19. Any amount owing and unpaid from the Design-Builder to any Utility Owner under a Utility Agreement.

Any amounts withheld as a result of any failure or event described above shall be paid to the Design-Builder once the relevant failure or event has been addressed by the Design-Builder and is no longer in effect, except that any amount withheld pursuant to Section 11.3.2.3 will not be paid to the Design-Builder unless such amounts are first recovered from the Governmental Person to which the Department paid such amounts. Payment for Work arising from Change Orders will be made in accordance with the relevant Change Order.

The Department's failure to withhold from a progress payment or final payment any amount that the Department is entitled to recover from the Design-Builder under the Contract Documents shall not constitute a waiver of the Department's right to such amounts.

11.5.2 Processing and Payment

11.5.2.1 Processing of Requests for Progress Payment

Once the Department reviews and Approves the Request for Progress Payment, the Department will sign and date and return a copy of the Request for Progress Payment cover sheet with any corrections noted and proceed with processing the Request for Progress Payment. From the date signed, the Department will make payment on Approved amounts within 10 Calendar Days.

11.5.2.2 Amounts Withheld

No payment will be made for activities that are incomplete. Payment will not be made for Nonconforming Work unless the Department agrees that a pay adjustment may be made for Nonconforming Work in accordance with Section 5.10.2.

11.5.3 Partial Payment for Material Delivered to the Site

Upon application by the Design-Builder and Approval by the Department, payments for the Actual Cost of certain material may be made to the Design-Builder prior to incorporation of such material in the permanent Work. To be eligible for partial payment, material must meet all of the following conditions:

1. Be one of the following materials: iron, steel, and aluminum products (including all metal components of railings and bridge Superstructures); precast and prestressed concrete products; pipe and underdrain products; concrete, steel, and timber piles and appurtenances; traffic signal, traffic control, signing, and lighting components; cable, wire, and conduit; impact attenuator components; or material manufactured to meet specific, unique requirements of the Project (to be determined by the Department);
2. Have a minimum material cost of \$20,000 per item or group of like items;
3. Be material that will be incorporated into permanent Structures or features of the Project;
4. Be delivered and stored in a manner approved by the Department at the Site of Work, at a site within the State, or subject to satisfaction of any requirements imposed by the Department at its discretion, at a site outside of the State;
5. Be material that is stored a minimum of 30 Calendar Days; and
6. Be of a quantity not to exceed the quantity of such material required under the Contract Documents.

The following documentation must be provided for each application for partial payment:

1. Bill(s) of sale or vouchers indicating the actual dollar value paid by the Design-Builder for the material as stored;
2. Certification of title showing that title to the material, without encumbrances, is in the name of the Design-Builder and that title is warranted to the Department;
3. Documented evidence of acceptability of the material;

4. If the material is stored on private property, a release and waiver of the Department's liability for any damage to the private property caused by such material, and providing access to the Department to the storage site, which release and waiver shall be executed by the property owner in favor of the Department;
5. Documentation of the quantity and cost of the material;
6. For materials produced by the Design-Builder, detailed statements showing the delivered cost of the material. Such statements shall also include receipted (paid) bills or invoices for royalty payments and/or a certification of ownership signed by a duly authorized officer of the firm supplying the material and properly notarized; and
7. Certification by the Design-Builder that the material meets the Applicable Standards for the stage of production at which the material is stored.

The Design-Builder is responsible for assuring that only those materials which comply with the Contract Documents are incorporated into the Project. All costs associated with handling, transportation, and storage of material, including any storage site rental, security, and weather protection, are borne by the Design-Builder.

11.6 Prompt Payment to Subcontractors

11.6.1 Progress Payments

All Subcontracts must provide for the payment of Subcontractors for satisfactory performance of subcontracted work no later than 10 Calendar Days after receiving payment from the Department for such work or sooner if required by applicable Legal Requirements.

11.6.2 Payment Delay

All Subcontracts must provide for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Department may hold disputed funds under a Subcontract with a DBE Subcontractor until the dispute is resolved.

11.7 Final Payment

Final payment will be made in accordance with this Section 11.7.

11.7.1 Application for Final Payment

Following the Department's issuance of a Notice of Final Acceptance pursuant to Section 20.4, the Design-Builder shall prepare and submit an Application for Final Payment to the Department showing the proposed total amount due the Design-Builder. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include: (i) the written consent by the Surety to such payment;

and (ii) such other documentation as the Department may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment.

The Department will review the Design-Builder's proposed Application for Final Payment, and changes or corrections will be forwarded to the Design-Builder for correction. If no changes or corrections are required, the Department will Approve the Application for Final Payment.

The Design-Builder's acceptance of final payment shall constitute a waiver of Claims by the Design-Builder, except for Claims the Design-Builder has already submitted to the Department.

12 RELIEF EVENTS

12.1 Relief Events

12.1.1 Relief Event Defined

The occurrence of any of the following events shall constitute a "Relief Event" for which the Design-Builder shall be entitled to seek adjustments to the Project Schedule and applicable Compensation Cap pursuant to this Section 12 and Section 13:

1. A Department-Directed Change;
2. Unavoidable delays, arising from a suspension order pursuant to Section 14.1;
3. Uncovering, removing, and restoring Work, to the extent additional costs or time are provided for in Section 5.8.3;
4. The occurrence of a Risk Register Event that is identified as a Department risk or a provisional risk on the Risk Register.

12.1.2 Limitations on Relief Events

12.1.2.1 None of the foregoing events described in Section 12.1.1 shall be deemed a Relief Event to the extent that performance of the Work would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Design-Builder, its Subcontractors or any other Design-Builder-Related Entity for which the Design-Builder is not entitled to relief.

12.1.2.2 Notwithstanding anything to the contrary herein, if a Risk Register Event occurs that is designated as a Design-Builder Risk pursuant to the Risk Register, then the Design-Builder shall give notice to the Department in accordance with this Section 12.2.1, but the Design-Builder shall not be entitled to seek a Change Order and the Design-Builder shall bear the schedule impact and pay all costs associated with such event and the agreed mitigation strategy. If an event occurs that impacts cost or schedule and is not

identified as a Relief Event or a Risk Register Event, then Design-Builder shall not be entitled to seek a Change Order and the Design-Builder shall bear the schedule impact and pay all costs associated with such event and the agreed mitigation strategy.

12.2 Relief Event Claims

12.2.1 Relief Event Notice

The Design-Builder shall provide notice to the Department within 15 Calendar Days of the date on which the Design-Builder after the date on which the Design-Builder first became aware (or should have been aware, using all reasonable diligence) of a Relief Event (the “**Relief Event Notice**”). The Relief Event Notice shall include a reasonably detailed description of the circumstances and an initial estimate of the approximate number of Calendar Days the Design-Builder expects to be delayed as a result of the event and the approximate additional costs the Design-Builder will incur as a result of the event. The Relief Event Notice shall also describe the efforts of the Design-Builder that have been (or are going to be) undertaken by the Design-Builder to overcome or remove the Relief Event and minimize the potential adverse effect on the cost for performance of the Work resulting from such Relief Event.

If the Design-Builder fails to deliver the Relief Event Notice within 15 Calendar Days after the date on which the Design-Builder first became aware (or should have been aware, using all reasonable diligence) of the Relief Event, the Design-Builder shall have irrevocably and forever waived and released the portion of any Claim or right to relief for the adverse effect attributable to the Relief Event.

12.2.2 Request for Change Order

The Design-Builder shall submit to the Department a Request for Change Order (RCO) within 30 Calendar Days after submitting the Relief Event Notice. The RCO shall include (i) a detailed description of the Relief Event, including its nature, the date of its occurrence, and its likely duration; (ii) the effect of the Relief Event on the Design-Builder’s ability to perform any of its obligations under this Agreement, including the specific effect on each affected obligation and the likely duration of that effect and an analysis of the effect to the Critical Path; (iii) the specific relief requested by the Design-Builder; and (iv) if the relief requested includes compensation, the Design-Builder’s analysis and estimate of the amount of such compensation. The RCO shall comply with the requirements of Section 13.2 to the extent applicable.

If the Design-Builder fails to deliver the RCO within 30 Calendar Days after the applicable deadline set forth in the preceding paragraph, the Design-Builder shall have irrevocably and forever waived and released any Claim or right to relief for the adverse effect attributable to the Relief Event, unless, prior to such deadline, the Department agrees to extend the deadline at its discretion.

12.2.3 Adjustments in Project Schedule

An extension of any relevant Completion Deadline shall only be granted under the following circumstances: (i) a delay occurs in the Critical Path as a result of a Relief Event, (ii) the delay was not reasonably avoidable by the Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work, and was not caused by the fault or negligence, or act or failure to act of any Design-Builder-Related Entity; and (iii) the Design-Builder has complied with its obligations under Sections 12.1 and 12.2. The Department and the Design-Builder will use good faith efforts to agree on the extent to which the Critical Path has been delayed on account of any such Relief Event. Once the parties have mutually agreed as to the extent of such delay, they shall enter into a Change Order reflecting their agreement as to the adjustment in the relevant Completion Deadline(s) pursuant to Section 13.

12.2.4 Adjustments in Compensation Cap

An increase in any applicable Compensation Cap shall only be granted for a Relief Event to the extent: (i) the increased cost was not reasonably avoidable by the Design-Builder or caused by the Design-Builder or any Design-Builder-Related Entity; and (ii) the Design-Builder has complied with its obligations under Sections 12.1 and 12.2.

The Department and the Design-Builder will use good faith efforts to agree on the extent to which the Design-Builder is entitled to cost relief as a result of any such Relief Event. Whenever actual costs for a Provisional Sum item are more than the applicable Provisional Sum, the Guaranteed Maximum Price will be adjusted by the difference between actual costs and the Provisional Sum amount set forth in the GMP Amendment. Where unit prices are specified in a Provisional Sum, such unit pricing shall be used to calculate the amount of any Change Order. Once the parties have mutually agreed as to the Design-Builder's entitlement to cost relief, they shall enter into a Change Order reflecting their agreement as to the adjustment in the applicable Compensation Cap pursuant to Section 13. Any relief provided pursuant to this Section 12.2.4 shall be subject to the limitations in Section 13.6. For certainty, the Design-Builder shall not be entitled to an increase in any Compensation Cap for any costs covered by insurance required to be carried pursuant to this Design-Build Agreement (regardless of whether the Design-Builder has actually obtained such insurance).

12.3 Waiver

The rights and remedies set forth in this Section 12 shall be the Design-Builder's sole and exclusive rights and remedies in the event of an occurrence of a Relief Event, and the Design-Builder hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against the Department on account of a Relief Event. In confirmation and furtherance of the terms and provisions of this Section 12 the Design-Builder acknowledges and agrees that any Compensation Cap and the Completion Deadlines may only be adjusted in accordance with, and to the extent permitted by, the terms and provisions of this Section 12 and Section 13.

13 CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under this Design-Build Agreement, including Change Orders relating to Relief Events and changes in the scope of the Work. The Design-Builder hereby acknowledges and agrees that the Contract Price, subject to the Compensation Caps, constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in Section 12 and this Section 13, and that the Department is subject to constraints which limit its ability to increase any Compensation Cap or extend the Completion Deadlines.

13.1 Change Orders

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. A Change Order shall not be effective for any purpose unless executed by the Department. Change Orders may be issued for the following purposes (or combination thereof):

1. To modify the Work;
2. To revise a Completion Deadline;
3. To revise a Compensation Cap; and
4. To revise other terms and conditions of the Contract Documents.

Upon the Department’s Approval of the Change Order form, the Department will execute the Change Order form indicating Approval thereof.

The Department may reject a claim by the Design-Builder for a Change Order at any point in the process. Once a complete RCO is provided, the Department’s failure to respond thereto within 14 Calendar Days of delivery of the request shall be deemed a rejection of such request for a Change Order.

13.2 Contents of Change Orders (excluding No-Cost Change Orders)

Each Change Order form and RCO submitted by the Design-Builder pursuant to Section 12 shall meet all applicable requirements of this Section 13 and shall include a cost analysis to be prepared in a form reasonably acceptable to the Department.

The Design-Builder shall prepare a scope of work, cost estimate, time impact analysis, if any and other information as required by this Section for each Change Order form and RCO.

Scope of Work: The scope of work shall describe in detail satisfactory to the Department all activities associated with the Change Order, including a description of additions, deletions and modifications to the existing Contract Document requirements.

Cost Estimate: The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made and is acceptable to the Department, consistent with the protocols described in Exhibit E.

Time Impact Analysis: If the Design-Builder claims that such event, situation or change affects the Critical Path affecting a Completion Deadline, it shall provide an time impact analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to the Department, which compares the proposed new schedule to the then-current Project Schedule, as appropriate. Except as otherwise provided in this Section, the time impact analysis shall only modify the activities, which have been impacted by the event which justifies the extension. The Design-Builder may reschedule activities not otherwise affected by the event, in order to take advantage of additional float available as a result of the requested time extension. Any such rescheduling shall be reflected in the time impact analysis.

Other Supporting Documentation: The Design-Builder shall provide such other supporting documentation as may be required by the Department.

13.2.1 Justification

Each RCO shall include a justification therefore, detailing all causes of the proposed change, making specific reference to the applicable provisions of this Section 13 which permit a Change Order to be issued, and describing the data and documents which establish the necessity of such proposed change.

13.2.2 Incomplete Request for Change Orders

Each RCO shall meet all requirements set forth in this Section 13.2; provided that if any such requirements cannot be met due to the nature of the occurrence, the Design-Builder shall provide an incomplete RCO, which shall:

1. Comply with all requirements capable of being met;
2. Include a list of requirements, which are not fulfilled together with an explanation reasonably satisfactory to the Department stating why such requirements cannot be met;
3. Provide such information regarding projected impact on the Critical Path affecting a Completion Deadline as is requested by the Department; and
4. In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Design-Builder shall furnish, when requested by the Department, such further information and details as may be required to determine the facts or contentions involved. The Design-Builder agrees that it shall give the Department access to any

and all of the Design-Builder's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the Department can investigate the basis for such proposed Change Order. The Design-Builder shall provide the Department with a monthly update to all outstanding incomplete RCOs, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the Department, time expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. The Department may reject the Design-Builder's claim at any point in the process. Once a complete RCO is provided, the Department's failure to respond thereto within 14 Calendar Days of delivery of the request shall be deemed a rejection of such request. Although the Department intends to review incomplete Change Orders for the purposes of timely delivery described in this Section 13.2.3, the Department shall have no obligation to review the supporting documentation associated with any RCO until a complete RCO is provided.

13.2.3 Phased Change Orders

The Department and Design-Builder may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated design cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and definition of the estimated construction cost.

13.2.4 Performance of Changed or Extra Work

As a condition precedent to the Design-Builder's right to receive additional payment or an extension of a Completion Deadline for changed or extra work, the Design-Builder and the Department must execute a Change Order. To the extent that the Design-Builder undertakes any such work without receiving a Change Order executed by the Department, the Design-Builder shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Design-Builder may be required to remove or otherwise undo any such work, at its sole cost.

13.2.5 Procedure for Department Initiated Change Orders

If the Department desires to evaluate whether to initiate a Change Order, the Department may, at its discretion, issue a Request for Change Proposal (RCP).

Within seven Calendar Days after the Design-Builder's receipt of an RCP, the Department and the Design-Builder shall consult to define the proposed scope of the change. Within seven Calendar Days after the initial consultation, the Department and the Design-Builder shall consult concerning an estimated rough order of magnitude ("ROM") cost and time impacts, if any. The Design-Builder shall prepare the ROM at its cost. The Design-Builder shall provide data regarding such matters as requested by the Department.

Within seven Calendar Days after the ROM consultation meeting and provision of any data requested by the Department, the Department shall notify the Design-Builder whether the Department:

1. Wishes to request the Design-Builder to prepare a Change Order form as discussed at the meeting; or
2. No longer wishes to issue a Change Order.

The Department may at any time, in its sole discretion, require the Design-Builder to provide two alternative Change Order forms, one of which shall provide for a time extension if applicable and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

If requested by the Department, the Design-Builder shall, within 21 Calendar Days after receipt of the notification, prepare and submit to the Department for Approval a Change Order form for the requested change, complying with all applicable requirements of Section 13.4, and incorporating all requests made by the Department. The Design-Builder shall bear the cost of developing the Change Order form, including any modifications thereto requested by the Department, except that costs of design and engineering Work required for preparation of plans or exhibits necessary to the Change Order form and pre-authorized by the Department shall be included in the Change Order as reimbursable items. If the Change Order is Approved, the design and engineering costs will be included within the Change Order. If the Change Order is not Approved, the Design-Builder shall be separately reimbursed for the design and engineering costs through a separate Change Order.

If the Department and the Design-Builder 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 change to be made to a Compensation Cap or a Completion Deadline, the Department may, in its sole discretion, order the Design-Builder to proceed with the performance of the Work in question notwithstanding such disagreement

13.2.6 Procedures for Design-Builder-Initiated Lump Sum Change Orders

Except with respect to a request for a No-Cost Change Order pursuant to Section 13.5, the Design-Builder may only initiate Change Orders for any Relief Event in accordance with Section 12.

13.3 Certain Limitations for all Change Orders (excluding No-Cost Changes)

13.3.1 Limitation on Compensation Cap Increases

Any increase in a Compensation Cap pursuant to Sections 12 and 13 shall exclude:

1. Costs caused by a breach of contract or fault or negligence, or act or failure to act of any Design-Builder-Related Entity;
2. Costs, which could reasonably have been avoided by the Design-Builder, including by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment); and
3. Costs for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work.

13.3.2 Limitation on Time Extensions

Any extension of a Completion Deadline pursuant to Sections 12 and 13 shall exclude any delay to the extent that it:

1. Did not impact the Critical Path affecting a Completion Deadline;
2. Was due to the fault or negligence, or act or failure to act of any Design-Builder-Related Entity; or
3. Could reasonably have been avoided by the Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a Department caused delay, the Department shall have agreed, if requested to do so, to reimburse the Design-Builder for its Actual Costs incurred, if any, in resequencing, reallocating, or redeploying its forces).

The Design-Builder shall be required to demonstrate to the Department's satisfaction that the change in the Work or other event or situation which is the subject of the Change Order request seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity affecting a Completion Deadline.

13.4 Pricing of Change Orders (excluding No-Cost Changes)

The Department and the Design-Builder (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. If compensation for a particular Relief Event is provided in the Risk Register, then such pricing shall be used to calculate the pricing of the Change Order. If the Department and the Design-Builder cannot agree on the terms of pricing of a

Change Order, pricing will be determined in accordance with the Department's Standard Specifications, including provisions for force account change orders.

13.5 No-Cost Change Orders

The Design-Builder may request the Department's Approval of a Change Order for minor no-cost deviations to the Contract Document requirements. The Department may Approve, in its sole discretion, in whole or in part, a Change Order request for such deviations in a form reasonably acceptable to the Department. If Approved as provided in this Section 13.5, the changes may be implemented without any sharing of the Design-Builder's cost savings (and without any additional cost to the Department).

A No-Cost Change Order is an Approved proposal developed and documented by the Design-Builder, which would modify or require a change in any of the Contract Documents in order to be implemented that is a minor deviation to the underlying requirement. No-Cost Change Orders cannot change a Completion Deadline.

13.5.1 Required Information

At a minimum the following information shall be submitted by the Design-Builder with each No-Cost Change Order proposal:

1. A redline of the changes proposed to the Contract Documents, which are involved in the proposed change;
2. A description of the rationale for the proposed change and its impact on the quality of the Project (with the understanding that the Department generally will not accept changes that will decrease quality); and
3. A description of any previous use or tests of the proposal and the conditions and results if requested by the Department.

The Design-Builder shall provide any additional information requested by the Department in a timely manner.

13.5.2 Department Review and Approval or Rejection

Upon receipt of a No-Cost Change Order proposal, the Department will review it, but shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section 13.5. The Design-Builder may withdraw all or part of any No-Cost Change Order proposal at any time prior to Approval by the Department. The Department may Approve, in its sole discretion, in whole or in part, any No-Cost Change Order proposal submitted. Until a No-Cost Change Order proposal is Approved by the Department, the Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of the Department as to rejection or Approval of any No-Cost Change Order proposal shall be at the sole discretion of the Department, and shall be final and not subject to partnering, Dispute resolution or appeal. No-Cost Change Order proposals that require excessive time or costs for review, evaluation or investigations,

or that are not consistent with the Department's design policies and basic design criteria may be rejected. The Design-Builder shall have no claim for any additional costs or delays resulting from the rejection of a No-Cost Change Order proposal, including development costs, loss of anticipated profits, or increased material or labor costs. The Department will consider only proven features that have been employed under similar conditions or projects acceptable to the Department.

13.6 Waiver

THE DESIGN-BUILDER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH THE DESIGN-BUILDER FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY RCO, AND AGREES THAT THE DESIGN-BUILDER SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE DESIGN-BUILDER IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

13.7 Disputes

If the Department and the Design-Builder agree that a request to increase any Compensation Cap and/or extend any Completion Deadline by the Design-Builder has merit, but are unable to agree as to the amount of such price increase and/or time extension, the Department agrees to mark up the Change Order request or Change Order form, as applicable, provided by the Design-Builder to reduce the amount of the price increase and/or time extension in accordance with the Department's Standard Specifications. In such event, the Department will execute and deliver the marked-up Change Order to the Design-Builder within a reasonable period, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of the Department and the Design-Builder to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a force account Change Order and the disputed amount of the increase in the applicable Compensation Cap and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19. 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 by the Design-Builder of any nature arising from or relating to the Work covered by the Change Order. The Design-Builder's Claim and any award by the resolver of the Dispute shall be limited to the incremental costs incurred by the Design-Builder with respect to the disputed matter (crediting the Department for any corresponding reduction in the Design-Builder's other costs) and shall in no event exceed the amounts allowed by this Section 13 with respect thereto.

The Design-Builder shall provide notice to the Department of its intention to dispute a rejected Change Order within seven Calendar Days. The Design-Builder's failure to provide such notice shall result in a waiver by Design-Builder of the right to raise such Claim in the future.

13.8 No Release or Waiver

13.8.1 Extension of Time for Performance

No extension of time granted hereunder shall release the Design-Builder's Surety from its obligations. The Department shall not be deemed to have waived any rights under this Design-Build Agreement (including its right to abrogate this Design-Build Agreement for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of any Completion Deadline, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to the Design-Builder after such date.

13.8.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Department has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, the Design-Builder shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. The Design-Builder shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, the Department may require the Design-Builder to remove or otherwise undo any such work, at the Design-Builder's sole cost.

14 SUSPENSION OF WORK

14.1 Suspension for Convenience

The Department may, at any time and for any reason, by written notice, order the Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that the Department deems appropriate for the convenience of the Department. The Design-Builder shall promptly comply with any such written suspension order. The Design-Builder shall promptly recommence the Work upon receipt of written notice from the Department directing the Design-Builder to resume Work.

14.2 Suspension for Cause

The Department has the authority by written order to suspend the Work without liability to the Department wholly or in part for the Design-Builder's failure to:

1. Correct conditions unsafe for the Project personnel or general public;

2. Comply with any Governmental Approval, Legal Requirement, or otherwise carry out the requirements of this Design-Build Agreement;
3. Carry out directives or orders of the Department;
4. Comply with environmental requirements or requirements contained in the Project Management Plan, Quality Management Plan, or the Safety Plan; or
5. Remove an employee whom the Department has requested be removed pursuant to Section 7.9.1.

The Design-Builder shall promptly comply with any such written suspension order. The Design-Builder shall promptly recommence the Work upon receipt of written notice from the Department directing the Design-Builder to resume Work.

14.3 Design-Builder Responsibilities during Suspension

During periods that Work is suspended, the Design-Builder shall continue to be responsible for the Work and shall prevent damage or injury to the Project and other facilities in the Project vicinity, provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Design-Builder-provided insurance and bonds and erect necessary Temporary Structures, signs or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by the Department, the Design-Builder shall continue to be responsible for maintenance of traffic and maintenance during construction in accordance with requirements of the Contract Documents. If the suspension is for the Department's convenience, the additional work performed by the Design-Builder during the suspension period shall be considered a Department-Directed Change.

15 TERMINATION FOR CONVENIENCE

15.1 Notice of Termination

15.1.1 Notice of Termination Issued by the Department

The Department may terminate this Design-Build Agreement and the performance of the Work by the Design-Builder in whole or, from time to time, in part, if the Department determines, in its sole discretion that a termination is in the best public, State or national interest to do so. The Department shall notify the Design-Builder of its decision to terminate by delivering to the Design-Builder a written Notice of Termination specifying the extent of termination and its effective date. Termination (or partial termination) of this Design-Build Agreement shall not relieve any Surety of its obligation for any claims arising out of the Work performed.

15.1.2 Notice of Termination Issued by the Design-Builder

The Design-Builder may terminate this Design-Build Agreement for convenience if the Department has suspended the Work (including a deemed suspension pursuant to

Section 16.3) for more than 180 consecutive Calendar Days. The Design-Builder shall notify the Department of its decision to terminate by delivering to the Department a written Notice of Termination specifying the effective date (which may be no sooner than 30 Calendar Days after delivery of the Notice of Termination). Termination of this Design-Build Agreement shall not relieve any Surety of its obligation for any claims arising out of the Work performed. If the parties mutually agree upon the terms of a Change Order to compensate the Design-Builder for the ongoing suspension, the Design-Builder shall withdraw its Notice of Termination in connection with execution of such Change Order. If the Design-Builder withdraws a Notice of Termination, the Design-Builder will not be permitted to issue another Notice of Termination pursuant to this Section 15 at a later time in response to the same event(s) that resulted in the issuance of the initial Notice of Termination.

15.2 Design-Builder Responsibilities Upon Termination

After issuance or receipt of a Notice of Termination, and except as otherwise directed by the Department, the Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 15.

1. Stop Work as specified in the notice;
2. Communicate such notice to all affected Subcontractors and that their Subcontracts are not to be further performed unless otherwise authorized in writing by the Department;
3. Place no further Subcontracts or orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;
4. Terminate all Subcontracts to the extent that they relate to the Work terminated;
5. Assign to the Department in the manner, at the times, and to the extent directed by the Department, all of the right, title and interest of the Design-Builder under the Subcontracts so terminated, in which case the Department will have the right, in its sole discretion, to accept performance, settle or pay any or all claims arising out of the termination of such Subcontracts;
6. Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the Approval or ratification of the Department, to the extent it may be required, which Approval or ratification shall be final;
7. Provide the Department with an inventory list of all materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet

delivered to the Department, and such other information as the Department may request; and transfer title and deliver to the Department, in the manner, at the times, and as and to the extent, if any, directed by the Department: (i) fabricated or unfabricated parts, the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and (ii) the Design Documents;

8. Complete performance in accordance with the Contract Documents of all Work not terminated;
9. Take all action that may be necessary, or that the Department may direct, for the safety, protection and preservation of: (i) the public, including public and private vehicular movement; (ii) the Work; and (iii) the equipment, machinery, materials and property related to the Contract Documents that is in the possession of the Design-Builder and in which the Department has or may acquire an interest;
10. As authorized by the Department in writing, use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by the Department, any property of the types referred to in Section 15.2.7; provided, however, that the Design-Builder: (i) is not required to extend credit to any purchaser; and (ii) may acquire the property under the conditions prescribed and at prices Approved by the Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Department under the Contract Documents or paid in any other manner directed by the Department;
11. If requested by the Department, withdraw from the portions of the Site designated by the Department and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, the Design-Builder and any Subcontractor in the performance of the Work as the Department may direct; and
12. Take other actions directed by the Department.

15.3 Responsibility After Notice of Termination

The Design-Builder shall continue to be responsible for damage to materials after issuance of a Notice of Termination, except as follows:

1. The Design-Builder's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when the Department certifies that those materials have been stored in the manner and at the locations directed by the Department; and
2. The Design-Builder's responsibility for damage to materials purchased by the Department subsequent to the issuance of the notice that this Design-

Build Agreement is to be terminated shall terminate when title and delivery of those materials has been taken by the Department.

Immediately after the Department determines that the Design-Builder has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, the Design-Builder will not be required to provide for continuing safety, Security and maintenance at the Site.

15.4 Payment on Termination Under Section 15.1

15.4.1 Payment During the Planning Phase or Preconstruction Phase

If this Design-Build Agreement is terminated under Section 15.1 during the Planning Phase or Preconstruction Phase, then the Department shall pay to the Design-Builder an amount equal to (a) all earned but unpaid Planning Phase Compensation or Preconstruction Phase Compensation, as applicable, plus (b) any actual, documented and reasonable cancellation charges due to Subcontractors pursuant to the terms of their Subcontracts; providing that in no event shall such amount exceed the applicable NTE Amount. In addition, if the Construction Phase has commenced prior to the time of such termination (as allowed under Section 4.1.1), then the Design-Builder shall also be entitled to termination compensation for Construction Work as provided in Section 15.4.2.

The compensation described in this Section 15.4.1 is the Design-Builder's sole and exclusive remedy hereunder in the event of termination during the Planning Phase or Preconstruction Phase.

15.4.2 Payment After the Start of Construction Work

If this Design-Build Agreement is terminated under Section 15.1 after the start of the Construction Phase, then the Department shall pay to the Design-Builder for Work properly completed in accordance with the Schedule of Values plus any actual, documented and reasonable cancellation charges due to Subcontractors pursuant to the terms of their Subcontracts by reason of the termination of this Contract. In addition, if the Preconstruction Phase has not yet completed by the time of such termination, then the Design-Builder shall also be entitled to termination compensation for Preconstruction Work as provided in Section 15.4.1. The compensation described in this Section 15.4.2 is the Design-Builder's sole and exclusive remedy hereunder in the event of termination during the Construction Phase.

Reimbursement for demobilization of the Site will be considered, the intent being that an equitable settlement will be made with the Contractor. In no event shall the Contractor receive payment, including any portion of the Contractor's Fee, with respect to Work or other services not performed as of the time of termination.

Notwithstanding the foregoing, in no event shall the termination payment under this Section 15.4.2 exceed the then-current GMP.

15.4.3 Payment of Termination Amount

Upon determination of the amount of the termination payment, a Change Order will be executed to reflect the agreed termination payment, and the Design-Builder shall be paid the agreed amount.

15.4.4 Partial Termination

If a termination hereunder is partial, the applicable Compensation Cap for the remainder of the Work shall be adjusted as appropriate to account for the change in the overall scope of the Project.

15.4.5 Reduction in Amount of Claim

The amount otherwise due the Design-Builder under this Section 15 shall be reduced by: (i) all unliquidated advance or other payments made to or on behalf of the Design-Builder applicable to the terminated portion of this Design-Build Agreement, including any costs for which the Design-Builder has already been compensated pursuant to a Change Order arising out of a Relief Event; (ii) the amount of any claim which the Department may have against any Design-Builder-Related Entity in connection with this Design-Build Agreement; (iii) the agreed price for, or the proceeds of the sale of, any property, materials, supplies or other things acquired by the Design-Builder or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to the Department; (iv) amounts that the Department deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners; (v) the cost of repairing any Nonconforming Work, and (vi) any amounts due or payable by the Design-Builder to the Department.

15.4.6 Partial Payments

The 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 the Design-Builder in connection with the terminated portion of this Design-Build Agreement, whenever in the opinion of the Department the aggregate of such payments shall be within the amount to which the Design-Builder will be entitled under this Section 15. If the total of such payments is in excess of the amount due to the Design-Builder under this Section 15, such excess shall be payable by the Design-Builder to the Department upon demand together with interest at a rate equal to the average rate at the time being received from the investment of state funds, as determined by the State Treasurer, for the period from the date such excess payment is received by Design-Builder to the date on which such excess is repaid to the Department. However, no interest will be charged with respect to any such excess payment attributable to a reduction in Design-Builder's claim by reason of retention or other disposition of termination inventory until ten Calendar Days after the date of such retention or disposition, or such later date as determined by the Department by reason of the circumstances.

15.4.7 Inclusion in Subcontracts

The Design-Builder shall insert in all Subcontracts a requirement that the Subcontractor shall stop Work on the date and to the extent specified in a Notice of Termination in accordance with this Section 15, and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

15.4.8 Limitation on Payments to Subcontractor

For the purposes of this Section 15.4, the Design-Builder will not be entitled to reimbursement for that portion of the termination settlement with any such Subcontractor which constitutes anticipatory or unearned profit on Work not performed, or which constitutes consequential damages on account of the termination or partial termination.

15.4.9 No Unearned Profits or Consequential Damages

Under no circumstances shall the Design-Builder be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to the Design-Builder determined in accordance with this Section 15 constitutes the Design-Builder's sole and exclusive remedy for a termination under this Section 15.

15.5 No Waiver

Anything contained in this Design-Build Agreement to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages, which the Department may have, and the Department may pursue any cause of action, which it may have at law or in equity or under this Design-Build Agreement.

15.6 Dispute Resolution

The failure of the parties to agree on amounts due under this Section 15 shall be a Dispute to be resolved in accordance with Section 19.

16 DEFAULT

16.1 Default by Design-Builder

16.1.1 Events of Default

The Design-Builder shall be deemed to be in breach under this Design-Build Agreement upon the occurrence of any one or more of the following events or conditions:

1. The Design-Builder fails to promptly begin (i) the Planning Phase Work under the Contract Documents following execution of the Design-Build Agreement, (ii) the Preconstruction Phase Work under the Contract

Documents following execution of the Preconstruction Phase Amendment/NTP, or (iii) the Construction Work under the Contract Documents following execution of a Work Package or the GMP Amendment/NTP for Construction.

2. The Design-Builder fails to perform the Work with sufficient resources to ensure the prompt completion thereof and fails to execute remedial action in accordance with the Project Management Plan;
3. The Design-Builder fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by the Department under Section 7.9.1;
4. The Design-Builder discontinues or suspends the prosecution of the Work (exclusive of Work stoppage due to: (i) suspension or termination by the Department; (ii) an excusable delay pursuant to a Relief Event or Force Majeure Event; or (iii) nonpayment by the Department not related to a breach by the Design-Builder);
5. The Design-Builder fails to resume performance of Work, which has been suspended or stopped, within a reasonable time after receipt of notice from the Department to do so or (if applicable) after cessation of the event preventing performance;
6. The Design-Builder breaches any other material agreement, representation or warranty contained in the Contract Documents, or the Design-Builder fails to perform any other material obligation under the Contract Documents, including EEO and DBE requirements;
7. The Design-Builder fails to provide and maintain the required insurance and Payment and Performance Bonds;
8. The Design-Builder assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under Section 26.4.2;
9. The Design-Builder fails, absent a valid Dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law; fails to comply with any Legal Requirement or Governmental Approval; or fails reasonably to comply with the instructions of the Department consistent with the Contract Documents;
10. The Design-Builder or any Principal Participant, partner, joint venture member or other member of the Design-Builder shall have become insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

11. Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against the Design-Builder or any Principal Participant, partner, joint venture member or other member of the Design-Builder and not dismissed within 60 Calendar Days;
12. Any material representation or warranty made by the Design-Builder in the Proposal or Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents shall have been false or materially misleading when made;
13. The Design-Builder or a Principal Participant is a party to fraud;
14. The Design-Builder meets the cap set forth in Section 17.1.4 for cumulative Liquidated Damages and Daily Road User Costs;
15. The Design-Builder removes or replaces one or more Key Personnel without the prior Approval of the Department;
16. The Design-Builder fails to appropriately cooperate with the Department, the public, or others associated with the Work or to provide proper supervision of the Work;
17. The Design-Builder otherwise fails to carry out the Work in accordance with the Contract Documents;
18. The Design-Builder breaches its obligation under Section 1.8 to avoid engaging in any activities during the Planning Phase that violate the restrictions on private entities' participating in the development of NEPA documents under any Federal Requirement; and
19. During the performance of the Preconstruction Work, the Design-Builder fails to engage in good faith negotiations related to the development of any Amendment/NTP or Work Package.

16.1.2 Right to Cure

The Department agrees to allow the Design-Builder and Surety 30 Calendar Days' notice and opportunity to cure any breach before declaring an Event of Default, provided that no such notice and opportunity to cure is required for any breach, which by its nature cannot be cured. If a breach is curable but by its nature cannot be cured within 30 Calendar Days, as determined in the Department's reasonable discretion, the Department agrees not to declare an Event of Default provided that the Design-Builder commences such cure within such 30-Calendar Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period exceed 60 Calendar Days in total. The Design-Builder hereby acknowledges and agrees that the events described in Subsections 16.1.1.12 and 16.1.1.13 are not curable. Notwithstanding the foregoing, if the Department believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, the

Department may, without notice and without awaiting lapse of any cure period, rectify the condition at the Design-Builder's cost, and so long as the Department undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the Department to liability to the Design-Builder and shall not entitle the Design-Builder to any other remedy, it being acknowledged that the Department has a paramount public interest in providing and maintaining safe public use of and access to the Site. The Department's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

16.2 Remedies

16.2.1 Rights of the Department

If an Event of Default occurs, then, in addition to all other rights and remedies provided by law or equity or available under this Design-Build Agreement or otherwise, including the rights to recover Delay Charges and to seek recourse against the Payment Bond and the Performance Bond, the Department shall have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing the Design-Builder from any obligations:

1. The Department may order the Design-Builder to suspend or discontinue the Work or any portion of the Work;
2. The Department may terminate this Design-Build Agreement or a portion thereof, in which case, the provisions of Sections 15.2 and 15.3 shall apply;
3. If and as directed by the Department, the Design-Builder shall withdraw from the Site; and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Design-Builder-Related Entity in the performance of the Work;
4. The Design-Builder shall deliver to the Department possession of any or all facilities of the Design-Builder located on the Site as well as all Design Documents;
5. The Design-Builder shall confirm the assignment to the Department of the Subcontracts requested by the Department, and the Design-Builder shall terminate, at its cost, all other Subcontracts;
6. The Department may deduct from any amounts payable by the Department to the Design-Builder such amounts payable by the Design-Builder to the Department, including Delay Charges or other damages payable to the Department under the Contract Documents;
7. The Department, without incurring any liability to the Design-Builder, shall have the rights to: (i) take the performance of all or a portion of the Work from the Design-Builder (either with or without the use of the Design-

Builder's materials, equipment, tools and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) use such other methods, as in the opinion of the Department, will be required for the completion of the Project; and

8. If the Department exercises any right to perform any obligations of the Design-Builder, in the exercise of such right the Department may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Work; (ii) spend such sums as the Department deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such Work; (iii) execute all applications, certificates and other documents as may be required for completing the Work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2 Liability of Design-Builder

If an Event of Default has occurred, the Design-Builder and Surety shall be jointly and severally liable to the Department (in addition to any other damages under the Contract Documents other than those costs intended to be covered by Delay Charges payable hereunder) for all costs reasonably incurred by the Department or any party acting on the Department's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work and increased financing costs). Upon the occurrence of an Event of Default, the Department shall be entitled to withhold all or any portion of further payments to the Design-Builder until such time as the Department is able to determine how much (if any) remains owing to the Design-Builder. Promptly upon such determination, the Department shall notify the Design-Builder in writing of the amount, if any, that the Design-Builder shall pay the Department or that the Department shall pay the Design-Builder with respect thereto. All costs and charges incurred by the Department, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any moneys due or which may become due to the Design-Builder. If such expense exceeds the sum which would have been payable under this Design-Build Agreement, then the Design-Builder and its Surety(ies) shall be liable and shall pay to the Department the amount of such excess.

It is recognized that if a default under Section 16.1.1.10 or 16.1.1.11 occurs, such event could impair or frustrate the Design-Builder's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, the Department shall be entitled to request of the Design-Builder, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten Calendar Days of delivery of the request shall entitle the Department to terminate this Design-Build Agreement and to the

accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Department shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from the Department's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under this Design-Build Agreement and the Payment and Performance Bonds.

In lieu of the provisions of this Section 16.2 for terminating this Design-Build Agreement and completing the Work, the Department may pay the Design-Builder for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Design-Build Agreement. No claim under this provision will be allowed the Design-Builder for prospective profits on, or any other compensation relating to, Work uncompleted by the Design-Builder.

If this Design-Build Agreement 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 pursuant to Section 15.

If the Department suffers damages as a result of the Design-Builder's breach or failure to perform an obligation under the Contract Documents, then the Department shall be entitled to recovery of such damages from the Design-Builder regardless of whether the breach or failure that gives rise to the damages is ultimately determined to be an Event of Default.

The exercise or beginning of the exercise by the Department of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by the Department of any or all other rights or remedies, each of which shall be cumulative.

The Design-Builder and Surety shall not be relieved of liability for continuing Delay Charges on account of a default by the Design-Builder hereunder or by the Department's declaration of an Event of Default, or by actions taken by the Department under this Section 16.2.

16.3 Right to Stop Work if Undisputed Payment is Not Made

The Design-Builder shall have the right to stop Work if the Department fails to make an undisputed payment due hereunder within 30 Calendar Days after receipt of notice of nonpayment. Any such Work stoppage shall be deemed a suspension for purposes of Sections 14.1 and 15.1.2. The Design-Builder shall not have the right to terminate this Design-Build Agreement for default as the result of any failure by the Department to make an undisputed payment due hereunder, but the Design-Builder shall have the right to issue a Notice of Termination under Section 15 upon meeting the requirements

of Section 15.1.2. In such event, the Design-Builder's sole and exclusive remedy shall be to receive termination compensation as set forth in Section 15.

17 DAMAGES

17.1 Liquidated Damages and Daily Road User Costs

17.1.1 Failure to Meet Contract Requirements

The Design-Builder understands and agrees that if the Design-Builder fails to complete the Work in accordance with the Contract Documents, the Department will suffer substantial losses and damages. The cost to the Department of the administration of the contract, including engineering, inspection and supervisions, will be increased as the time occupied in the Work is lengthened. Loss will also accrue to the public due to delays in access to the Project. The Design-Builder agrees that it shall be liable for all such losses and damages.

17.1.2 Liquidated Damages

The Design-Builder and the Department have agreed to stipulate the amount payable by the Design-Builder in the event of its failure to achieve Substantial Completion by the Substantial Completion Deadline or to achieve Final Acceptance by the Final Acceptance Deadline. The Design-Builder acknowledges and agrees that such Liquidated Damages are intended to compensate the Department solely for the Design-Builder's failure to meet these Completion Deadlines. The Department's right to seek Liquidated Damages is the Department's sole and exclusive remedy for the Design-Builder's failure to achieve Substantial Completion by the Substantial Completion Deadline or to Achieve Final Acceptance by the Final Acceptance Deadline. Payment of Liquidated Damages shall not excuse the Design-Builder from liability from any other breach of Contract Document requirements, including any failure of the Work to conform to applicable requirements, or from the obligation to pay Daily Road User Costs in accordance with Section 17.1.3.

If the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Deadline or to achieve Final Acceptance by the Final Acceptance Deadline, the Design-Builder shall pay to the Department Liquidated Damages in the amounts agreed to in the GMP Amendment/NTP for Construction.

17.1.3 Daily Road User Costs

In addition to Liquidated Damages, the Design-Builder shall also be responsible for any stipulated lane use charges, lane site use charges, and contract site use charges (collectively, "Daily Road User Costs") as agreed to and set forth in the GMP Amendment/NTP for Construction.

The Design-Builder acknowledges and agrees that Daily Road User Costs are intended to compensate the Department solely for the Design-Builder's failure to meet these Contract Document requirements, and shall not excuse the Design-Builder from

liability from any other breach of Contract Document requirements, including any failure of the Work to conform to applicable requirements.

17.1.4 Maximum Liquidated Damages and Daily Road User Costs

Cumulative Liquidated Damages and Daily Road Use Costs under this Section 17.1 shall not exceed 100% of the Final GMP as the same may be adjusted by Change Order.

17.1.5 Multiple Assessments of Liquidated Damages and Daily Road User Costs

Liquidated Damages and Daily Road User Costs may be assessed simultaneously under more than one subsection of this Section 17.1.

17.1.6 Reasonableness of Delay Charge Amounts

The Design-Builder acknowledges and agrees that the Liquidated Damages and the Daily Road User Costs, if any, shall be set based on an evaluation by the Department of damages, which it will incur in each of the above events, including administrative costs. The Design-Builder and the Department agree that the parties have agreed or shall agree to such charges in order to fix the Design-Builder's costs and to avoid later disputes over which items are properly chargeable to the Design-Builder. The Design-Builder understands and agrees that any Liquidated Damages or Daily Road User Costs payable in accordance with this Section 17.1 are not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of this Design-Build Agreement. The Design-Builder further acknowledges and agrees that Liquidated Damages and Daily Road User Costs may be owing even though no Event of Default has occurred.

17.2 Offset; Waiver

17.2.1 Offset

The Department shall have the right to deduct any amount owed by the Design-Builder to the Department hereunder from any amounts owed by the Department to the Design-Builder under this Design-Build Agreement.

17.2.2 No Waiver

Permitting or requiring the Design-Builder to continue and finish the Work or any part thereof after a Completion Deadline shall not act as a waiver of the Department's right to receive Delay Charges hereunder or any rights or remedies otherwise available to the Department.

17.3 Payment of Delay Charges

To the extent Delay Charges are not deducted from any amount owed to the Department by the Design-Builder, the Department may send Design-Builder an invoice and the

Delay Charges shall be payable by the Design-Builder to the Department within ten Calendar Days after the Design-Builder's receipt of the invoice therefore.

18 INDEMNIFICATION

18.1 Indemnifications by Design-Builder

18.1.1 General Indemnities

Subject to Section 18.1.3, the Design-Builder shall release, defend, indemnify and hold harmless the Department and its agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from:

1. The failure by any Design-Builder-Related Entity to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Materials) or Governmental Approvals in performing the Work;
2. Any patent or copyright infringement or other improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to the Department or another Indemnified Party pursuant to this Design-Build Agreement; provided that this indemnity shall not apply to any infringement resulting from the Department's failure to comply with specific written instructions regarding use provided to the Department by the Design-Builder;
3. The negligent act or omission or willful misconduct of any Design-Builder-Related Entity;
4. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of the Design-Builder or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any Design-Builder-Related Entity;
5. Any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or Lien, provided that the

Department is not in default in payments owing to the Design-Builder with respect to such Work;

6. Any spill or release or threatened spill or release or exacerbation of Hazardous Materials: (i) attributable to the negligence, willful misconduct or breach of contract by any Design-Builder-Related Entity; or (ii) that was brought onto the Site by any Design-Builder-Related Entity; and
7. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Design-Builder-Related Entity with or hindering the progress or completion of work being performed by other contractors as described in Section 25.1, or failure of any Design-Builder-Related Entity to cooperate reasonably with other contractors in accordance therewith.

18.1.2 Design Defects

Subject to Section 18.1.3, the Design-Builder shall release, indemnify and hold harmless the Indemnified Parties from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, attributable to any bodily injury to or death of persons or damage to or loss of tangible property (including damage to utility facilities), and including reasonable attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from negligent Errors in the Design Documents.

18.1.3 Losses Caused by Indemnified Parties

The Design-Builder's indemnity obligation under Sections 18.1.1 and 18.1.2 shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the negligence, fault, gross negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

18.1.4 Claims by Employees

In claims by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.5 Reliance on Design-Builder's Performance

The Design-Builder hereby acknowledges and agrees that it is the Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely

on the Design-Builder's performance of such obligation. The Design-Builder further agrees that any review, acceptance and/or Approval by the Department and/or others hereunder shall not relieve the Design-Builder of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

18.1.6 Indemnities in Connection with Third-Party Agreements

18.1.6.1 The Design-Builder is advised that certain Third-Party Agreements contain provisions for the Design-Builder to indemnify, save and hold harmless the counterparties, their employees and agents with respect to certain matters. The Design-Builder hereby agrees to and shall perform and comply with such provisions of the Third-Party Agreements for the benefit of the counterparties, their employees and agents.

18.1.6.2 The Design-Builder is also advised that certain Third-Party Agreements may include agreements by the Department to indemnify, defend and hold harmless the counterparties with respect to certain matters. The Design-Builder's obligation under this Section 18.1 shall automatically apply to require it to release, indemnify, defend and hold harmless the counterparties, in addition to the Indemnified Parties, with respect to all such matters.

18.2 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge or reduce other rights or obligations, which would otherwise exist in favor of a party hereunder.

18.3 Comprehensive Environmental Response, Compensation, and Liability Act Agreement

Without limiting their generality, the indemnities set forth in Section 18.1.1.7 are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607(e), to insure, protect, hold harmless and indemnify the parties indemnified in said Section 18.1.1.7.

19 PARTNERING, CLAIMS FOR ADJUSTMENT AND DISPUTES

19.1 Partnering

The Department intends to encourage the use of an extensive partnering program among the Department, the Design-Builder, its Subcontractors and other stakeholders, where appropriate. The partnering relationship will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives include effective and efficient Project performance and completion on schedule, within budget and in accordance with the Contract Documents.

The Department anticipates a partnering effort involving the executive management, Project management, Project staff and others. The Design-Builder shall pay all costs associated with effectuating the partnership.

It is the intent of the parties that the dispute resolution provisions contained in this Section 19 shall apply only in the event that the normal Department-Design-Builder issue resolution efforts through partnering are not successful. The dispute resolution provisions set forth in Section 19.2 shall apply to all Disputes arising out of the Work that are not resolved by the parties through the partnering process, except as expressly provided to the contrary in the Contract Documents.

19.2 Dispute Resolution

19.2.1 General Provisions

All Disputes between the Design-Builder and the Department that are not resolved by the parties through the partnering process shall be resolved as provided by this Section.

Participation in and completion of this dispute resolution process is a condition precedent to an action or claim before the Arkansas State Claims Commission pursuant to A.C.A. §§ 19-10-200, et seq.

If a dispute arises relating to a Utility Agreement or the Utility Work thereunder, and the Utility Owner is a necessary or appropriate party to such dispute, then such dispute shall be resolved in the manner set forth in the applicable Utility Agreement, and the Design-Builder shall participate in such dispute resolution process as appropriate to resolve such dispute.

19.2.2 Continuation of Work

At all times during this Dispute resolution process or any subsequent administrative or court proceeding, and at all times during the pendency of any Dispute with any other project contractor, the Design-Builder and all Subcontractors shall proceed with the Work diligently, without delay, in accordance with all provisions of the Contract Documents.

19.2.3 Records Related to Dispute

Throughout the course of any work that is the subject of any Dispute, the Design-Builder shall keep complete records of the extra costs and time incurred related to the Dispute. The Design-Builder shall permit the Department access to these and all other records needed for evaluating the disputed issue(s) as determined by the Department. These records shall be retained for a period of not less than six years from the date of resolution of the Dispute.

19.2.4 Submission of Claim to Department Project Director

If the parties have been unable to resolve a Dispute through the partnering process, and the Design-Builder wishes to seek additional relief, the Design-Builder shall comply with the following procedures:

1. Within 14 Calendar Days (or as mutually agreed by the Department and the Design-Builder) after the date on which the Design-Builder and the Department first agree that the Dispute cannot be resolved through the partnering efforts of the parties, the Design-Builder shall submit a Claim to the Department, which shall be accompanied by all information required to be submitted with respect to an RCO as described in Section 13.2. Such information shall explain in detail, with supporting back-up documentation, the nature of the Claim and the claimed cost and schedule impacts as required by Section 13.2.
2. Concurrent with the submission of its Claim pursuant to Section 19.2.4.1, the Design-Builder also shall submit a sworn certification in a form acceptable to the Department, executed by an authorized representative with authority to bind the Design-Builder and with direct knowledge of the Dispute, certifying that: (i) the Claim is made in good faith and in accordance with the terms of the Contract Documents; (ii) the amount claimed accurately reflects the appropriate adjustments in the applicable Compensation Cap and/or extension in the Completion Deadlines, and includes all delay claims and direct and indirect costs sought by the Design-Builder to the extent reasonably known at the time; (iii) the supporting cost and pricing data are accurate, current and complete to the extent reasonably known at the time; (iv) the factual basis for the Claim is not falsely represented; and (v) except as expressly noted and justified by citation to legal authority, the amount claimed includes no attorneys' fees, interest or other generally non-compensable costs.
3. In the event any such Claim or protest package, supporting statement and the required certification is not filed within the time period set forth above and within the timing requirements of Section 13.2, the Design-Builder shall be deemed to have waived the right to pursue the Claim.

19.2.5 Decision by the Department Project Director

Within 60 Calendar Days after the Design-Builder's Claim, the Department Project Director shall provide a decision to both parties setting forth his or her conclusions regarding the Dispute. The Department Project Director shall base his or her findings and conclusions on the terms of the Contract Documents, established principles of law, statutes and regulations deemed by the Department Project Director to be applicable, and the facts and circumstances of the Dispute as found by the Department Project Director, and the information provided by the parties. The Department Project Director's decision shall include a statement of findings and conclusions upon all the

material issues of fact, law, or discretion presented by the record, and the appropriate order, sanction, relief or demand of the Department Project Director.

The Department Project Director may, at its discretion, hold an informal hearing prior to issuing his or her decision. If the Department Project Director holds an informal meeting, the Design-Builder shall be given the opportunity to make a presentation, and the Department Project Director shall consider such presentation when reaching its decision.

19.2.6 Submission of Claim to the Department Chief Engineer

Within 30 Calendar Days after issuance of the Department Project Director's decision, the Design-Builder may file an appeal of the decision with the Department Chief Engineer. The Department Project Director shall provide the Department Chief Engineer with, and the Department Chief Engineer shall review and consider, all records and information considered by the Department Project Director in making his or her decision. The Department Chief Engineer shall base his or her findings and conclusions on the terms of the Contract Documents, established principles of law, statutes and regulations deemed by the Department Chief Engineer to be applicable, and the facts and circumstances of the Dispute as found by the Department Chief Engineer, and the information provided by the parties.

The Department Chief Engineer may, at its discretion, hold an informal hearing prior to issuing his or her decision. If the Department Chief Engineer holds an informal meeting, the Design-Builder shall be given the opportunity to make a presentation, and the Department Chief Engineer shall consider such presentation when reaching its decision.

19.2.7 Decision by the Department Chief Engineer

The Department Chief Engineer will render a decision within 60 Calendar Days after the appeal has been filed. The Department Chief Engineer's decision shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record, and the appropriate order, sanction, relief or demand of the Department Chief Engineer.

19.2.8 Appeal to the Arkansas Claims Commission

The decision of the Department Chief Engineer shall constitute the Department's final decision, which may be appealed to the Arkansas Claims Commission within 60 Calendar Days of the issuance of the decision of the Department Chief Engineer, in accordance with A.C.A. §§ 19-10-200, et seq.

20 ACCEPTANCE OF PROJECT

20.1 Substantial Completion

As a pre-requisite to Substantial Completion, the Design-Builder shall provide written notice to the Department representing that the following have occurred with respect to the Project:

1. The Department and the Design-Builder have agreed upon a Punch List of items to be completed for Final Acceptance;
2. The Design-Builder has completed all Work (except for Punch List items, final cleanup and other items only included in the requirements for Final Acceptance);
3. The Design-Builder represents that the Work in connection with Substantial Completion has been performed in accordance with the requirements of the Contract Documents;
4. The Design-Builder represents that the Project may be operated safely without injury to any Person or damage to the Project or any other property on or off the Site;
5. The Design-Builder represents that the Project is ready to be opened for traffic and pedestrians, as applicable, and that no further work is required which would involve any lane or shoulder closure;
6. The Design-Builder has received all applicable Governmental Approvals required for the Project;
7. The Design-Builder has furnished to the Department certifications from the Design-Builder's design manager, in form and substance satisfactory to the Department, certifying that the Design Documents meet the requirements of the Contract Documents;
8. The Design-Builder has furnished to the Department certifications from the DB Project Manager, in form and substance satisfactory to the Department, certifying that the construction meets the requirements of the Contract Documents and that there are no outstanding Nonconforming Work or Punch List items, identified by the Design-Builder or the Department, as prerequisites to Substantial Completion; and
9. The Design-Builder has obtained all applicable Third-Party approvals relating to the Work (including Utility Owners as required under any applicable Utility Agreements), and all Third Parties have completed all work that involves obligations by the Design-Builder (including Utility Owners under any applicable Utility Agreements).

20.2 Notice of Substantial Completion

Within 10 Business Days following receipt of the Design-Builder's notice under Section 20.1, the Department will either (i) issue a Notice of Substantial Completion (which shall be backdated to the date the Design-Builder achieved Substantial Completion) or (ii) notify the Design-Builder of the Nonconforming Work or other prerequisites to Substantial Completion that have yet to be corrected or satisfied. If the Department provides notice to the Design-Builder pursuant to clause (ii), the Design-Builder shall provide written notification to the Department after it has corrected such Nonconforming Work and satisfied all such prerequisites, and the Department will verify that all prerequisites to Substantial Completion have been met and will issue a Notice of Substantial Completion.

20.3 Affidavit of Final Completion

Once the following have occurred, the Design-Builder shall provide the Department with an affidavit containing the statement and certifications described below (the "Affidavit of Final Completion"):

1. All Punch List items have been completed;
2. The Department has received all Design Documents, ROW record maps, surveys, Test data, and other deliverables required under the Contract Documents for the Project. The Design-Builder has furnished to the Department alignment points as part of the Final Design;
3. All of the Design-Builder's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish, and temporary facilities not incorporated into the Work have been removed from the Site, the Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of the Department and the Site is in good working order and condition;
4. The Design-Builder has furnished to the Department certifications from the DB Project Manager, in form and substance reasonably satisfactory to the Department, certifying that there are no outstanding Nonconforming Work or Punch List items; and
5. All of the Design-Builder's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the Department) have been satisfied in full or waived in writing by the Department.

The Affidavit of Final Completion shall include the following statement:

To the best of the Design-Builder's knowledge and belief, the Work under the Design-Build Agreement has been completed in accordance with the Contract Documents; no lawful debts for labor or materials are outstanding;

all requests for funds for undisputed work under the Design-Build Agreement, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Design-Build Agreement or under any adjustment issued thereunder for said undisputed work; there are no outstanding claims, Liens or stop notices relating to the Project, including claims by Utility Owners; there is no existing default by the Design-Builder under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or event of default under any Utility Agreement; and upon receipt of final payment, the Design-Builder and Subcontractors acknowledge that the Department and any and all employees of the Department and their authorized representatives will thereby be released, discharged and acquitted from any and all claims or liability for additional sums on account of undisputed work performed under the Design-Build Agreement.

The Affidavit of Final Completion shall certify to the following:

1. All Work has been performed in accordance with the requirements of the Contract Documents;
2. The Design-Builder has resolved any claims made by Subcontractors, Suppliers, Utility Owners, laborers, and others against the Design-Builder, the Department, or the Project, except for those claims for which the Subcontractor has executed a release against the Department, the Project, and the Payment Bond;
3. The Design-Builder has provided complete lien releases from all Subcontractors and Suppliers in a form and with language Approved by the Department;
4. The Design-Builder has no reason to believe that any Person has a valid claim against the Design-Builder, the Department, or the Project which has not been communicated in writing by the Design-Builder to the Department as of the date of the certificate; and
5. All guarantees, warranties, the Payment Bond and the Performance Bond are in full force and effect.

If the Design-Builder is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by the Department. Such a list shall describe any actions being taken by the Design-Builder to contest any such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each

such matter. The Department shall be under no obligation to issue a Notice of Final Acceptance if there are any such outstanding matters.

20.4 Notice of Final Acceptance

Within 15 Business Days following receipt of the Affidavit of Final Completion, the Department will either (i) issue a Notice of Final Acceptance (which shall be backdated to the date the Design-Builder achieved Final Acceptance); or (ii) notify the Design-Builder of the Nonconforming Work, Punch List items or other prerequisites to Final Acceptance (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the Department) that have yet to be corrected or completed. If the Department provides notice to the Design-Builder pursuant to clause (ii), the Design-Builder shall provide written notification to the Department after it has corrected such Nonconforming Work and satisfied such Punch List items and other outstanding prerequisites to Final Acceptance, and the Department will verify that all prerequisites to Final Acceptance have been met and will issue a Notice of Final Acceptance.

20.5 Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent the Department from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from the Design-Builder, the Surety(ies) or both, the amount of any overpayment sustained due to failure of the Design-Builder to fulfill the obligations under this Design-Build Agreement. A waiver on the part of the Department of any breach by the Design-Builder shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve the Design-Builder from any of its continuing obligations hereunder, or constitute any assumption of liability by the Department.

20.6 Opening of Sections of Project to Traffic

20.6.1 No Waiver

Opening of portions of the Project to the public prior to Final Acceptance does not constitute acceptance of the Work or a waiver of any provisions of the Contract Documents.

20.7 Assignment of Causes of Action

The Design-Builder hereby offers and agrees to assign to the 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. § 15), arising from purchases of goods, services or materials pursuant to this Design-Build Agreement or any Subcontract. This assignment shall be made and become effective at the time the Department tenders final payment to the Design-Builder, without further acknowledgment by the parties.

21 WARRANTIES

21.1 Warranties by Design-Builder

21.1.1 Project Warranties

The Design-Builder warrants that:

1. All design Work furnished pursuant to the Contract Documents shall comply with all applicable Legal Requirements and conform to the Professional Standard of Care;
2. The construction Work shall be free of defects and shall be performed in a good and workmanlike manner in accordance with Good Industry Practice;
3. Materials and equipment furnished under the Contract Documents shall be of good quality and shall be new; and
4. The Work shall meet all of the requirements of the Contract Documents.

21.1.2 Project Warranty Term

The Warranty for the Project shall commence upon Substantial Completion. Subject to extension under Section 21.2, the Warranty shall remain in effect until one year after Final Acceptance. If the Department determines that any of the Work has not met the standards set forth in this Section 21.1 at any time within the Warranty term, then the Design-Builder shall correct such Work as specified below, even if the performance of such corrective Work extends beyond the applicable Warranty term.

21.1.3 Corrective Work

Within seven Calendar Days of receipt by the Design-Builder of notice from the Department specifying a failure of any of the Work to satisfy the Design-Builder's Warranties, or of any Subcontractor representation, warranty, guarantee, or obligation which the Design-Builder is responsible to enforce, the Design-Builder and the Department shall mutually agree when and how the Design-Builder shall remedy such violation; provided, however, that in case of an emergency as indicated by the Department in its notice requiring immediate curative action, the Design-Builder and the Department shall agree on a remedy immediately upon notice by the Department of such emergency. If the Design-Builder does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the Design-Builder and the Department fail to reach such an agreement within such seven Calendar Day period (or immediately, in the case of emergency conditions), then the Department, after notice to the Design-Builder, shall have the right, but not the obligation, to perform or have performed by Third Parties the necessary remedy, and the costs thereof shall be borne by the Design-Builder. The Department may agree to accept Nonconforming Work in accordance with Section 5.10.2.

The Department and the Design-Builder shall conduct a walkthrough of the Site prior to expiration of the Warranty term and shall produce a Punch List of those items requiring Warranty Work. The Design-Builder shall commence correcting all items on the Punch List within seven Calendar Days and diligently complete all such corrections.

21.1.4 Costs of Correction of Work

The Design-Builder will bear all costs of correcting such rejected Work, including additional testing and inspections and other costs of the Department. The Design-Builder shall reimburse the Department and pay the Department's expenses made necessary thereby within ten Calendar Days after the Design-Builder's receipt of invoice therefore. The Design-Builder shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

21.2 Warranty of Corrected Work

The Warranties shall apply to all Work redone, repaired, corrected or replaced pursuant to the terms of this Design-Build Agreement. The Warranties as to each redone, repaired, corrected or replaced element of the Work shall extend beyond the original warranty period if necessary to provide at least a one-year warranty period following acceptance thereof by the Department or acceptance thereof by the appropriate Person who will own such element.

21.3 Subcontractor Warranties

21.3.1 Assignment

Without in any way derogating the Design-Builder's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, the Design-Builder shall obtain from all Subcontractors and cause to be extended to the Department, appropriate representations, warranties, guarantees and obligations with respect to the design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors, including all such representations, warranties, guarantees, and obligations required to be furnished by Subcontractors pursuant to the Contract Documents. All representations, warranties, guarantees, and obligations of Subcontractors shall: (i) be written so as to survive all the Department and the Design-Builder inspections, tests, and approvals; and (ii) run directly to and be enforceable by the Design-Builder and/or the Department and their respective successors and assigns. The Design-Builder hereby assigns to the Department all of the Design-Builder's rights and interest in all extended warranties for periods exceeding the applicable Warranty term which are received by the Design-Builder from any of its Subcontractors.

21.3.2 Enforcement

Upon receipt from the Department of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, the Design-Builder shall enforce or perform any such representation, warranty, guarantee, or

obligation, in addition to the Design-Builder's other obligations hereunder. The Department's rights under this Section 21.3.2 shall commence at the time such representation, warranty, guarantee, or obligation is furnished, and shall continue until the expiration of the Design-Builder's relevant Warranty (including extensions thereof under Section 21.2). Until such expiration, the Design-Builder shall be responsible for the cost of any equipment, material, labor (including re-engineering) or shipping, and the Design-Builder shall be required to replace or repair defective equipment, material or workmanship furnished by any Subcontractor.

21.4 No Limitation of Liability

The foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Design-Builder's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

21.5 Warranty Beneficiaries

In addition to benefiting the Department and its successors and assigns, the Warranties and Subcontractor warranties provided under this Section 21 shall inure to the benefit of, and shall be directly enforceable by, any local agencies and Utility Owners with respect to those portions of the Work owned or controlled by each such Person.

21.6 Remedies for Breach of Warranty

In addition to the Department's other rights and remedies hereunder, at law or in equity, the Design-Builder shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work.

21.7 Disputes

Any disagreement between the Department and the Design-Builder relating to this Section 21 shall be subject to the Dispute resolution provisions contained in Section 19, provided that the Design-Builder shall proceed as directed by the Department pending resolution of the Dispute.

22 Limitations on Liability

22.1 Limitation on the Design-Builder's Liability

Notwithstanding anything to the contrary contained in the Contract Documents, following execution of the GMP Amendment/NTP for Construction, the aggregate liability of the Design-Builder to the Department in relation to this Design-Build Agreement, whether such liability arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or other legal theory, shall not exceed an amount equal to the Final GMP.

22.2 Limitation on Consequential Damages

Notwithstanding any other provision of the Contract Documents, to the extent permitted by Legal Requirements, neither party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Design-Build Agreement, tort (including negligence) or any other theory of liability, and each party hereby releases the other party from any such liability.

22.3 Exceptions to the Design-Builder's Liability Limitations

The foregoing limitations on Design-Builder's liability in Sections 22.1 and 22.2 shall not apply to or limit any right of recovery the Department may have respecting the following:

1. Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant the Design-Build Agreement and (ii) covered by the proceeds of insurance actually carried by or insuring Design-Builder, regardless of whether required to be carried pursuant this Design-Build Agreement;
2. Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness, bad faith or gross negligence on the part of any Design-Builder-Related Entity;
3. Design-Builder's indemnities set forth in the Contract Documents, as they relate to third-party bodily injury and property damage;
4. Design-Builder's obligations to pay Delay Charges in accordance with Section 17; and
5. Losses arising out of Design-Builder releases of Hazardous Materials.

23 DOCUMENTS AND RECORDS

23.1 Project Records

23.1.1 Maintenance of Records

The Design-Builder shall maintain at the DB Project Manager's office in the State a complete set of all books, records and documents prepared or employed by the Design-Builder with respect to the Project.

23.1.2 Audit and Inspection Rights

The Department, FHWA, and the U.S. Comptroller General and their respective authorized representatives shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's and its Subcontractors' records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda

and other data relating to this Project, and the Design-Builder and its Subcontractors shall preserve these for a period of three years after final payment is made by FHWA to the Department for the Project, or for such longer period as may be required by applicable Legal Requirements. Such parties shall have the right to perform, or cause to be performed, an audit of the Design-Builder's accounting records during the term of this Design-Build Agreement or during the aforesaid three-year period (as may be extended by applicable Legal Requirements). The Design-Builder shall include a provision substantially similar to this Section 23.1.2 in its Subcontracts.

23.1.3 Claims Audits

All Claims filed against the Department shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of the Department or by an auditor under contract with the Department. No notice is required before commencing any audit before 60 Calendar Days after Final Acceptance. Thereafter, the Department shall provide 20 Calendar Days' notice to the Design-Builder, any Subcontractors or their respective agents before commencing an audit. The Design-Builder, Subcontractors or their agents shall provide adequate facilities, acceptable to the Department, for the audit during normal business hours. The Design-Builder, Subcontractors, and their agents shall cooperate with the auditors. Failure of the Design-Builder, Subcontractors, or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of the Design-Builder, Subcontractors, or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports;
2. Union agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices and requisitions;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Subcontractors' (including Suppliers) and agents' invoices;
11. Subcontractors' and agents' payment certificates;

12. Canceled checks (payroll and Suppliers);
13. Job cost report;
14. Job payroll ledger;
15. General ledger;
16. Cash disbursements journal;
17. E-mail, letters, and correspondence;
18. Network servers, data storage devices, backup media;
19. All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and
20. Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals and the rates for the individuals.

Full compliance by the Design-Builder with the provisions of this Section 23.1.4 is a contractual condition precedent to the Design-Builder's right to seek relief under Section 19. The Design-Builder represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 23.1.

The Design-Builder or a Subcontractor, as applicable, may request that any auditors or other Persons performing an audit or inspection pursuant to this Section 23.1 execute a reasonable non-disclosure agreement prior to conducting an audit or inspection of any documents, books, or records reasonably determined by, as applicable, the Design-Builder or Subcontractor to be confidential or proprietary.

23.2 Retention of Records Regarding Claims

All records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books and other evidence bearing on the Design-Builder's costs and expenses under the Contract Documents. The Design-Builder shall make these records and documents available for audit and inspection to the Department, at the Design-Builder's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to the Design-Builder).

23.3 Arkansas Freedom of Information Act

23.3.1 Applicability of Law

The Design-Builder acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials in the Design-Builder's or the Department's possession directly related to the Project, including materials submitted to the Department by the Design-Builder, are subject to the provisions of the Arkansas Freedom of Information Act. If any of the materials submitted by the Design-Builder to the Department are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Design-Builder, the Department shall provide notice to the Design-Builder of any request for the disclosure of such materials prior to making any such disclosure and give the Design-Builder an opportunity to assert, in writing and at its sole expense, a claimed exception under the Arkansas Freedom of Information Act or other applicable Legal Requirement within the time period specified in the notice issued by the Department and allowed under the Arkansas Freedom of Information Act.

23.3.2 Confidential Materials

Under no circumstances will the Department be responsible or liable to the Design-Builder or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of the Department.

23.3.3 Design-Builder to Defend Against Disclosure Request

In the event of litigation concerning the disclosure of any material submitted by the Design-Builder to the Department, the Department's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the Design-Builder shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk.

23.3.4 Cooperation with the Department Regarding Arkansas Freedom of Information Act Requests

In the event the Department receives an Arkansas Freedom of Information Act request for documents that are in the custody and control of the Design-Builder, the Design-Builder shall cooperate with the Department in responding to the request in a timely manner under the Arkansas Freedom of Information Act.

24 OWNERSHIP OF DOCUMENTS

24.1 Ownership

The copies and other tangible embodiments of the Design Documents are and shall remain the exclusive property of the Department. The Design-Builder shall use its best efforts to ensure all copies of the Design Documents are delivered or returned to the

Department or suitably accounted for upon the Department's request or upon final payment, whichever is earlier. The Design-Builder may retain one copy of the Design Documents for its records, but shall not use such copies for any purpose other than with respect to the Work without Department's prior written consent. The Intellectual Property Rights, if any, relating to the Design Documents or the contents of or concepts embodied in the Design Documents shall remain with and belong to the Design-Builder or its Subcontractors, as the case may be; provided, however, only those Design Documents which are stamped or marked as "proprietary" shall be deemed subject to Intellectual Property Rights, and failure of the Design-Builder or a Subcontractor, as the case may be, to stamp or mark Design Documents as such shall be deemed a waiver by the Design-Builder and the Subcontractor with respect to any current or future claim of any such Intellectual Property Rights against the Department, or the Department's contractors, subcontractors, vendors, or agents.

24.2 Assignment of Intellectual Property Rights

To the extent Design Documents are not stamped or marked as "proprietary", the Design-Builder hereby assigns, transfers, releases and conveys to the Department all worldwide right, title and interest of the Design-Builder in and to any Intellectual Property Rights associated with such Design Documents. The Design-Builder shall also cause all Subcontractors to assign, transfer, release and convey to the Department all of their respective worldwide rights, titles, and interests in and to any Intellectual Property Rights associated with such Design Documents.

24.3 Grant of License to Use Intellectual Property Rights

As to those Design Documents deemed subject to any form of Intellectual Property Rights, the Design-Builder hereby grants, and will cause to be granted and delivered to the Department from Subcontractors, a paid-up, non-exclusive, world-wide, irrevocable, transferable license, for the term of the Intellectual Property Rights, for the Department to use, reproduce and have reproduced, and for the Department to allow others to use, reproduce and have reproduced, such Design Documents and any derivative thereof, subject to the restrictions set forth below:

1. All Intellectual Property Rights in or relating to any of the Design Documents shall remain the property of the Design-Builder or the appropriate Subcontractor, whether or not the Project is constructed; and
2. The Department shall not, without the prior written consent of the Design-Builder, use such Design Documents, in whole or in part, for the construction of any other project. The Department may, however, at no cost to the Department, use such Design Documents (i) for completion of the Project by others upon termination of this Design-Build Agreement and (ii) for the construction, operation, maintenance and repair of (and for additions, improvements, changes or alterations to) the Project after its completion.

24.4 Vesting of Ownership of Design Documents

In confirmation and furtherance of the terms and provisions of this Section 24, ownership and title to the Design Documents shall vest in the Department immediately upon creation of such materials, as shall ownership and title to the Intellectual Property Rights relating thereto, to the extent such Intellectual Property Rights are assigned, transferred, released and conveyed to the Department pursuant to Section 24.2 above. In addition, the license granted to the Department pursuant to Section 24.3 above shall be deemed granted immediately upon creation of any of the Intellectual Property Rights to which it pertains.

25 COORDINATION WITH OTHERS

25.1 Coordination with Other Contractors of the Department

The Department reserves the right to perform and to contract with others to perform other or additional work on or near the Site. The Design-Builder shall coordinate with the Department, such other contractors, any other third-parties working on or adjacent to the Site, and any other contractors working with such parties to the extent reasonably necessary for the performance by the Department and such other contractors of their work, and shall cause its employees, agents, officers, and Design-Builder-Related Entities to so coordinate. If other separate contracts are awarded by the Department, the Design-Builder shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

If the Department exercises its right under Section 4.3 to contract with other contractors to perform outstanding Work on the Project, the Design-Builder shall coordinate with such other contractors in good faith to facilitate completion of the Project in a timely and effective manner.

25.2 Interference by Other Contractors of the Department

If the Design-Builder asserts that any of the Department's other contractors have hindered or interfered with the progress or completion of the Work, then the Design-Builder's sole remedy shall be to seek recourse against such other contractors. The Design-Builder shall have the right to ask the Department Project Manager to resolve such dispute, provided the other contractor and its sureties have agreed to submit the dispute to the Department Project Manager, and provided that such proceeding shall be conducted at no cost to the Department.

26 MISCELLANEOUS PROVISIONS

26.1 Amendments

This Design-Build Agreement may be amended only by a written instrument duly executed by the parties or their respective successors or assigns. For clarity, such requirement applies to any Amendment/NTP.

26.2 Waiver

26.2.1 No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

26.2.2 Custom Does not Constitute Waiver

No act, delay, or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

26.2.3 Waivers Must be in Writing

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

26.3 Independent Contractor

The Design-Builder is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the Department other than that of Project owner and independent contractor. In no event shall the relationship between the Department and the Design-Builder be construed as creating any relationship whatsoever between the Department and any of the Design-Builder's employees. Neither the Design-Builder nor any of its employees is or shall be deemed to be an employee of the Department. Except as otherwise specified in the Contract Documents, the Design-Builder has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that the Design-Builder or any Subcontractor hires or engages to perform or assist in performing the Work.

26.4 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of the Department and the Design-Builder and their permitted successors, assigns and legal representatives.

26.4.1 Assignment by the Department

The Department may assign all or part of its right, title, and interest in and to this Design-Build Agreement, including rights with respect to the surety bonds required hereunder and any other performance security provided, to any Person with the prior written approval of the Design-Builder.

26.4.2 Assignment by the Design-Builder

The Design-Builder may assign its rights to receive payment under the Contract Documents and in compliance with the requirements of the Contract Documents. The Design-Builder shall not otherwise sublet, transfer, assign, or dispose of any portion of this Design-Build Agreement, or delegate any of its duties hereunder, except with the Department's prior written approval, which approval shall be at the Department's sole discretion. The Design-Builder's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve the Design-Builder of its responsibility for the Work assigned or delegated, unless the Department, in its sole discretion, has Approved such relief from responsibility.

26.5 Designation of, and Cooperation with Representatives

26.5.1 Designation of Representatives

Identified below are representatives of the Department and the Design-Builder who are authorized to make decisions and bind the parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent written notice delivered to the other party in accordance with Section 26.11. 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 bind the Department or the Design-Builder.

The Department's representative is _____.

The Design-Builder's representatives are _____.

26.5.2 The Department's Representative to Execute Change Orders

Notwithstanding Section 26.5.1, the following is the only person who can execute Change Orders and other amendments to this Design-Build Agreement, including any Amendment/NTP, on behalf of the Department is _____. Such designation may

be changed by a subsequent written notice delivered by the Department to the Design-Builder in accordance with Section 26.11.

26.5.3 Cooperation

The Design-Builder shall cooperate with the Department and all representatives of the Department.

26.6 Gratuities and Conflicts of Interest

Neither the Design-Builder nor any of its employees, agents and representatives shall offer or give to an officer, official, or employee of the Department or the State gifts, entertainment, payments, loans, or gratuities. The Design-Builder represents and warrants that it has not previously offered or given any gifts, entertainment, payments, loans, or gratuities in violation of such prohibitions.

26.7 Survival

The dispute resolution provisions contained in Section 19, the indemnification provisions contained in Section 18, the warranty provisions contained in Section 21, and all other provisions, which by their inherent character should survive termination of this Design-Build Agreement, shall survive the termination of this Design-Build Agreement.

26.8 Restrictions on Employment of Present and Former Department Employees

The Design-Builder shall not be permitted to employ or make an offer of employment, for regular or part-time work related to any Department projects during the term of this Design-Build Agreement, to any person who:

1. Is a present employee of the Department;
2. Is a former employee of the Department and at any time during the person's employment with the Department, the person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, on any particular matter pertaining to this Design-Build Agreement;
3. Is a former employee of the Department and within 12 months of employment cessation, and under this Design-Build Agreement, will knowingly act as a principal or as an agent in matters that were within this person's official responsibility;
4. Is a former employee of the Department and within 12 months of employment cessation will engage in selling or attempting to sell commodities or services, including technical or professional services, to the Department, unless the former employee's last annual salary with the Department did not exceed \$10,500; or

5. Is a former employee of the Department and at any time was terminated with cause or allowed to resign/retire in lieu of termination with cause.

Any individual or entity acting as a principal or agent on behalf of any person disqualified pursuant to the terms of this Section 26.8 shall not be permitted to perform any work related to any Department project for the Design-Builder during the term of this Design-Build Agreement.

This Section 26.8 is not intended to preclude a former employee from accepting employment with the Design-Builder solely because the Design-Builder has entered into this Design-Build Agreement.

26.9 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Department and a Subcontractor or any other Person except the Design-Builder.

26.10 No Personal Liability

The Department's representatives are acting solely as agents and representatives of the Department when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They shall not be liable either personally or as employees of the Department for actions in their ordinary course of employment.

26.11 Notices and Communications

Notices and all other communications under the Contract Documents shall be in writing and shall be delivered through the Project's e-Builder website and other forms of written notice shall not be considered official notice. A notice shall be considered delivered and received when it is properly submitted to e-Builder.

26.12 Further Assurances

The Design-Builder shall promptly execute and deliver to the Department all such instruments and other documents and assurances as are reasonably requested by the Department to further evidence the obligations of the Design-Builder hereunder, including assurances regarding assignments of Subcontractors contained herein.

26.13 Severability

If any clause, provision, Section or part of this Design-Build Agreement is ruled invalid under Section 19 or otherwise by a court of competent jurisdiction, then the parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the applicable Compensation Cap and Completion Deadline(s) to account for any change in the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section or part shall not affect the validity or enforceability of the balance of this Design-Build Agreement, which shall be construed and enforced as if this Design-Build Agreement did not contain such invalid or unenforceable clause, provision, Section or part.

26.14 Headings

The captions of the Sections of the Contract Documents are for convenience only and shall not be deemed part of this Design-Build Agreement or considered in construing this Design-Build Agreement.

26.15 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State of Arkansas.

26.16 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the parties with respect to its subject matter.

26.17 Counterparts and Electronic Signatures

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be made and delivered electronically.

IN WITNESS WHEREOF, the parties have executed this Design-Build Agreement as of the as of the date last signed by a party hereto.

KEY, LLC

ARKANSAS STATE HIGHWAY
COMMISSION

By: _____
Signature

By: _____
Director of Highways and Transportation

Typed or Printed Name

Date

Date

EXHIBIT A

ACRONYMS, DEFINITIONS, AND SUBMITTALS

As used in the Design-Build Agreement to which this Exhibit is attached, and in the other Contract Documents (unless otherwise specified therein), the following acronyms shall have the meanings set forth below.

ACRONYMS	
Abbreviation	Title or Description
CAP	Connecting Arkansas Program
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
EPA	(U.S.) Environmental Protection Agency
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
ISO	International Organization for Standards
ITP	Instructions to Proposers
NEPA	National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.)
OSHA	United States Occupational Safety and Health Administration
RCO	Request for Change Order
RCP	Request for Change Proposal
RFC	Released for Construction
RFP	Request for Proposals
ROW	Right of Way
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USDOT	United States Department of Transportation

As used in the Design-Build Agreement to which this Exhibit is attached, and in the other Contract Documents (unless otherwise specified therein), the following terms shall have the meanings set forth below.

DEFINITIONS	
Term	Meaning
Abandonment	The Work necessary for each Utility (including appurtenances) to decommission a Utility which Utility is not removed using proper Utility Owner and/or industry procedures (e.g., flushing, capping, filling with grout or sand) or other procedures Approved by the Department.
Acceleration Costs	Those fully documented increased costs reasonably incurred by the Design-Builder (i.e., costs over and above what the Design-Builder would otherwise have incurred), which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.
Actual Cost	The Design-Builder's direct cost to provide labor, material, equipment (owned or invoiced rental), and administrative overhead necessary for the Work; excludes profit.
Affidavit of Final Completion	The meaning set forth in Section 20.3.
Affiliate	<p>(1) Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the: (i) Design-Builder or (ii) any Principal Participant; and</p> <p>(2) Any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by the: (i) Design-Builder, (ii) any Principal Participant, or (iii) any Affiliate of the Design-Builder under Part (1) of this definition.</p> <p>For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship, or otherwise.</p>
Alternate	A variation in Contract Document requirements on which a separate price is requested. If the Alternate is accepted, the variation will become a part of this Design-Build Agreement, and the amount of money quoted will be added or deducted from the then-current GMP to determine the revised GMP. Prices for accepted Alternates are already incorporated in the applicable GMP.

Amendment/NTP	The Preconstruction Phase Amendment/NTP and GMP Amendment/NTP for Construction.
Applicable Standards	The standards included in the Technical Provisions.
Application for Final Payment	The application described in Section 11.5.
Approve or Approval	The meaning set forth in Section 1.7.1.
Archaeological Conditions	Any human remains, artifacts, and/or other items of historical, archaeological or geological significance within the Right of Way to the extent that the existence of such item was not disclosed in any of the reports produced as part of the Preconstruction Work.
Arkansas State Highway and Transportation Department	The Department.
Business Day	A day that the Department is open for business.
Calendar Day	Each and every day shown on the calendar, including Saturdays and Sundays, beginning and ending at midnight.
Change Order	The meaning set forth in Sections 12 and 13.
Claim	A request by the Design-Builder for: (i) a time extension which is disputed by the Department, or (ii) payment of money or damages arising from work done by or on behalf of the Design-Builder in connection with the Design-Build Agreement which is disputed by the Department. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Design-Build Agreement amendment signed by all parties.
Compensation Cap	Any NTP or GMP, or any other binding compensation cap agreed to by the Department and Design-Builder in an Amendment/NTP or Work Package.
Completion Deadline	The Substantial Completion Deadline, the Final Acceptance Deadline, and any other milestone deadlines agreed to by the Department and the Design-Builder in an Amendment/NTP or Work Package.
Construction Phase	The Project phase beginning and ending as set forth in Section 4.1.1 during which all Construction Work will be completed.
Construction Work	All Work other than the Planning Phase Work and Preconstruction Phase Work.
Contract Documents	The meaning set forth in Section 1.2.
Contract Price	The Planning Phase Compensation, Preconstruction Phase Compensation, and Construction Compensation.
Critical Path	The longest path of activities, in terms of time, of logically connected activities on a Project Schedule ending with Final Acceptance. Any delay along a Critical Path will impact the timing of Substantial Completion or Final Acceptance.
Preconstruction Work	The Planning Phase Work and the Preconstruction Phase Work.
Daily Road User Costs	The meaning set forth in Section 17.1.3.
day	A Calendar Day.

DBE Performance Plan	The plan provided by the Design-Builder and Approved by the Department as described in Exhibit J.
Delay Charges	Means Liquidated Damages and Daily Road User Costs.
Department	The Arkansas Department of Transportation (formerly known as the Arkansas State Highway and Transportation Department), acting directly or through a representative authorized in writing, who is responsible for administrative supervision of the Project, whichever the context requires.
Department Project Director	
Department Chief Engineer	
Department Project Manager	
Department-Directed Changes	Any changes in the Work (including changes in the standards applicable to the Work) that the Department has directed the Design-Builder to perform as described in Section 13.
Design Documents	All drawings (including plans, elevations, sections, details, and diagrams), specifications, designs, “architectural work” (as such term is defined in the Architectural Works Copyright Protection Act of 1990), reports, calculations and records, at any stage of development or revision necessary for design of the Project in accordance with the Contract Documents, including shop drawings, the Released for Construction Documents and the Final Design prepared by or on behalf of the Design-Builder.
Design-Build Agreement	The Design-Build Agreement executed by the Department and the Design-Builder (to which this Exhibit A is attached), and any and all amendments thereto.
Design-Builder	The meaning set forth in the first page of the Design-Build Agreement.
Design-Builder-Related Entities	Design-Builder, Principal Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Design-Builder may be legally or contractually responsible.
Differing Site Conditions	A condition that (i) is a subsurface or latent condition encountered at the exact boring holes identified in the geotechnical reports produced as part of the Preconstruction Work, and (ii) differs materially from those conditions indicated in the geotechnical reports for such boring holes. The foregoing definition specifically excludes (w) Utility facilities, (x) Hazardous Materials, (y) non-contaminated water and (z) any other conditions that would otherwise constitute a Relief Event.
Disadvantaged Business Enterprise or DBE	A contracting firm certified to participate in the U.S. Department of Transportation financial assistance programs as a DBE by the Department pursuant to the “Arkansas Unified Disadvantaged Business Enterprise Certification Program.”

Dispute	Any written request for relief in any form arising out of or relating to the Contract Documents or the Project, including all contract claims, statutory claims, equitable claims, claims for extension of time, disagreements resulting from a change, a delay, a Change Order, any other written orders, or oral orders from the Department, including any direction, instruction, interpretation, or determination by the Department, but excluding claims that are not actionable against the Department by the Design-Builder on its own behalf or on behalf of any of its Subcontractors, claims arising in tort, claims relating to the scope or applicability of indemnities provided under the Contract Documents, claims relating to decisions within the sole discretion of the Department, claims for injunctive relief, and claims against insurance companies.
Effective Date	The date of execution of the Design-Build Agreement by the Department.
Engineer	A professional engineer registered with the Arkansas State Board of Licensure for Professional Engineers and Professional Surveyors who is responsible for engineering and administrative supervision of the Project on behalf of the Design-Builder, who is either an employee of the Design-Builder or a Design-Builder-Related Entity.
Engineer of Record	An engineer licensed in the State responsible for the final design of an element of the Work for the Design-Builder. The Engineer of Record is responsible to seal and sign the design plans in accordance with the requirements of the State Board.
Environmental Approval	All Governmental Approvals arising from or required by any Environmental Law in connection with the Project, including the NEPA environmental documents and environmental decision documents.
Environmental Laws	All Legal Requirements now or hereafter in effect relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Materials into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials 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 the statutes listed in the definition of Hazardous Materials; the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.; and the Eagle Protection Act, 16 U.S.C. § 668, each as amended.

Error	An error, omission or other defect.
Event of Default	A default as described in Section 16.1.1, following notice and opportunity to cure to the extent permitted by Section 16.1.2 and issuance by the Department of notice that an Event of Default has occurred.
Federal Acquisition Regulation	The Federal Acquisition Regulation contained in 48 CFR § 1.101 et seq. and all related regulations that implement or supplement the FAR.
Federal Requirements	All Legal Requirements applicable to work financed with federal funds and the provisions required to be included in FHWA-assisted contracts, including the provisions set forth in Exhibit H.
Final Acceptance	Acceptance of the Project as described in Section 20.4.
Final Acceptance Deadline	The date specified as such in the Project Schedule, as the same may be updated with the Approval of the Department.
Final Design	Depending on the context: (i) the final complete version of the construction drawings prepared by the Design-Builder, (ii) the design concepts set forth in the Design Documents, which shall be substantially consistent with the Contract Documents or (iii) the process of development of the Design Documents which includes Preliminary Design Submittals, Final Design Submittals and Released for Construction Documents.
Final GMP	The GMP set forth in the executed GMP Proposal/NTP for Construction.
Force Majeure Event	Any of the following acts, events, conditions or occurrences to the extent that the same are beyond the Design-Builder's reasonable control, which could not have been either foreseen or avoided by the exercise of due diligence, and which has an adverse effect on the Design-Builder's ability to perform its obligations hereunder: <ol style="list-style-type: none"> 1. Fire; 2. Hurricane or tornado; 3. Any epidemic or quarantine restrictions occurring within the vicinity of the Project; 4. A blockade or freight embargos; 5. War, whether foreign or domestic; 6. Acts of the public enemy; 7. Work stoppages, work slowdowns, or other labor disruptions, unless caused by or otherwise under the control or influence of the Design-Builder occurring within the vicinity of the Project; and 8. River flow of greater than 200,000 cubic feet per second.
GMP	The meaning set forth in Section 4.2.3.3.
GMP Amendment/NTP for Construction	An amendment establishing the Final GMP and satisfying the requirements set forth in Section 4.2.3.5.

GMP Amendment Proposal	The meaning set forth in Section 4.2.3.2.
Good Industry Practice	The exercise of the degree of skill, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced design-build contractor seeking in good faith to comply with its contractual obligations engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project and which complies with applicable Legal Requirements. Good Industry Practice includes, without limitation, taking reasonable steps to assure sufficient personnel are employed and available to perform the work and such personnel are adequately skilled, experienced and trained to complete the Work.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.
Governmental Person	Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the State of Arkansas and agencies and subdivisions thereof, other than the Department.
Hazardous Materials	<p>Any of the following:</p> <ol style="list-style-type: none"> 1. 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. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; all as 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; 2. Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; 3. Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles; and 4. Asbestos or asbestos-containing materials in structures and or other

	improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).
Hazardous Materials Report	The hazardous materials initial site assessment produced as part of the Preconstruction Work.
Holidays	Any day the Department is closed for a holiday.
ICE	The independent cost estimator retained by the Department.
Including, or including, includes, included	All references in the Contract Documents to “Including”, “includes” or “included” shall mean “including, but not limited to”.
Indemnified Parties	The meaning set forth in Section 18.1.
Instructions to Proposers	The RFP document identified as Instructions to Proposers.
Intellectual Property Rights	All patents, copyrights, trademarks, service marks, trade secrets and all similar and related intellectual property rights protected under any Legal Requirement.
Key Personnel	The persons identified on Exhibit C as key personnel, subject to revision in accordance with the Contract Documents.
Legal Requirements	All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals or tax laws.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance or attempt to make such an 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 or other instrument intended to perfect a security interest).
Liquidated Damages	The charges described in Section 17.1.2.
Master Utility Agreement	An agreement made between the Department and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project.
Materials	All components required for use in the construction of the Project.
New Environmental Approval	Any of the following: 1. A new Environmental Approval; and 2. A renewal, revision, modification or amendment to one or more of the Environmental Approvals.
Nonconforming Work	Work performed that does not meet the requirements of the Contract Documents.

No-Cost Change Order	The meaning set forth in Section 13.8.
Notice of Final Acceptance	The notice delivered to the Design-Builder under Section 20.4 stating that final Department acceptance of the Project has occurred.
Notice of Substantial Completion	The notice delivered to the Design-Builder under Section 20.2 stating that Substantial Completion of the Project has occurred.
Notice of Termination	A notice issued by the Department or the Design-Builder to terminate the Design-Build Agreement pursuant to Section 15.
NTE Amount	The Planning Phase NTE Amount or Preconstruction Phase NTE Amount.
OJT Requirements	The on-the-job training program requirements set forth in Exhibit I.
Payment Bond	The payment bond described in Section 8.2.
Performance Bond	The performance bond described in Section 8.1.
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including the Department.
Planning Phase	The Project phase beginning and ending as set forth in Section 4.1.1 during which Preconstruction Work will be performed.
Planning Phase Compensation	The meaning set forth in Section 11.1.1.
Planning Phase NTE Amount	\$846,860.00 and is calculated as set forth on Exhibit B-1
Planning Phase Work	The preliminary engineering work related to the preparation of NEPA documents and other work described in Exhibit B.
Preconstruction Phase	The Project phase beginning and ending as set forth in Section 4.1.1 during which Preconstruction Work will be performed.
Preconstruction Phase Compensation	The meaning set forth in Section 11.1.2.
Preconstruction Phase NTE Amount	The not-to-exceed amount applicable to the Preconstruction Phase Compensation agreed to in the Preconstruction Phase Amendment/NTP.
Preconstruction Phase Work	All work necessary in connection with the preparation and finalization of the GMP Amendment/NTP for Construction, including any such work described in the Preconstruction Work Amendment/NTP. For clarity, the Preconstruction Phase Work shall not include any Construction Work authorized by an executed Work Package.
Preliminary Design Submittal	All non-final Design Documents prepared by the Design-Builder.
Principal Participant	Each of the Persons identified on Exhibit C as a principal participant.

Professional Standard of Care	A standard of care consistent with the degree of skill and care that would ordinarily be exercised by other competent practitioners of the same discipline and profession currently practicing under similar circumstances as the circumstances affecting the Project, taking into consideration the contemporary state of the art and the geographical area of the Project.
Project	, as described by the Contract Documents.
Project Information Documents	Any Project studies or other related information prepared by the Design-Builder and/or the Department as part of the Preconstruction Work.
Project Management Plan	The project management plan developed by the Design-Builder as part of the Preconstruction Work and Approved by the Department.
Project Schedule	The initial Approved Project schedule included in the GMP Amendment/NTP for Construction and any subsequent Approved Project schedule, determined based on context.
Project Team	The meaning set forth in Exhibit E.
Provisional Sum	A fixed sum for a specific line item of Work that is included as an allowance amount in the Guaranteed Maximum Price upon agreement by the Design-Builder and the Department. Provisional Sums may be used in instances when the actual price or quantity for such item of Work is unknown at the time of agreement on the Guaranteed Maximum Price. Where appropriate, Provisional Sums may include a designation of unit pricing and the estimated number of units making up the Provisional Sums. The Design-Builder and the Department shall agree on all Provisional Sums as part of the GMP Amendment. Whenever actual costs for a Provisional Sum item are more or less than the applicable Provisional Sum, the Guaranteed Maximum Price will be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the Provisional Sum amount set forth in the GMP Amendment. Where unit prices are specified in a Provisional Sum, such unit pricing shall be used to calculate the amount of any additive or deductive Change Order, as appropriate.
Proposal or Proposal Documents	Those documents constituting the Design-Builder's proposal in response to the RFP, including any supplements to proposals as may have been requested by the Department.
Proposer	The meaning set forth in Recital C.
Protection of Existing Utilities	Any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection of Existing Utilities;

	whereas temporarily moving power lines to another location after cutting them would be considered a temporary Relocation.
Punch List	The list of Work items with respect to the Project which remain to be completed after achievement of Substantial Completion, generally limited to minor incidental items of Work necessary to correct imperfections that have no adverse effect on the safety or operability of the Project and will not require lane closures to complete.
Quality Control	The activities performed by the Design-Builder, designer, producer or manufacturer to ensure and document that a product meets the requirements of the Contract Documents. Activities may include checking, materials handling and construction procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any sampling, testing, and inspection done for these purposes.
Quality Management Plan	The quality management plan developed by the Design-Builder as part of the Preconstruction Work and Approved by the Department.
Record Drawings	Documents that depict the final completed Project, including all changes from RFC Documents and data showing all items such as the electrical systems, drainage systems, lighting systems, underground utilities, traffic controls, intelligent transportation system, signing placement, highway alignment and grade revisions, bridge detail changes, bridge settlement reference elevations and joint seal measurements, typical sections, cross sections, and all other relevant data, including any operations and maintenance manuals for mechanical and electrical systems.
Reimbursable Utility	A Utility for which the relevant Utility Owner is entitled to reimbursement for the relinquishment of related Utility Easements or for Relocation costs pursuant to the Department's <i>Utility Accommodation Policy</i> (November 16, 2010), available at http://www.arkansashighways.com/right_of_way_division/Utility%20Accommodation%20Policy%20effective%201-1-2012.pdf .
Released for Construction Documents	All drawings, specifications, revisions thereto, and any other items necessary to construct the Work, signed and sealed by the Engineer of Record.
Relief Event	The meaning set forth in Sections 12.1.1.
Relief Event Notice	The meaning set forth in Section 12.2.1.
Relocation or Relocate	As related to Utilities, each Removal, transfer of location, Abandonment and/or Protection of Existing Utilities as necessary to ensure their continued safe operation and structural integrity (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.

Removal	Work necessary to remove any Utilities for which leaving the Utilities in-place is not feasible or not permitted, or which the Design-Builder otherwise proposes to be removed in order to accommodate or permit construction of the Project, regardless of whether or not replacements for such Utilities are being installed in other locations.
Request for Change Order	A Design-Builder initiated request for a change order made pursuant to Sections 12 and 13.
Request for Change Proposal	A proposal issued by the Department under Section 13.
Request for Progress Payment	A request made by Design-Builder for payment pursuant to Section 11.3.2.
Request for Proposals	The Request for Proposals for the Project issued by the Department on September 28, 2018, including all addenda thereto.
Review and Comment	The meaning set forth in Section 1.7.2.
Right of Way	The land use rights already owned or to be acquired by the Department to make up the Site.
ROW Plans	The meaning set forth in Section 6.1.1.
Safety Plan	The safety plan developed by the Design-Builder as part of the Preconstruction Work and Approved by the Department.
Schedule of Values	The meaning set forth in Section 4.2.3.4.
Site	The parcels of ROW identified on the ROW Plans or upon which the Project is to be constructed and installed as well as all other areas in the vicinity used by the Design-Builder for construction Work.
Standard Specifications	The 2014 edition of the Standard Specifications for Highway Construction for the Arkansas State Highway and Transportation Department, now Arkansas Department of Transportation.
State	The State of Arkansas, acting by and through the Department.
State Board	The Arkansas Board of Licensure for Professional Engineers that has the responsibility to regulate, license, and monitor the practices of Professional Engineers in the State.
Structures	Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, storm drains, service pipes, underdrains, foundation drains, fences, guardrail, signs, end sections, traffic signals, light standards, and other features that may be encountered in the Work and not otherwise classified.
Subcontract	Any subcontract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between the Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor or Subconsultant	Any Person with whom the Design-Builder has entered into any Subcontract, and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Substantial Completion	Achievement of all Work necessary to meet the Substantial Completion Deadline as described in Section 20.1.

Substantial Completion Deadline	The date specified as such in the Project Schedule, as the same may be updated with the Approval of the Department.
Substructure	That part of a bridge structure below the bearings of simple and continuous spans; all buttresses and piers below the skewbacks of arches; all parts of rigid frames, or integral bents below tops of footings or tops of caissons; and also, all parts of the abutments, backwalls and wingwalls, except handrails and handrail posts.
Superstructure	All parts of a bridge structure not defined as Substructure.
Supplier	Any Person other than employees of the Design-Builder not performing work at the Site that supplies machinery, equipment, materials or systems to the Design-Builder or any Subcontractor 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	A corporate body duly authorized to do business in the State of Arkansas, and which has issued one or more of the Payment and Performance Bonds.
Technical Provisions	The technical provisions agreed to during the Preconstruction Phase.
Test	The procedure and method of acquiring and recording physical data and comparing it to set standards and submitting a statement to such conditions or operations as will lead to its acceptance or rejection (deficiency, defect, Nonconforming Work) of the item.
Third Party	Any Governmental Person, railroad, property owner or other third party having regulatory jurisdiction or property rights over or in any aspect of the Project, Work or the Right of Way.
Third-Party Agreement	An agreement between the Department and any Third Party related to the Project.
Threatened or Endangered Species	Any species listed by the United States Fish and Wildlife Service as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.
Unidentified Utility	Any Utility, other than a service line, present on the Site that was not identified or was incorrectly shown in the Utility Map and which was not known and could not reasonably have been known, identified, discovered, observed or anticipated by the Developer prior to the date the GMP Amendment/NTP for Construction is executed undertaking due diligence pursuant to Good Industry Practice, provided that the following Utilities shall not be Unidentified Utilities: (i) any Utility located at or less than 10 feet distant from the horizontal centerline indicated therefor in the Utility Map (without regard to vertical location) and (ii) any Utility that has an actual nominal diameter (excluding casings and any other appurtenances) within 12 inches of the size indicated in the Utility Map.

United States Department of Transportation (USDOT)	United States Department of Transportation or any executive department or agency thereof, or as the context may require, the USDOT Secretary or other person who may at the time be acting in the capacity of Secretary, or an authorized representative or any other person otherwise authorized to perform the functions to be performed hereunder by USDOT.
Utility or utility	A privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other products that directly or indirectly serve the public. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any service line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service line. The term “Utility” shall specifically exclude privately owned irrigation facilities, existing storm water facilities, traffic signals and street lights, without regard to whether or not such items are included in the definition of “Utility” in the Utility Agreements.
Utility Agreement	A Master Utility Agreement and/or a Work Order, and other agreements entered into with Utility Owners.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.
Utility Map	The utility map and related documents developed by the Design-BUILDER as part of the Preconstruction Work and Approved by the Department.
Utility Owner	The owner or operator of any Utility.
Warranty	Any warranty made by the Design-BUILDER in Section 21.1.
Work	Depending upon the placement and context of its use, Work shall mean one or more of the Planning Phase Work, Preconstruction Phase Work, Construction Phase Work or all of the Work. In general, Work shall include, in totality and in each respective Phase, as applicable, all duties and services to be furnished and provided by Design-BUILDER as required by the Contract Documents, including the administrative, design, engineering, quality control, quality assurance, Relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Materials, equipment, documentation and other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by the Department or other Persons. In certain cases the term is also used to mean the products of the Work.
Work Order	An ordering agreement (as the same may be amended from time to time) among the Department, a Utility Owner and the Design-BUILDER, providing detailed information and terms relating to the Relocation of

	a particular Utility, which is executed pursuant to a master utility agreement.
Work Package	The meaning set forth in Section 4.2.3.1.

EXHIBIT B

PLANNING PHASE WORK PLAN

The Design-Build Agreement, particularly with respect to the Planning Phase, is designed to ensure that there is an objective NEPA process, that public officials and citizens have the necessary environmental impact information for federally funded actions before actions are taken, and that Design-Builder does not assume an unnecessary amount of risk in the event the NEPA process results in a significant change in the Project, and that the amount payable by the Department to the Design-Builder does not include significant contingency as the result of risk placed on the Design-Builder associated with significant changes in the Project arising out of the NEPA process. Consistent with 23 C.F.R. Section 636.109, the Design-Build Agreement incorporates (a) provisions ensuring that all environmental and mitigation measures identified in connection with required Environmental Approvals will be implemented, (b) provisions ensuring that no commitments are made to any alternative being evaluated in connection with required Environmental Approvals, and (c) provisions providing for the right to terminate the Design-Build Agreement (with equitable compensation) in the event of Project revisions deriving from the required Environmental Approvals, including in the case that the no-build alternative is selected in connection therewith.

The Department intends to begin environmental document preparation in early 2021. In accordance with Federal requirements, the work of the Design-Builder during this phase will be limited to specific activities in the scope of work and conducted under communication protocols necessary to keep the functions separated. See the preliminary matrix of responsibilities and roles of various participants during the NEPA process set forth in ITP Exhibit C-3.

The Design-Builder scope of work for the Planning Phase is expected to include the following:

- Preliminary design / preliminary engineering, as requested by the Department to develop additional alternatives
 - Scope excludes preparation of NEPA documents
- Site investigations, subsurface utility investigations, geotechnical studies
- Third-party coordination for Right of Way, railroad, and utilities (anticipated to be led by the Design-Builder under Department oversight)
- Preliminary constructability analysis
- Cost and schedule estimates related to preliminary engineering
- Project management plan development
 - Management plan for Preconstruction Phase
 - Design standards
 - Preliminary construction management plan
 - QA/QC plan
 - Subcontracting plan
 - Estimating plan for GMP
- DBE outreach
- Development of Preconstruction Phase Amendment/NTP
 - The calculation of the Planning Phase NTE Amount is attached hereto as Exhibit B-1.

KEY LLC

		HOURS																							
TASK	Required Key Personnel Add'l. Key Personnel Other Personnel	PM	DM	RDL	RPE	BDL	BPE	TEL	UM	ECM	HHL	HPE	PIL	PCM	SCH	CM	CE	ACE	ECE	CRM	ADMIN	APDL	TOTAL		
Develop/refine alternatives			60																				60		
Refine preferred proposal alternative				20	120	12	24	4		8													188		
Refine up to 2 planning phase or other proposal alternatives				40	230	24	40	4		8													346		
Third Party Coordination																									
Railroad			8			12	12		8														40		
ROW			8	4	12																		24		
Utilities			8	2	4				72														86		
Review environmental consultant detailed traffic analysis								40															40		
Conduct drainage/hydraulic analysis																									
Develop existing conditions H&H models											12	68											80		
Develop initial proposed conditions H&H models											8	52											60		
Modify initial proposed conditions H&H models for one hydraulic structure design iteration											8	40											48		
Prepare floodplain mapping												8											8		
Prepare technical memorandum											4	12											16		
Perform constructability & cost review of alternatives	20	8	8	12	4	8		8								20	100	50	20	20			278		
Develop cost and schedule estimates related to preliminary engineering		24	8	12	8	12		8															72		
Develop engineering schedule										4				6	40								50		
Integrate NEPA schedule										8					24								32		
Develop Cost Structure/Design/Pre-Construction	5													6			80	40	20	15			166		
Develop framework for Pre-Construction schedule															40								40		
NEPA Coordination																									
Review design elements in draft environmental technical reports				8	8																		16		
Review design elements in draft environmental assessment				6	4																		10		
Support preparation of public meeting materials & attend meeting	10	8	8	4	8					8			24			10							80		
Support design public hearing materials preparation & attend hearing	10	8	8	4	8								24			10							72		
Review final environmental assessment/FONSI										32													32		
Project Management Plan Development																									
Management plan for preconstruction phase	10	16	4		4			4						8		4							50		
Design Standards	4	8	16		16											4							48		
Preliminary construction management plan	15															15				5			35		
QA/QC plan	4	8	16		16					4						2							50		
Subcontracting Plan	8															5	5	5	2	5			30		
Estimating plan for GMP	10															20	95	50	40	40			255		
Site Visit	8	8	8		8			8								8							48		
Team Meetings (1 hr per week for 21 months)	90	40	84	30	64	30		24	24														410		
Project Management / Administration	40	80	8																		80		208		
Development of Preconstruction Amendment/NTP	20	24																		20			64		
Progressive DB Process Support																						80	80		
TOTAL Hours - KEY LLC	254	316	248	440	184	126	84	120	96	32	180	48	20	104	98	280	145	82	105	80	80		3,122		

LABOR COSTS			
Category - Description (Key Personnel in bold) (Additional Key Personnel in bold italic) (Other Personnel in normal text)	Hourly Rate	Hours	Amount
Project Manager - PM	\$ 250.00	254	\$63,500
Design Manager - DM	\$ 340.00	316	\$107,440
Roadway Design Lead - RDL	\$ 225.00	248	\$55,800
Roadway Project Engineer - RPE	\$ 185.00	440	\$81,400
Roadway Design Engineer - RDE	\$ 105.00	0	\$0
Sr. Roadway Designer - SRD	\$ 165.00	0	\$0
Bridge Design Lead - BDL	\$ 335.00	184	\$61,640
Bridge Project Engineer - BPE	\$ 190.00	126	\$23,940
Bridge Design Engineer - BDE	\$ 110.00	0	\$0
Sr. Bridge Technician - SBT	\$ 115.00	0	\$0
Traffic Engineer Lead - TEL	\$ 290.00	84	\$24,360
Traffic Project Engineer - TPE	\$ 160.00	0	\$0
Traffic Design Engineer - TDE	\$ 115.00	0	\$0
Utility Manager - UM	\$ 270.00	120	\$32,400
Environmental Compliance Manager - ECM	\$ 245.00	96	\$23,520
Hydraulics & Hydrology Lead - HHL	\$ 235.00	32	\$7,520
Hydraulics & Hydrology Project Engineer - HPE	\$ 150.00	180	\$27,000
Hydraulics & Hydrology Design Engineer - HDE	\$ 110.00	0	\$0
Public Involvement Lead - PIL	\$ 120.00	48	\$5,760
Signal Engineer Lead - SEL	\$ 150.00	0	\$0
Project Controls Manager - PCM	\$ 290.00	20	\$5,800
Scheduler - SCH	\$ 215.00	104	\$22,360
Construction Manager - CM	\$ 215.00	98	\$21,070
Cost Estimator - CE	\$ 180.00	280	\$50,400
Assistant Cost Estimator - ACE	\$ 135.00	145	\$19,575
Executive Cost Estimator - ECE	\$ 285.00	82	\$23,370
Constructability & Risk Manager - CRM	\$ 165.00	105	\$17,325
Admin Asst. - ADMIN	\$ 90.00	80	\$7,200
Alternative Project Development Lead - APDL	\$ 460.00	80	\$36,800
Subtotal Hours		3,122	
Subtotal Labor Costs			\$718,180

EXPENSES			
ITEM	Quantity	Unit	Rate
Grubbs, Hoskyn, Barton & Wyatt subconsultant expense:			Amount
Perform Preliminary Geotechnical Analysis	1	Estimated	\$50,000
OR Colan subconsultant expense:			
ROW Cost Estimate	1	Estimated	\$20,000
Relocation Plan	1	Estimated	\$35,000
Attend Public Meetings	1	Estimated	\$6,000
Key expenses:			
Travel to ARDOT - Jackson to LR Airfare	15	trip	\$650
Rental Car for Air Travel	5	day	\$85
Lodging/Hotel (Taxes/less included)	15	night	\$115
Meals (Overnight stay required) per GSA	15	day	\$55
Mileage (3 trips - Jackson to ARDOT at 410 miles)	1,230	mile	\$0.56
Overnight Mail	10	each	\$20.47
Garver expenses:			
B&W Photocopies (8 1/2" x 11")	5,000	each	\$0.10
B&W Photocopies (11" x 17")	500	each	\$0.20
Color Photocopies (11" x 17")	1,000	each	\$1.30
42" B&W Roll Plots (10 - 5' plots)	50	lin. ft.	\$1.75
42" Color Roll Plots (10 - 5' plots)	50	lin. ft.	\$7.00
Mileage (5 trips - NLR to project site at 266 miles)	1,330	mile	\$0.56
Mileage (24 trips to ARDOT at 28 miles)	672	mile	\$0.56
Overnight Mail	5	each	\$20.46
H&H Model from FEMA	1	each	\$500
Subtotal Expenses			\$128,680
Total NTE Amount			\$846,860

BASIS OF ESTIMATE	
Assumptions/Description:	
Geotechnical Assumptions:	
Geotechnical investigation will consist of preliminary borings taken in low lying areas to evaluate potential cost implications associated with soil improvement strategies	
ROW Assumptions:	
ROW Cost Estimate, Relocation Plan and Attend Public Meetings billed on an hourly basis not to exceed 160 hours	
Roadway Assumptions:	
Up to 3 Alternatives will be investigated.	
Graphics developed for alternatives will consist of plan view roll plots showing geometry (centerlines, lane edges, and shoulder edges) and preliminary right of way on top of an aerial photograph.	
Conservative right of way limits will be developed based on basic template roadway modeling. Detailed 3D models will not be developed for alternatives.	
Quantity takeoffs will be developed for major cost drivers only. Other quantities will be estimated on a parametric or percentage basis.	
Bridge Assumptions:	
Evaluate type and size of structures required for each of the three potential alternatives. Configurations will be displayed on roadway plan & profiles.	
Bridge layout development is not included.	
Traffic Assumptions:	
Perform one site visit to evaluate existing conditions and existing equipment	
Participate in discussions with regards to developing and refining alternatives	
Review the environmental design consultant detailed traffic analysis	
Participate in weekly team meetings	
H & H Assumptions:	
One proposed alternative will be modeled, based on basic roadway template modeling and hydraulic structure locations.	
A two-dimensional (2D) HEC-RAS hydraulic model with rain-on-the-mesh will be utilized.	
A limited-detail HEC-HMS hydrologic model of the project area will be developed to calculate excess precipitation for input to the 2D hydraulic model.	
The 2D hydraulic model will be based primarily on publicly-available lidar topographic data and will include limited survey information for channel cross sections and existing drainage structures.	
The existing conditions hydraulic model will establish baseline water surface elevations (WSELs) within the project area.	
One iteration of hydraulic structure sizing/configuration will be performed, if required, to attempt to mitigate any WSEL rises.	
Further hydraulic model refinement and iterations are anticipated in subsequent design phases.	

EXHIBIT C

KEY PERSONNEL AND PRINCIPAL PARTICIPANTS

Project Manager - PM	
Design Manager - DM	
Project Controls Manager - PCM	
Construction Manager - CM	
<i>Roadway Design Lead - RDL</i>	
<i>Bridge Design Lead - BDL</i>	
<i>Traffic Engineer Lead - TEL</i>	
<i>Utility Manager - UM</i>	
<i>Environmental Compliance Manager - ECM</i>	
<i>Hydraulics & Hydrology Lead - HHL</i>	
<i>Public Involvement Lead - PIL</i>	
<i>Signal Engineer Lead - SEL</i>	
<i>Cost Estimator - CE</i>	
<i>Constructability & Risk Manager - CRM</i>	

Indicates Required Key Personnel

Indicates Additional Key Personnel

Principal Participant –

EXHIBIT D
HOURLY RATES

Project Manager - PM	\$ 250.00
Design Manager - DM	\$ 340.00
<i>Roadway Design Lead - RDL</i>	\$ 225.00
Roadway Project Engineer - RPE	\$ 185.00
Roadway Design Engineer - RDE	\$ 105.00
Sr. Roadway Designer - SRD	\$ 165.00
<i>Bridge Design Lead - BDL</i>	\$ 335.00
Bridge Project Engineer - BPE	\$ 190.00
Bridge Design Engineer - BDE	\$ 110.00
Sr. Bridge Technician - SBT	\$ 115.00
<i>Traffic Engineer Lead - TEL</i>	\$ 290.00
Traffic Project Engineer - TPE	\$ 160.00
Traffic Design Engineer - TDE	\$ 115.00
<i>Utility Manager - UM</i>	\$ 270.00
<i>Environmental Compliance Manager - ECM</i>	\$ 245.00
<i>Hydraulics & Hydrology Lead - HHL</i>	\$ 235.00
Hydraulics & Hydrology Project Engineer - HPE	\$ 150.00
Hydraulics & Hydrology Design Engineer - HDE	\$ 110.00
<i>Public Involvement Lead - PIL</i>	\$ 120.00
<i>Signal Engineer Lead - SEL</i>	\$ 150.00
Project Controls Manager - PCM	\$ 290.00
Scheduler - SCH	\$ 215.00
Construction Manager - CM	\$ 215.00
<i>Cost Estimator - CE</i>	\$ 180.00
<i>Constructability & Risk Manager - CRM</i>	\$ 165.00
Admin Asst. - ADMIN	\$ 90.00
Alternative Project Delivery Lead - APDM	\$ 460.00
<i>Assistant Cost Estimator – ACE</i>	\$135.00
<i>Executive Cost Estimator (CFO) – ECE</i>	\$285.00

Indicates Required Key Personnel

Indicates Additional Key Personnel

Indicates Other Personnel

EXHIBIT E

FAIR PRICING APPROACH

The Contractor shall work collaboratively with the Department to maximize the scope, value, and quality of the Project during the performance of the Preconstruction Services. Such efforts shall include the following:

1. Development of a collaborative team environment that fosters communication, accountability, and trust;
2. Collaboration the Department and its representatives including but not limited to the ICE.
3. Participation in workshops and recurring meetings with the Department to discuss risk and identify opportunities and innovations;
4. Participation in the interactive design process to incorporate risk mitigation strategies and innovations into the design;
5. Performance of plan and specification reviews and quantity reconciliation meetings at major milestones as determined by the parties;
6. Preparation of opinions of probable construction cost (“OPCC”) at various milestones. This includes the obligation to share information with the Department and to maintain confidentiality among various Department representatives as requested by the Department to ensure the independence of the Department’s cost estimate.
7. Participation in price reconciliation meetings to review differences in the assumptions of those items; and

Section 1. Initial Approach to Cost Meetings

Before any pricing of the Work begins in development of the GMP Amendment/NTP for Construction, the Contractor shall meet with the Department, and to discuss and agree on the pricing strategy for the GMP Amendment/NTP for Construction. The following issues will be discussed:

1. Definition of fair market price;
2. Acceptable percentage of price difference between the Contractor and the Department which may use an estimate prepared by the ICE;
3. Expectation of PD-B cost versus low bid;
4. Overhead and profit margins (includes management labor above project manager level, audited home office overhead rate, and profit margin);

5. Labor and equipment rates;
6. Subcontractor quotes and self-performed work; and
7. Number of OPCCs and bid submittals.

Section 2. Risk and Opportunity Workshop, Constructability Review, and Quantity Reconciliation Meeting

The Contractor shall participate in a risk and opportunity workshop to identify and prioritize risks, discuss possible risk mitigation strategies, and explore risk sharing concepts. The workshop shall seek to quantify risks and predict probabilities of occurrence in an effort to predict a total Project contingency figure. The meeting shall focus on risk mitigation and how risks would affect bid items. For the priority risks, associated bid items will be identified and the affected pricing components (production rates, labor, materials cost, etc.) summarized for each.

During the risk and opportunity workshop, the attendees will also discuss constructability review comments and issues related to quantities. The Contractor shall review plans to ensure that the risk mitigation strategies and opportunities stemming from the risk and opportunity workshop have been incorporated. This review shall also include quantity takeoffs, verification, and reconciliation to ensure all bidding parties have agreed to bid quantities.

Section 3. OPCCs

After the risk and opportunity workshop, the Contractor shall prepare a production-based OPCC based on a pre-formatted Excel spreadsheet with the bidding schedule provided by the Department. The Department or its designated representative will also prepare its own version of the OPCC. The Contractor and the Department will each use their own construction schedule in development of their respective estimate. The Contractor shall separately account for indirect items, profit, and risk in the estimate. Once the OPCC estimates are complete, the Contractor shall submit its spreadsheet to the Department. The Department or its designated representative will compare the costs for each item in the Contractor's OPCC and highlight any items that vary from the Department's estimate by more than the divergence percentage identified by the Department. The total cost of each OPCC will also be compared by the Department to ensure that the OPCCs are within the Project budget. The Department will then return the spreadsheet to the Contractor and other involved parties.

Section 4. OPCC Price Reconciliation Meeting

The Contractor shall meet with the Department to discuss the assumptions for items which have a discrepancy greater than the divergence factor defined by the Department. Costs will not be discussed. Rather, the factors that contribute to the costs are shared and discussed. The goal of these meetings is to clarify and resolve differences where possible between estimators. The goal is that the total project cost be at fair-market value at the time the GMP is determined with respect to the GMP Amendment/NTP for Construction.

EXHIBIT F

FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **[NAME AND LEGAL STATUS OF DESIGN-BUILDER]** as Principal, and **[NAME AND LEGAL STATUS OF SURETY]** authorized to do business in the State of Arkansas, as Surety, are held and firmly bound unto the State of Arkansas for the use and benefit of the Arkansas State Highway Commission, and its successors and assigns for one hundred percent of the contract amount in the sum of:

[INSERT AMOUNT]

(\$[●]), lawful money of the United States of America to be paid to said Arkansas State Highway Commission, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors or assigns, jointly and severally, firmly by these presents.

Signed, sealed and delivered this date _____

THE CONDITION OF THIS BOND is as follows: That, whereas the Principal, has entered into a Design-Build Agreement with the Arkansas State Highway Commission, by and through the Arkansas Department of Transportation, for the design and construction of that certain project in Pulaski County Arkansas, designated as

Job [●] FEDERAL AID PROJECT

Job Name:

also known as the _____ Project, consisting of interchange improvements where _____

, more specifically described in the Design-Build Agreement, such work to be performed in strict accordance with the terms and conditions of the Design-Build Agreement.

NOW, THEREFORE, if the Principal shall in all things stand and abide by and well and truly observe, do keep and perform all and singular, the terms, covenants, guarantees and agreements in the Design-Build Agreement to be observed, kept, done and performed, and each of them, at the time and in the manner and form therein specified, and shall do and perform all the labor and work as specified in the Design-Build Agreement and in strict accordance with the terms of the Design-Build Agreement, along with any and all modifications thereof, and shall be bound to the Arkansas State Highway Commission for all overpayments made to the Design-Builder in accordance with Section 20.5 of the Design-Build Agreement, and shall complete said work within the time specified in said Design-Build Agreement, then this obligation shall be null and void; otherwise to remain in full force and effect.

PERFORMANCE BOND (Continued)

The Surety hereon further agrees that lack of knowledge by the Surety of any delay in the progress of the work by the Principal shall not operate as a defense by the Surety to any claim or suit on this bond, it being understood that the Surety shall receive reasonable notice of all steps looking to the cancellation of the Principal, and, or, the reletting of the work.

If the Design-Build Agreement is placed in default or terminated in accordance with Section 16 of the Design-Build Agreement, a suspension order will be issued effective on the date that the Arkansas State Highway Commission gives notice of default or termination. A resumption order will be issued sixty (60) days after the date of the suspension order or when work is actually resumed if prior to sixty (60) days. If the Arkansas State Highway Commission determines that special circumstances or project complexity justify, this sixty-day period may be modified. If the responsible Surety fails to actively respond to the resumption order within thirty (30) days and to secure immediate completion/closing of the project, then no future bonds will be accepted from the Surety until the matter is resolved to the Department's satisfaction.

WITNESS OUR HANDS, this date _____

Surety

Principal

Surety

By: _____
Licensed Agent, State of Arkansas

By: _____

PRINTED NAME: _____
(Must Be Legible)

Filed with the Arkansas State Highway Commission for approval this date _____.

EXHIBIT G

FORM PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, [NAME AND LEGAL STATUS OF DESIGN-BUILDER] as Principal, and [NAME AND LEGAL STATUS OF SURETY] authorized to do business in the State of Arkansas, as Surety, are held and firmly bound unto the State of Arkansas for the use and benefit of the Arkansas State Highway Commission, and its successors and assigns for eighty percent of the contract amount in the sum of:

[INSERT AMOUNT]

(\$[●]), lawful money of the United States of America to be paid to said Arkansas State Highway Commission, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors or assigns, jointly and severally, firmly by these presents

Signed, sealed and delivered this date _____.

THE CONDITION OF THIS BOND is as follows: That, whereas the Principal, has entered into a Design-Build Agreement with the Arkansas State Highway Commission, by and through the Arkansas Department of Transportation, for the design and construction of that certain project in Pulaski County Arkansas, designated as

Job [●] FEDERAL AID PROJECT

Job Name:

also known as the

more specifically described in the Design-Build Agreement, such work to be performed in strict accordance with the terms and conditions of the Design-Build Agreement.

NOW, THEREFORE, if the Principal shall pay all bills and claims for all materials, labor and supplies entered into contingent or incident to the construction of said work, or used in the course of performance of the work, then this obligation shall be null and void; otherwise to remain in full force and effect.

The Surety hereon further agrees that lack of knowledge by the Surety of any delay in the progress of the work by the Principal shall not operate as a defense by the Surety to any claim or suit on this bond, it being understood that the Surety shall receive notice of all steps looking to the cancellation of the Design-Build Agreement, and, or, the reletting of the work.

The Surety Company hereon agrees to pay all unpaid claims for all materials, labor and supplies entered into contingent or incident to the construction of said work or used in the course of said work including but not limited to materials, labor and supplies described in and provided

for in Act Nos. 65 and 368 of 1929, Act No. 82 of 1935, and Acts amendatory thereof. Unpaid claims for materials, labor and supplies entered into contingent or incident to construction of said work or used in the performance of said work shall have a right of action on this bond in accordance with the provisions of Ark. Code Ann. § 22-9-403 and Ark. Code Ann. § 18-44-503. However, no suit, action or proceeding shall be brought on this bond outside the State of Arkansas.

WITNESS OUR HANDS, this date _____

Surety

Principal

Surety

By: _____
Licensed Agent, State of Arkansas

By: _____

PRINTED NAME: _____
(Must Be Legible)

Filed with the Arkansas State Highway Commission for approval this date _____.

EXHIBIT H
FEDERAL REQUIREMENTS

[See attached.]

EXHIBIT I

ON-THE-JOB TRAINING PROGRAM

1. **Training Requirement.** The Design-Builder shall provide on-the-job training (“OJT”) aimed at developing full journeymen in the type of trades and job classifications required for the Work. The Design-Builder shall seek to provide at least the minimum number of training slots (consisting of 520 to 1040 hours each) determined by the Department during the Preconstruction Phase to be the goal for the Project. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. The goals for minority and female participation established in accordance with the Federal Requirements apply to all training performed by the Design-Builder in the covered area.
2. **Training Objective.** The primary object of the training program shall be the training and upgrading of minorities, women, and disadvantaged individuals toward journey-level status. For purposes of this Exhibit I, a “disadvantaged individual” is an individual that falls under the poverty threshold established by the U.S. Department of Health and Human Services Poverty Guidelines. Training in classifications such as clerk-typist, secretary, bookkeeper, fire fighter, office engineer, estimator, timekeeper, laborer, or flag person shall not be considered toward the training goals required under this Exhibit I.
3. **Training Requirements and Subcontractors.** The Design-Builder may not assign any portion of the training requirements established herein to a Subcontractor without the prior Approval of the Department and the written approval of the Subcontractor.
4. **Required Submittals.** The Design-Builder shall submit the following to the Department for Approval:
 - (a) A completed Form 1 (“Training Commitment Form” or “TCF”) specifying the training program, number of trainees, training classification, estimated starting date and training hours required per training classification to be used to fulfill the training requirement; and
 - (b) A completed Form 2 for each trainee, which shall include the following information:
 - (i) Name;
 - (ii) Last Four Digits of Social Security Number;
 - (iii) Address;
 - (iv) Telephone Number;
 - (v) Race/Ethnic Origin;
 - (vi) Gender;

- (vii) Training Classification;
 - (viii) Training Starting Date; and
 - (ix) Classification(s) previously trained and date training was completed (if applicable).
5. **Acceptable Training Programs.** Only training programs approved by the Department with FHWA concurrence, the U.S. Department of Labor, its agencies, or by a state Apprenticeship Agency or Council recognized by the U.S. Department of Labor may be used to fulfill training requirements hereunder.
6. **Monthly Reports.** The Design-Builder shall provide OJT progress reports to the Department simultaneously with each Request for Progress Payment. The reports shall include the following:
- (a) The number of training hours accumulated by each trainee during the prior month submitted on Form 3;
 - (b) The names of any new trainees not previously provided to the Department, along with the information described in Section 4(b) for such new trainees submitted on Form 2 (any new trainees shall be subject to the Department's Approval); and
 - (c) A trainee termination form submitted on Form 4 for any trainee that completed his or her training during the prior month or otherwise ended his or her participation in the training program.
7. **Information Provided to Trainees.** The Design-Builder, prior to the start of training, shall provide written notice to each individual to be trained under the Design-Builder's training program of that individual's designation as a trainee, the training program and classification under which training will be provided, the length of the training program, and the hourly wage rate to be paid to the trainee. Each month, while enrolled in the training program, the Design-Builder shall inform the trainees of the number of hours they have accumulated in the training program. Upon graduation, each trainee shall be issued a permanent certification designating the bearer as a graduate journey person of the appropriate training program.
8. **Limitations on Trainee Participation.** No employee shall be employed as a trainee in any classification in which the employee has successfully completed a training course leading to journey-level status or in which the employee has been employed at the journey level. Individuals may be trained a maximum of three times as long as the training is for the purpose of upgrading that individual. If the trainee is enrolled more than once on the Project, the trainee will only count as one trainee for purposes of satisfying the number of trainees required to be enrolled pursuant to the requirements of this Exhibit I. The Design-Builder shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. The Design-Builder's findings in each case shall be documented.

9. **Payment to the Design-Builder for Training.** The Department shall pay the Design-Builder \$2.00 per hour of training provided to individuals under an Approved training program. Such \$2.00 per hour payment will be made regardless of whether the Design-Builder receives additional training program funds from other sources, provided that such other sources do not prohibit the Design-Builder from receiving payment from the Department for the training. Payment for off-Site training may be made only if the Approved training program includes provision for off-Site training, the trainees are concurrently employed on the Project and the Design-Builder contributes to the cost of the training, provides the training instruction, or pays the trainees' wages during the off-Site training.
10. **Timing of Training.** It is expected that each trainee will begin training on the Project as soon as feasible following the start of Work requiring the skill on which such trainee will be trained and remain on the Project until either the trainee has completed the training program or training opportunities no longer exist in the relevant work classification. It is desired that all trainees be on board for the entire length of the Project. The Design-Builder will not earn any credit toward the OJT goal for any trainee that is terminated or leaves the Project prior to completing the training program (although the Design-Builder will get paid for the work done by any such trainee pursuant to Section 9).
11. **Trainee Pay.** The Design-Builder shall pay each trainee no less than 60 percent of the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including the Davis-Bacon Act, and as provided in the Federal Requirements for the first half of the trainee's training period, 75 percent of such rates for the third quarter of the trainee's training period, and 90 percent of such rates for the last quarter of the trainee's training period. Notwithstanding the forgoing, if a trainee on this Project is already in an approved existing program, then the appropriate rates approved by the U.S. Departments of Labor or Transportation in connection with such existing program shall apply to all trainees being trained for the same classification as such trainee on this Project.

EXHIBIT I FORM 1

TRAINING COMMITMENT FORM

The Design-Builder will provide training in the following crafts and in the amount of hours indicated below.

Training Program _____

Number of Trainees	Training Classification	Estimated Starting Date	Minimum Number of Training Hours Required Per Trainee

EXHIBIT I FORM 2
REGISTRATION FOR OJT PROGRAM

NAME _____ SS# _____ (last four)

ADDRESS _____
STREET

CITY STATE ZIP CODE

TELEPHONE _____ SEX _____ RACE _____

DESIGN-BUILDER _____

ADDRESS _____
STREET

CITY STATE ZIP CODE

TRAINING CLASSIFICATION _____

DATE TRAINING STARTED _____

CLASSIFICATIONS PREVIOUSLY TRAINED _____

JOB NUMBER _____ JOB SITE _____

SIGNATURE - APPLICANT

SIGNATURE – DESIGN-BUILDER

SUPERVISOR _____

CONTACT NUMBER _____

THIS IS AN EQUAL OPPORTUNITY PROGRAM

EXHIBIT I FORM 3
ON-THE-JOB TRAINING
MONTHLY CERTIFIED TRAINING HOURS

Job Number _____

Design-Builder _____

Trainee Name _____

Job Classification _____

Month _____

Total of Monthly Hours _____

Total Accumulated Training Hours _____

EXHIBIT I FORM 4
TRAINEE TERMINATION FORM

Design-Builder _____ Job Number _____
FAP Number _____

1. Name of Trainee _____
2. Classification _____
3. Social Security Number (last four) _____
4. Total Hours Trained _____
5. Hourly Wage at Time of Termination _____
6. Date of Termination _____
7. Reason for Termination (Check Appropriate Item)

- _____ a. Program completed - retained as journeyman
- _____ b. Program completed - not retained by the Design-Builder
- _____ c. Illness
- _____ d. Laid-off; construction phase or road completed
- _____ e. Fired (Explain below)
- _____ f. Relocated
- _____ g. Death
- _____ h. Strike, work stoppage, did not return
- _____ i. Quit to work for another contractor or company
- _____ j. Did not return from seasonal layoff
- _____ k. Military
- _____ l. Personal or health problems (Explain)
- _____ m. Lack of transportation and/or travel distance
- _____ n. Reason unknown

8. Comments on Trainee Performance (Use reverse if required)

EXHIBIT J

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

1. **Purpose.** The purpose of this Exhibit J is to carry out and implement the Department's and the U.S. Department of Transportation's ("DOT") policies and regulations to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
2. **Policy.** It is the policy of the Department to ensure nondiscrimination on the basis of race, color, age, disability, national origin, and sex in the award and administration of contracts in the Department's highway and transit programs. In support of this policy, the Department encourages and assists those businesses owned and controlled by socially and economically disadvantaged individuals as determined in accordance with CFR 49 Part 26.

"Disadvantaged Business Enterprise" or "DBE" means a contracting firm certified to participate in the U.S. Department of Transportation financial assistance programs as a DBE by the Department pursuant to the "Arkansas Unified Disadvantaged Business Enterprise Certification Program."
3. **Design-Builder Assurances.**
 - (a) Neither the Design-Builder nor any Subcontractor shall discriminate on the basis of race, color, age, disability, national origin, or sex in the performance of the Design-Build Agreement. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award, administration and performance of its Subcontracts. Failure by the Design-Builder to carry out these requirements is a material breach of the Design-Build Agreement, which may result in termination of the Design-Build Agreement or such other remedy as the Department deems appropriate.
 - (b) The Design-Builder agrees to ensure that DBEs have a full and equal opportunity to participate in the performance of Subcontracts on this Project financed in whole or in part with Federal funds. In this regard the Design-Builder shall take all necessary and reasonable steps in accordance with this Exhibit J to ensure that DBEs have an equal opportunity to compete for and perform Work on contracts.
4. **Design-Build Agreement DBE Goal.** The Department shall determine the DBE participation goal for the Project during the Preconstruction Phase. The Design-Builder shall establish individual contract DBE goals as appropriate for each Subcontractor to ensure that the DBE goal is met or exceeded. The Department will monitor the Design-Builder's activities to determine if they are conducted in a manner consistent with the requirements of 49 CFR Part 26, the Design-Build Agreement requirements and the Design-Builder's DBE Performance Plan.
5. **Submittal of Documents.** The following documents have been or shall be submitted:
 - (a) **DBE Goal Certification** was submitted as part of the Design-Builder's Proposal.

- (b) **DBE Performance Plan** shall be submitted prior to issuance of the GMP Amendment/NTP for Construction. The DBE Performance Plan shall include completed copies of Forms 1, 2, and 3.
 - (c) **Monthly Reports** shall be submitted monthly with each Request for Progress Payment.
6. **DBE Performance Plan.** The Design-Builder shall submit the DBE Performance Plan for the Department's Approval prior to issuance of the GMP Amendment/NTP for Construction.

The DBE Performance Plan shall set forth Design-Builder's plan to meet the DBE participation goal, and shall provide for an effective method of achieving those goals, and reporting to the Department regarding DBE participation. The DBE Performance Plan shall also set forth a proactive outreach program for DBE firms. The minimum requirements are as follows:

- (d) **DBE Goals.** The DBE Performance Plan shall set forth the Design-Builder's plan to meet the Project goal for DBE participation, with meaningful design and construction representation, throughout the term of the Design-Build Agreement. It shall include the following information, which shall be set forth in the form attached hereto as Form 1:
 - (i) The estimated dollar amount of DBE subcontracts to be awarded and paid for design and construction; and
 - (ii) The areas and types of anticipated Work to be subcontracted to DBE firms and the anticipated timing of such Work.

DBE Subcontracts shall be distributed among work classifications on the basis of the Design-Builder's needs and the availability of DBE firms in the various classifications.

- (e) **Description of Approach to Good Faith Efforts.** The DBE Performance Plan shall describe the good faith efforts the Design-Builder will take to ensure that DBEs have maximum opportunity to successfully bid and perform on the Design-Build Agreement, and that the Design-Builder meets its DBE goal. These efforts shall include but not be limited to the following:
 - (i) Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the Work.
 - (ii) Selecting portions of the Work to be performed by DBEs to increase the likelihood of meeting the DBE participation goal for the Project (including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation).

- (iii) Providing interested DBEs with adequate information about plans, specifications, and requirements of the Design-Build Agreement in a timely manner to assist them in responding to a solicitation;
- (iv) Negotiating in good faith to secure Subcontracts with DBEs whether or not committed to prior to Design-Build Agreement award;
- (v) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- (vi) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (vii) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (viii) Continuing to provide assistance to DBE Subcontractors in obtaining bonding, lines of credit, etc., if required by the applicable Subcontract;
- (ix) Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting the Department's approval to substitute the DBE;
- (x) Timely payment of all monies due and owing to DBE contractors, subcontractors, consultants, sub-consultants, suppliers and service providers, in accordance with the requirements of Sections 7.6.4 and 11.4 of the Design-Build Agreement;
- (xi) Timely submittal of complete and accurate DBE payment reports in accordance with the reporting requirements specified herein.
- (xii) Timely submittal of "good faith efforts" information and documentation to the Department throughout the term of the Design-Build Agreement, as Subcontracts are entered into and new Subcontractors are selected;
- (xiii) Informing the Department in writing in a timely manner of any problems anticipated in attaining the DBE participation goal for the Project; and
- (xiv) If the Design-Builder or any Subcontractor requests a substitution of a DBE firm, the Design-Builder or the applicable Subcontractor must exert good faith efforts to replace the DBE firm with another DBE firm, and must include all documentation to substantiate its good faith efforts, subject to the Department's approval.

(f) **Good Faith Efforts Forms.** The Design-Builder shall submit the following documentation of its good faith efforts with its DBE Performance Plan:

- (i) Form 2 – Bidder’s List, providing information on all DBE and non-DBE firms that submitted a bid/proposal for the Project, including:
 - (1) The firm’s name;
 - (2) The firm’s address;
 - (3) The firm’s status as a DBE or non-DBE; and
 - (4) The type of work/work category the firm proposed to perform.
- (ii) Form 3 – Good Faith Efforts showing the good faith efforts that the Design-Builder has made to provide equal opportunities to DBE firms, and including a certification on behalf of the Design-Builder and its Subcontractors that the Design-Builder has made a good faith effort to ensure that DBEs have an equal opportunity to compete for and perform on the Design-Build Agreement.

The information and documentation required by Form 3 includes the following, which must be provided:

- (1) The names and dates of advertisement of each newspaper, trade paper and minority-focus paper in which the Design-Builder placed requests for DBE participation (the actual advertisement and the number of times it was run shall be included);
- (2) The names and dates of written notices to certified DBEs solicited by direct mail or other means for this Project, and the methods used to follow up on these solicitations;
- (3) Items of work for which the Design-Builder requested bids, proposals or materials to be supplied by DBEs and the information furnished to DBEs, for example plans, specifications and requirements for the work and any break downs of work into economically feasible units to facilitate DBE participation;
- (4) The names of DBEs that submitted bids or proposals for any of the work indicated above, which were not accepted by the Design-Builder; a summary the Design-Builder’s discussions and/or negotiations with them; the name of the contractor, subcontractor, consultant, sub-consultant, supplier or service provider that was selected for the work and the reasons therefore. If the reason for the DBE rejection is price, state the rejected DBE’s price bid/proposal and that of the selected contractor, subcontractor, consultant, sub-consultant, supplier or service provider.

- (5) A description of the assistance the Design-Builder extended to rejected DBEs identified above to remedy the bid deficiencies;
 - (6) Efforts to assist DBEs on obtaining bonding, lines of credit, insurance;
 - (7) Effective use of services of available minority/women community organizations, contractor groups and local/state/Federal minority/women business assistance offices.
- (iii) Any additional documentation that demonstrates the Design-Builder made good faith efforts, including but not limited to the Design-Builder's efforts to encourage its Subcontractors to solicit DBE participation in their Subcontracts.
- (g) **DBE Coordinator.** The initial DBE Coordinator shall be identified during the Preconstruction Phase and shall be subject to the Department's reasonable approval. The DBE Coordinator may be replaced by the Design-Builder with the Department's reasonable approval. The initial DBE Coordinator, and any replacement DBE Coordinator, must be a direct, full-time employee of a Principal Participant or of a firm that is responsible for performing more than 15 percent of the design or more than 20 percent of the construction of the Project, and must possess a minimum of three years of experience in DBE outreach or mentorship for complex construction projects. The responsibilities of the DBE Coordinator shall include managing and implementing the DBE Performance Plan, and ensuring compliance with 49 CFR Part 26, the DBE Performance Plan, the Federal Requirements and the OJT Requirements. The DBE Coordinator shall be responsible for developing, managing and implementing the DBE Performance Plan on a day-to-day basis, for carrying out technical assistance activities for DBEs, and for disseminating information on available business and subcontracting opportunities so that DBEs are provided an equitable opportunity to compete and perform the Work on behalf of the Design-Builder. The DBE Coordinator shall work with the Department DBE specialist assigned to the Project to ensure that all rules and regulations are carried out in accordance with the Department's DBE requirements and the federal regulations. All DBE participation will be reviewed and Approved by the Department prior to being counted towards the Project DBE goal.
- (h) **DBE Outreach Program.** The DBE Performance Plan shall describe in detail the processes Design-Builder will use to achieve the following:
 - (i) Develop a proactive outreach program for DBEs;
 - (ii) Assist DBEs in identifying subcontracting opportunities on the Project, and assist subcontractors in identifying concerns for their specific subcontracting needs;

- (iii) Provide for training for DBEs, and coordinate with the Department's Equal Employment Opportunity / Disadvantaged Business Enterprise Section;
 - (iv) Provide technical business assistance for DBEs, including coordination with ArDOT DBE Supportive Services; and
 - (v) Work cooperatively with the Department, including the obligation to forward to the Department any complaints received regarding the Design-Builder's efforts to be in compliance with the DBE requirements described herein.
- (i) **Record Keeping for Monthly DBE Progress Reports.** The DBE Performance Plan shall describe in detail the processes Design-Builder will use to keep records regarding the progress of DBE participation sufficient to provide the information required in the monthly DBE progress reports as described in Section 7.
 - (j) **DBE Subcontracts.** The DBE Performance Plan shall ensure that whenever a DBE Subcontract is signed the Design-Builder shall promptly provide the Department with the following information regarding the Subcontract:
 - (i) The name and business address of the Subcontractors.
 - (ii) The total dollar amount of the Subcontract.
 - (iii) The specific work items covered by the Subcontract.
 - (iv) The amount of the Subcontract to be credited to design or construction.
 - (v) The estimated quantities of each work item.

No Work shall be performed by a DBE under a Subcontract until the Review and Comment process for such Subcontract required under Section 7.6.2 of the Design-Build Agreement is completed.

- 7. **Monthly DBE Progress Reports.** The Design-Builder shall provide DBE participation progress reports to the Department simultaneously with each Request for Progress Payment. The reports shall include the following information for each DBE Subcontract under which Work was performed during the applicable payment period:

- (k) The name of the relevant DBE Subcontractor.
- (l) Dollar amount of the Subcontract.
- (m) Quantities (or other measure of performance) completed as of the month just ended, reported using the same units of measurement used in the relevant Subcontract.
- (n) Dollar amount paid under the Subcontract as of the end of the month (separately stating the amount paid during the month in question with a cumulative total for the month and all prior periods, including the dates of all payments).
- (o) Dollar amount of outstanding invoices and of uncompleted work remaining on the Subcontract.
- (p) Dollar amount and percentage amount of retainage, if any.
- (q) Expected completion date of the Subcontract.

The information described above shall be provided using the form attached hereto as Form 4.

The report shall also include a narrative summary stating whether the Design-Builder is on target with respect to its DBE goals, whether it has exceeded its goals (and stating the amount of the excess), or whether it is behind (and stating the amount of the deficit).

The Design-Builder shall submit with its final DBE monthly report a final certificate of payment to all DBE Subcontractors using the form attached hereto as Form 5.

8. **Consequences of Failure to Achieve DBE Participation**

If a monthly report shows that the Design-Builder is not on track to achieve the DBE participation rate set forth in the last Form 1 submitted by the Design-Builder, the Design-Builder shall submit the following to the Department with its next monthly report:

- (r) **Updated DBE Participation Form.** The Design-Builder shall submit an updated Form 1. Any revision to the amount of participation by a DBE on the Project or the removal of a DBE from the Project shall be accompanied by a letter from the affected DBE acknowledging the change and describing the reason for the change.
- (s) **Updated Good Faith Efforts Form.** The Design-Builder shall submit an updated Form 3 describing the Design-Builder's good faith efforts undertaken since the last Form 3 submitted by the Design-Builder.

If the Department determines that the Design-Builder has not made good faith efforts to achieve the DBE goal for the Project, payment made to the Design-Builder shall be reduced by an amount equal to dollar value of the unmet portion of the DBE goal for the Project. The Parties agree that such deduction is not a penalty, but is a good faith and reasonable

estimate of the damages and loss the Owner would suffer in the event of Design-Builder's failure to achieve the DBE goal for the Project.

9. **Counting DBE Participation Toward Goals.**

- (t) **Certification Requirement.** The Department will recognize and grant DBE credit only for the value of the Work actually performed by a DBE Subcontractor for which it is certified.
- (u) **Work Performed by DBE Subcontractor.** The entire amount of that portion of a DBE Subcontract that is performed by the DBE Subcontractor's own forces for which it is certified shall be counted toward the Design-Build Agreement DBE goal. The cost of supplies and materials obtained by the DBE Subcontractor for the work of that portion of the Subcontract, including supplies purchased or equipment leased by the DBE Subcontractor (except supplies and equipment the DBE Subcontractor purchases or leases from the Design-Builder or its affiliates), is included.
- (v) **Second Tier Subcontractors.** When a DBE Subcontractor subcontracts part of the work of its Subcontract to another firm, the value of the subcontracted work may be counted toward the Design-Build Agreement DBE goal only if the DBE Subcontractor's Subcontractor is a DBE and is certified for the types of work being subcontracted. Work that a DBE Subcontractor subcontracts to a non-DBE firm does not count toward the Design-Build Agreement DBE goals.
- (w) **Contrived Arrangements.** No credit will be given toward the Design-Build Agreement DBE goal for any subcontracting arrangement that is contrived to artificially inflate or obtain the appearance of DBE Subcontractor participation, including any arrangement that uses DBE middlemen or passive conduits that are inconsistent with standard industry practices or which serve no commercially useful function, and arrangements in which a DBE Subcontractor is acting essentially as a broker (e.g., DBE second-tier Subcontracts between DBE Subcontractors who are fulfilling Project goals, and non-DBE Subcontractors with Subcontracts acknowledged by the Department on the same project). Regardless of whether an arrangement between the Design-Builder and a DBE Subcontractor represents standard industry practice, where such an arrangement erodes the ownership, control, or independence of the DBE or does not meet the commercially useful function requirement, the Design-Builder shall receive no credit toward the Design-Build Agreement DBE goal.
- (x) **Bona Fide Services.** The entire amount of fees or commissions charged by a DBE Subcontractor for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, may be counted toward the Design-Build Agreement DBE goal, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- (y) **Joint Ventures.** When a DBE performs as a participant in a joint venture Subcontractor, the portion of the total dollar value of the Subcontract equal to the clearly defined portion of the work that the DBE performs with its own forces may be counted toward the Design-Build Agreement DBE goal.
- (z) **Commercially Useful Function.** Only expenditures to DBE Subcontractors that perform a commercially useful function count toward the Design-Build Agreement DBE goal. A DBE Subcontractor performs a commercially useful function when it is responsible for execution of a distinct element of the Work and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE Subcontractor is performing a commercially useful function, the Department shall evaluate the amount of Work subcontracted, industry practices, whether the amount the DBE Subcontractor is to be paid under the Subcontract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A commercially useful function is performed when:

- (i) All employees are under direct supervision of the DBE Subcontractor and on the DBE Subcontractor's payroll. Use by a DBE Subcontractor of personnel from the Design-Builder or any other Subcontractor will not be permitted without prior Approval by the Department.
- (ii) The DBE Subcontractor is responsible for obtaining all equipment necessary to perform the Subcontract work. The DBE Subcontractor shall negotiate and enter into equipment lease or purchase order agreements directly with the equipment source. Such lease or purchase order agreements must receive prior Approval by the Department.
- (iii) The DBE Subcontractor is responsible, with respect to materials and supplies, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

If the Design-Builder chooses to assist a DBE Subcontractor by assuring payment for materials to be placed in the DBE Subcontractor's work or equipment leased by the DBE Subcontractor and wants to receive credit toward the Design-Build Agreement DBE goal for the cost, the following procedures may be used:

- (1) the material supplier or lessor may invoice the DBE Subcontractor and be paid by remittance from the DBE Subcontractor; or
- (2) the supplier or lessor may invoice the Design-Builder and DBE Subcontractor jointly and be paid by the Design-Builder and DBE Subcontractor firm utilizing a joint check from the Design-Builder. Such a joint checking arrangement must be in writing, either in the

subcontract or a separate agreement, and Approved by the Department prior to the supplies or equipment being utilized and payment being made.

No credit will be given toward the Design-Build Agreement DBE goal for the cost of the DBE Subcontractor's required materials or equipment that the Design-Builder pays directly to the material supplier or lessor.

- (iv) A DBE Subcontractor will be deemed to have performed a commercially useful function and the Design-Builder will be allowed DBE goal credit when a DBE Subcontractor performs at least 30% of its Subcontract. This work shall be performed by the DBE Subcontractor's normal work force.

The following factors will be used in determining whether a DBE Subcontractor trucking firm or owner/operator is performing a commercially useful function:

- (v) The DBE Subcontractor must be responsible for the management and supervision of the entire trucking operation for the items on its Subcontract or purchase order, including scheduling, providing sufficient trucks to accomplish the haul, and coordinating the work with the Design-Builder. There cannot be a contrived arrangement for the purpose of meeting DBE goals.
- (vi) The DBE Subcontractor must own and operate at least one fully licensed, insured, and operational truck used on the Subcontract when work is in progress.
- (vii) The DBE Subcontractor receives credit for the total value of the transportation services it provides on the Subcontract using trucks it owns, insures, and operates using drivers it employs. The DBE Subcontractor will also receive credit for the total dollar value of the transportation services attributable to no more than twice the number of trucks owned by the DBE Subcontractor and leased from another DBE firm. Long-term lease arrangements are an acceptable form of "ownership."
- (viii) There are two types of lease arrangements that can be utilized by DBE Subcontractor firms: long-term leases and short-term leases.
 - (1) Long-term lease arrangements. The DBE Subcontractor may lease trucks under a long-term lease arrangement from independent equipment leasing companies. To be an independent equipment leasing company, the company must lease equipment to the public. A long term lease is defined as a 12 month or longer lease period. The drivers, fuel, minor maintenance responsibility, and full control of the leased trucks must rest solely with the DBE Subcontractor as stipulated in the lease agreement. Drivers must be employees of the DBE Subcontractor, subject to withholding, worker's compensation requirements, unemployment, etc. Leased trucks must display the

name and identification number of the DBE Subcontractor. The DBE Subcontractor will receive full credit for the full value of the transportation services provided by trucks leased and operated in this manner. A DBE supplier (regular dealer) must utilize this type of lease to supplement distribution equipment owned by the firm to receive credit for transportation services.

(2) Short-term lease arrangements.

- a. The DBE Subcontractor may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE Subcontractor who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE Subcontractor provides on the contract.
- b. The DBE Subcontractor may also lease trucks from a non-DBE firm, or owner-operator. Credit for the total value of the non-DBE firm or owner-operator trucks transportation services will be credited to the DBE Subcontractor so long as the number of non-DBE firm or owner operator trucks does not exceed the number of trucks owned by the DBE Subcontractor or leased from other DBE firms. For trucks leased by the DBE Subcontractor in excess of the total number of owned or leased DBE Subcontractor trucks, the DBE Subcontractor is entitled to receive credit only for the fee or commission it receives as a result of the lease arrangements for the excess trucks.

All lease agreements must indicate that the DBE Subcontractor has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE Subcontractor, so long as the lease gives the DBE Subcontractor absolute priority for use of the leased truck. A copy of each lease agreement must be provided to and Approved by the Department before the truck begins hauling. The agreement must reflect the name of the lessor, cab card registration numbers of all leased trucks, the description of the truck(s), the amount and terms of the lease and method of payment (hour, ton, cubic yard, or number of loads hauled), and, if owner-operator, his/her Social Security Number.

The DBE Subcontractor must certify on each applicable Request for Progress Payment the amounts paid to: (1) other DBE truckers, (2) non-DBE truckers, and (3) for hauls made with trucks owned by the DBE Subcontractor. This certification must be made on a form Approved by the Department.

- (aa) **Right to Rebut Finding of Not to Be Performing Commercially Useful Function.** When a DBE Subcontractor is found not to be performing a commercially useful function, the DBE Subcontractor may present evidence to rebut the finding. Such evidence will be reviewed by the Department and a determination made. Decisions on commercially useful function matters are subject to review by the Federal Highway Administration.
- (bb) **Materials and Supplies.** The Design Builder may count toward the Design-Build Agreement DBE goal 60% of expenditures for materials and supplies required under the Design-Build Agreement and obtained from a DBE regular dealer, and 100% of such expenditures to a DBE manufacturer.
- (i) For purposes of this Section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles or equipment required under the Design-Build Agreement for incorporation into the Work.
- (ii) For purposes of this Section, a supplier or regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment required under the Design-Build Agreement for incorporation into the Work are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a supplier, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question. A trucking firm or owner/operator will not be considered a supplier, nor will a supplier be considered a trucking firm.
- A regular dealer in such bulk items as steel, cement, gravel, or stone, must own or lease, and operate, a pit, quarry, concrete plant, or other such facility that sells materials to the public. A person may be a regular dealer in petroleum products or asphalt binder without owning, operating, or maintaining a place of business, where these items are bought, kept in stock, and regularly sold to the public, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- (iii) Expenditures for lease of a particular piece or pieces of equipment from DBEs for exclusive use on the Project may be counted 60% toward the Design-Build Agreement DBE goal, provided the DBE dealer actually has ownership or control of the equipment and is considered a regular dealer.
- (iv) Capital expenditures for tools, equipment, vehicles, field office furniture, and similar property items, even though such items are used on the project and purchased from DBEs, do not count toward the Design-Build Agreement DBE goal.

- (v) Expenditures for materials and supplies obtained from DBE suppliers and manufacturers for use in the Design-Builder's general operations that are not incorporated into the work are not creditable in whole or part toward Design-Build Agreement DBE goal, even though a portion of such items may be used in the administration and/or execution of the Project.
- (cc) **Dealers.** Brokers, manufacturer's representatives, packagers, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this Section.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, counts toward the Design-Build Agreement DBE goal, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. None of the cost of the materials and supplies themselves will count toward Design-Build Agreement DBE goal.

- (dd) **Pipe Suppliers.** In order for a firm to qualify as a DBE supplier of metal and/or concrete pipe, the firm must fabricate the pipe.
- (ee) **Purchased Material.** If material is purchased from a DBE supplier, credit will be allowed at 60% of the total cost of the material obtained from the DBE facility and the cost of delivery if the supplier is transporting the material using equipment it owns or leases on a long-term basis. Credit for 100% of transportation services provided by the DBE truckers will be allowed.

A valid purchase order for the material must be executed by the Design-Builder and DBE and approved by the Department prior to the material being hauled from the facility.

- 10. **Changes and Substitutions.** Any change in previously identified DBE Subcontractors, or any reduction in the scope of work to be performed by a DBE Subcontractor, or any change in or variance from the approved DBE Performance Plan, will require the Department's prior Approval.

The Design-Builder may propose a substitution of a DBE Subcontractor who is unable to perform successfully. However, substitutions of any DBE Subcontractor(s), reductions in scope for DBE Subcontracts, substitution of work item(s), or decreases of total dollar amount(s) committed to DBE Subcontracts will not be allowed without prior submission of written justification to the Department and Approval of the Department.

The Design-Builder shall make good faith efforts to replace any DBE Subcontractor who fails to perform its obligations with another DBE.

Unauthorized substitutions and/or under-runs in total dollar amounts may result in a withholding of part or all of progress payments as described below in Section 11.

11. **Design-Build Agreement Sanctions.** Noncompliance with the DBE Performance Plan or with the requirements of this Exhibit J shall result in one or more of the following remedies:

- (ff) If the Design-Builder fails to provide documentation required by this Exhibit J, the Department shall have the discretion to withhold all or part of the monthly progress payments until such time that the Design-Builder provides the required documentation. The amount withheld shall be within the sole discretion of the Department.
- (gg) If the Design-Builder fails to comply with its DBE Performance Plan or with the requirements of this Exhibit J in any other manner, the Department shall have the discretion to withhold all or part of the monthly progress payments until such time that the Design-Builder comes into compliance. The amount withheld shall be within the discretion of the Department.

EXHIBIT J FORM 1
DBE COMMITMENTS

Design-Builder:

The Design-Builder has executed contracts with the following DBE Subcontractors:

NAME & ADDRESS	ITEM DESCRIPTION	AMOUNT
		\$

If any firm listed above is a regular dealer of materials and supplies, but not a manufacturer, the total amount of the agreement and the amount to be credited (60%) should be recorded on this form.

Total for DBEs - \$ _____ or
_____ % of Final GMP.

(Design-Builder)

By: _____

Title: _____

The named DBE subcontractors confirm their participation in the contract as provided in the commitment.

<u>DBE Firm:</u>	<u>DBE Owner or Authorized Representative's Signature:</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

EXHIBIT J FORM 2

BIDDERS LIST

List the names and addresses of all subcontractors, truckers or material suppliers that bid or provided quotes on any item on the Project, regardless of whether the firms will be used on the Project. DBEs should be indicated by placing an X in the box preceding the firm's name. The numeric code corresponding to the general type of work to be performed, i.e., (01) removal and disposal items (including clearing and grubbing), (02) earthwork (including drainage items), (03) hauling, (04) paving (PCCP or ACHM), (05) miscellaneous concrete, (06) traffic control, (07) erosion control, (08) signals/ electrical, (09) structures (includes steel suppliers), (10) material (aggregate) supplier, or (11) miscellaneous *items should be shown*.

DBE	FIRM NAME ADDRESS	TYPE OF WORK (Enter Code)

EXHIBIT J FORM 3

GOOD FAITH EFFORTS

The Design-Builder shall submit the following information to demonstrate that a good faith effort has been made to provide opportunities for DBE firms, including contractors, subcontractors, consultants, subconsultants, regular dealers, and service providers, etc. on the Project.

1. List the names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for DBE participation for this Project was place by the Design-Builder:

Publication	Date of Advertisement

2. List the names and dates of written notices of all certified DBEs solicited by direct mail or other means for this Project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested:

DBE Firms Solicited	Dates of Solicitations	Follow-up Methods and Dates

3. List the items of work for which the Design-Builder requested bids, proposals or materials to be supplied by DBEs, if any; the information furnished to interested DBEs in way of plans, specifications and requirements for the Work, and any breakdown of items of Work into economically feasible units to facilitate DBE participation. Where there are DBEs available for doing portions of the Work normally performed by the Design-Builder with its own forces, the Design-Builder will be expected to make portions of such work available for DBEs to bid on.

- a. Items of Work: [Describe]
- b. Information Furnished: [Describe]
- c. Breakdown of Items: [Describe]

4. List the names of DBEs selected to work on the Project; names of DBEs that submitted bids or proposals for any of the Work indicated above which were not accepted, a summary of the Design-Builder's discussions and/or negotiations with them, the name of the subcontractor, consultant, subconsultant, regular dealer, or service provider who was

selected for that portion of the work, and the reasons for the Design-Builder's choice. If the reason for rejecting a DBE bid was price, give the bid price or proposal by the rejected DBE and the bid price by the selected subcontractor, subconsultant, regular dealer, or service provider. Since the utilization of available DBEs is expected, only significant price differences will be considered as cause for rejecting such DBE bids.

- a. Proposed DBEs to be utilized on the Project: [List]
 - b. Rejected DBEs: [List]
 - c. Summary of discussions and negotiations: [Describe]
 - d. Selected Non-DBEs and reasons for that choice: [Describe]
5. List any assistance that the Design-Builder extended to the rejected DBEs identified above to remedy the deficiencies in their bids:
[List]
 6. List all efforts Design-Builder made to assist interested DBEs on obtaining required bonding, lines of credit, or insurance:
[List]
 7. List all efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services:
[List]
 8. List the Design-Builder's effective use of services available from minority/women community organizations, contractor groups and local/state/Federal minority/women business assistance offices and other organizations to assist in recruitment and placements of DBEs:
[List]
 9. List any additional data to support a demonstration of good faith efforts, such as contacts with DBE assistance agencies:
[List]

NOTES:

- 1) This form provides for a minimum of good faith efforts requirements, see Federal Register, Vol. 64, No. 21, Tuesday, February 2, 1999/Rules and Regulations, Appendix A to Part 26 – Guidance Concerning Good Faith Efforts for additional good faith effort considerations.

- 2) Appropriate documentation such as copies of newspaper ads, letters soliciting bids, and telephone logs should accompany this form.

GOOD FAITH EFFORTS AFFIDAVIT:

The undersigned, being first duly sworn, deposes and says that (he/she) is the [Title] of [Company Name] _____, which entity is a [shareholder, partner, joint venture member or other] _____ of [Design-Builder's Name] _____, a [corporation, partnership, limited liability company, joint venture, or other] _____, and he/she affirms that the Design-Builder has made good faith efforts to achieve the DBE goals identified in the Design-Build Agreement.

[Design-Builder's Name]

By: _____
Signature

Typed or Printed Name

Title

STATE OF _____ S.S

COUNTY OF _____

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

Signature

Printed Name of Notary Public in and for said
County and State

My commission expires

EXHIBIT J FORM 4

DBE SUBCONTRACTOR PAYMENT LOG

Project _____ Design-Builder _____
DBE Subcontract Amount _____ DBE Subcontractor _____
Expected Completion Date _____ Date Payment Made to DBE _____

Item Description	Subcontract Unit Price	2 nd Tier Unit Price	Quantity	Value Earned By Subcontractor
Total This Estimate				
Retainage Withheld this Estimate				
Net Total this Estimate				
____% Retainage Previous Total				
Total to Date				

The Design-Builder certifies that the payment listed has been made to the DBE Subcontractor and that the documentation of this payment is available for inspection upon request.

Authorized Signature _____ Title _____
Typed or Printed Name _____ Date _____

EXHIBIT J FORM 5

CERTIFICATE OF FINAL PAYMENT TO DBEs

Project _____ Design-Builder _____

Final GMP \$ _____ DBE Goal \$ _____

DBE Contract Goal % _____

Final Payment to DBEs

<u>DBE Subcontractor</u>	<u>Amount Paid</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Only payments related to work, services, or material actually provided by DBE Subcontractors should be shown. Payments under second tier subcontracts from DBE firms to non-DBE firms should not be included.

Design-Builder:			
Signature:			
Typed or Printed Name:			
Title:		Date:	

XVII: Sample Kick-off Meeting Agenda



(PROJECT NAME)

Meeting Title: PD-B Kickoff

Date: (date)

Location: Virtual (or in person)

Time: 8:00 AM – 4:30 PM

Topic	Time	Presenter
Welcome	8:00 AM	Project Manager
Introductions and Overview of Workshop <ul style="list-style-type: none">Attendee Introductions including project org chart<ul style="list-style-type: none">Owner – Arkansas Department of Transportation (ARDOT)Design Engineer – (company name)Independent Cost Estimator – (company name)Progressive Design-Builder – (company name)	8:00 AM	All
Leadership Remarks <ul style="list-style-type: none">ARDOT's SecretaryFederal Highways	8:15 AM	
ARDOT's Vision of Success <ul style="list-style-type: none">ARDOT Vision of Success<ul style="list-style-type: none">PD-B Highlights<ul style="list-style-type: none">What right looks likeProject Status and Vision of Success<ul style="list-style-type: none">Discuss selection of PD-B delivery methodObjectives for preconstruction phase	8:30 AM	Project Manager
Project from Team Member Perspectives <ul style="list-style-type: none">Each organization identifies challenges, concerns, opportunities, and goals and outlines their approach/proposed plan to collaborate and contribute toward project success. Lessons learned from prior collaborative project can also be shared during this time.<ul style="list-style-type: none">ARDOT (15 minutes) – Project ManagerDesigner (30 minutes) – Project LeadICE (30 min) – Project Manager or Lead EstimatorPD-B (30 min) – Project Manager	8:45 AM	Group Leaders
Break	10:30 AM	

Open Discussion/Hot Wash <ul style="list-style-type: none"> Aimed at identifying/prioritizing common concerns <i>Potential topics of discussion</i> <ul style="list-style-type: none"> Challenges not yet discussed Missing information Potential differing points of view Prioritization of resources Continued discussion of common concerns Action items/Next steps 	11:00 AM	Project Manager
Schedule and Reconciliation Process Review of baseline schedule and possible variations. Discuss reconciliation process for construction schedules and agreement on path forward. <ul style="list-style-type: none"> Current baseline schedule overview <ul style="list-style-type: none"> Design (Review Schedule) Construction Political Issues/Impacts Approach to Scheduling and Reconciliation <ul style="list-style-type: none"> Independent Approach Initially → Collaborate to Optimize Weather Holidays and Events Work days (5-10s, 5-8s or ?) Other limitations or milestones 	11:30 AM	ICE
Lunch	12:00 PM	
Risk Management <ul style="list-style-type: none"> Review of existing process/tools, discussion of PD-B plan/process and assignment of risk managers for programmatic, design and construction related risks. <ul style="list-style-type: none"> Risk Management Plan overview <ul style="list-style-type: none"> Risk Contingency Risk Management Process Agreement on process/modifications moving forward Initial Risk Register Schedule next Risk Meeting 	1:00 PM	ICE
Innovations <ul style="list-style-type: none"> Review of proposed Innovation Management Plan and prioritization of previously identified innovations <ul style="list-style-type: none"> Innovation Implementation Plan Experience/plan for tracking innovations Agreement on process/modifications moving forward Initial prioritization of previously identified innovations Schedule next Innovation Meeting 	2:00 PM	PD-B

Cost Model Development

3:00 PM

ICE

- ICE

Topics for Discussion:

- Independent Approach to Construction (Initially)
- “Fair Market Price” Definition and Discussion
 - Divergence Factor Percentage
- Subcontracting Plan
 - Plug Numbers
 - Sub Selection Process (Typical Process)
 - DBE Goal
- OPCC Meetings Overview
 - Open Book Estimating
 - Labor Rates
 - Equipment Rates
 - Materials Quotes
 - Indirects
 - Profit and Overhead
 - Subcontractor quotes
 - Escalation

Schedule next Cost Model Meeting

Wrap Up

4:00 PM

Project Manager

- Outstanding concerns/identified issues
- Review of action items/next steps
- Schedule task force follow-up meetings

Closing Comments

4:30 PM

Group Leaders

XVIII: Sample Task Force Meeting Agenda



(PROJECT NAME)

Meeting Title: Task Force Meeting (Railroad & Utilities)

Date: (DATE)

Location: Virtual (or in person)

Time: 9:00 AM – 10:00 AM

Topic	Time	Presenter
Welcome/Introductions	9:00 AM	Project Manager
Design Developments and Schedule Update <ul style="list-style-type: none">••	9:05 AM	Design Lead or PM
Review Action Items <ul style="list-style-type: none">••	9:15 AM	Design Lead or PM
Review Risk Register <ul style="list-style-type: none">••••	9:25 AM	ICE
Review Innovations Log <ul style="list-style-type: none">•••	9:35 AM	PD-B
Discuss Potential Early Work Package Items <ul style="list-style-type: none">••	9:45 AM	Design Lead or PM
Wrap Up <ul style="list-style-type: none">• Summarize New Action Items and Assign Champions• Next Meeting	9:50 AM	PM
Closing Comments		

XIX: Sample Approach to Cost Meeting Agenda



(PROJECT NAME)

Meeting Title: Approach to Cost

Date: (date)

Location: Virtual (or in-person)

Time: 8:00 AM – 10:00 AM

Topic	Time	Presenter
Welcome/Introductions	8:00 AM	Project Manager
Expectations and Instructions <ul style="list-style-type: none">• Definition “Fair Market Price” & “Open Book” review• Roles and responsibilities• Overall process discussion	8:05 AM	ICE
Subcontracting <ul style="list-style-type: none">• Identify bid items performed by subcontractors• Plug numbers discussion• Subcontractor selection process	8:25 AM	ICE & PD-B
Opinion of Probable Cost of Construction (OPCC) Meetings <ul style="list-style-type: none">• Pre-meeting – quantities, submittals, and forms• OPCC Meeting - What to expect• Divergence Factor• ICE “blinded”• Engineer’s Estimate• OPCC reconciliation process• Schedule first OPCC meeting (if appropriate)	8:40 AM	ICE
Review of Open Book Estimating <ul style="list-style-type: none">• Lump-sum items• Discipline breakout subtotals• Risk Reserve/Force Account/Contingency	9:00 AM	ICE or ARDOT
Escalation <ul style="list-style-type: none">• Wage Rates, fuel, materials (plugs)• Methods of calculation	9:15 AM	ICE
Overhead and Profit <ul style="list-style-type: none">• Home office overhead, project indirect costs, profit margins, etc.• Time Related Overhead (TRO)	9:20 AM	ICE & PD-B



Labor and Equipment Rates	9:25 AM	ICE & PD-B
<ul style="list-style-type: none">• Coordinate rates and discuss what will be shared		
CPM Schedule	9:30 AM	ICE & PD-B
<ul style="list-style-type: none">• Independent Approach Initially• Calendars• Workdays		
Final Bid Submittal	9:50 AM	ICE
<ul style="list-style-type: none">• Review/Award		
Wrap Up	9:55 AM	Project Manager
<ul style="list-style-type: none">• Outstanding concerns/identified issues• Review of action items/next steps• Schedule follow-up meetings		
Closing Comments		

XX: PD-B Checklist for Compliance with CFR

Ref #	Elements	Yes	No	N/A	TBD	Comments	CFR References
1	Are the federal requirements in 23 CFR Part 636 applicable to the Progressive Design-Build (PDB) Project?					<i>The provisions of this part apply to all Federal-aid design-build projects within the highway right-of-way or linked to a Federal-aid highway project.</i>	23 CFR 636.104
2	Are geographic preferences identified in the evaluation criteria of the procurement documents?						23 CFR 636.107
3	NEPA Considerations						23 CFR 636.109
3.1	Is the NEPA process complete at the release date of the procurement documents (RFQ or RFP)?					<i>If "yes", recommend conveying status of NEPA.</i>	23 CFR 636.109(a)
3.1.a	If no to #3.1, does the RFQ or RFP inform the Respondents/Proposers of the general status of the NEPA process and that no commitment will be made as to any alternative under evaluation in the NEPA process, including the no-build alternative?						
3.2	Is the intent to release the final RFP and PDB contract prior to the conclusion of the NEPA process?					<i>If "no", #3.2.a is not applicable and procurement may advance, subject to FHWA approval and consideration of #3.3.</i>	23 CFR 636.109(b)
3.2.a	If yes to #3.2, are the following contractual provisions included in the PDB Contract:						23 CFR 636.109(b)
	Provisions preventing the design-builder from proceeding with final design activities and physical construction prior to the completion of the NEPA process (contract hold points or another method of issuing multi-step approvals must be used)?						23 CFR 636.109(b)(3)
	Provisions ensuring that no commitments are made to any alternative being evaluated in the NEPA process and that the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated and fairly considered?						23 CFR 636.109(b)(4)
	Provisions ensuring that all environmental and mitigation measures identified in the NEPA document will be implemented?						23 CFR 636.109(b)(5)
	Provisions related to terminating the PDB Contract in the event that the no-build alternative is selected?						23 CFR 636.109(b)(9)
3.3	Is the intent to award the PDB Contract without considering construction price as part of the evaluation process?					<i>If "no", this would not be aligned with Progressive DB contracting.</i>	
3.3.a	If yes to #3.3 and the NEPA process is NOT complete, have the following elements been addressed in the procurement documents:						23 CFR 636.109(b) 23 CFR 636.302

Ref #	Elements	Yes	No	N/A	TBD	Comments	CFR References
	Price must be considered in the evaluation to the extent the contract requires the contracting agency to make any payments to the design-builder for any work performed prior to the completion of the NEPA process and the contracting agency wishes to use Federal-aid highway funds for those activities						23 CFR 636.302(a)(1)(ii)
	Quality of product or service is evaluated through consideration of non-price factors, including: (a) compliance with solicitation requirements; (b) completion schedule (contractual incentives and disincentives for early completion may be used where appropriate); or (c) technical solutions.						23 CFR 636.302(a)(2)
	All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the procurement documents.						23 CFR 636.302(b)
3.3.b	If yes to #3.3 and the NEPA process is complete, has a SEP-14 application been completed and submitted to FHWA for approval prior to issuance of the procurement documents?					<i>Since 23 CFR 636.302(a)(1) is very specific, a SEP-14 application to allow deviation from the CFR procurement requirements would be needed to advance a PDB Contract after NEPA is complete.</i>	23 CFR 636.109(b) 23 CFR 636.302
3.4	Does the scope of work for the design-builder clearly indicate that the design-builder must not prepare the NEPA document or have any decisionmaking responsibility with respect to the NEPA process?					<i>The design-builder may be requested to provide information about the project and possible mitigation actions, and its work product may be considered in the NEPA analysis and included in the record.</i>	23 CFR 636.109(b)(6)
4	If using a pre-solicitation or pre-proposal meeting/conference, have all materials distributed at the meeting/conference been made available to all potential Respondents/Proposers?						23 CFR 636.115(e)
5	Has all information that would be necessary for the preparation of proposals been to to all potential offerors in order to avoid creating an unfair competitive advantage?						23 CFR 636.115(e)
6	Are statutes or policies concerning organizational conflict of interest specified or referenced in the procurment documents, including specifically 23 CFR 636.116 and associated provisions in 23 CFR 636.116(a)(2)?						23 CFR 636.116
7	If evaluating past performance, do the procurement documents describe the evaluation criteria for the information requested?						23 CFR 636.205

Ref #	Elements	Yes	No	N/A	TBD	Comments	CFR References
8	If evaluating past performance, do the procurement documents clarify that firms without a record of relevant past performance will not be evaluated favorably or unfavorably on past performance?						23 CFR 636.206
9	If using a two-phase procurement (Phase 1 - RFQ followed by Phase 2 - RFP), does the RFQ indicate the maximum number of short-listed firms? <i>Note that FHWA does not allow more than five, subject to DOT determination that more than five is in the DOT's best interest and consistent with the use of two-phase procurement.</i>						23 CFR 636.207
10	Are requirements for technical proposals (assuming it is required) and price proposals provided in the RFP, including all factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation?						23 CFR 636.209
11	Are the evaluation criteria being used during evaluation based solely on factors and subfactors specified in the procurement documents?						23 CFR 636.304
12	Will tradeoffs be used?						23 CFR 636.211
12.1	If yes to #12, are all evaluation factors and significant subfactors that will affect contract award and their relative importance clearly stated in the procurement documents?						23 CFR 636.211(b)(1)
12.2	If yes to #12, does the procurement document state whether all evaluation factors, other than cost or price, when combined, are one of the following: (a) Significantly more important than cost or price; or (b) approximately equal to cost or price; or (c) significantly less important than cost or price?						23 CFR 636.211(b)(2)
12.3	Is there a process in place to ensure source selection records include: (a) an assessment of each offeror's ability to accomplish the technical requirements; (b) a summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors?						23 CFR 636.212
13	Has FHWA reviewed the Final RFP and provided concurrence with issuance of the Final RFP?						23 CFR 636.109(c)
14	Has FHWA provided concurrence with award of the PDB Contract?						23 CFR 636.109(c)

Ref #	Elements	Yes	No	N/A	TBD	Comments	CFR References
15	Has FHWA provided concurrence to proceed with preliminary design work under the PDB Contract?					<i>FHWA's authorization and obligation of preliminary engineering and other preconstruction funds prior to the completion of the NEPA process is limited to preliminary design and such additional activities as may be necessary to complete the NEPA process. After the completion of the NEPA process, the FHWA may issue an authorization to proceed with final design and construction and obligate Federal funds for such purposes.</i>	23 CFR 636.109(c)
16	Has ARDOT made a finding of price reasonableness for pricing related to final design activities pursuant to 23 CFR 636.302(a)(1)(v)?						23 CFR 636.302(a)(1)
17	Has FHWA concurred with ARDOT's finding of price reasonableness for final design activities?						23 CFR 636.302(a)(1)(vi) 23 CFR 636.109(c)
18	Has ARDOT made a finding of price reasonableness for pricing related to construction activities pursuant to 23 CFR 636.302(a)(1)(v)?						23 CFR 636.302(a)(1)
19	Has FHWA concurred with ARDOT's finding of price reasonableness for construction activities?						23 CFR 636.302(a)(1)(vi)