STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD CONTRACT
BOOK 1

FOR DESIGN AND CONSTRUCTION ON STATE HIGHWAY IN

SAN MATEO COUNTY, AT VARIOUS LOCATIONS FROM 7.5 MILES NORTH OF THE SANTA CLARA/SAN MATEO COUNTY LINE TO 0.2 MILE SOUTH OF THE SAN MATEO/SAN FRANCISCO COUNTY LINE

DISTRICT 04, ROUTE 101

For Use in Connection with Standard Specifications Dated May 2006, Standard Plans Dated May 2006, and Labor Surcharge and Equipment Rental Rates.

CONTRACT NO. 04-2A7904

04-SM-101-7.5/25.9 PM

Project ID 0400000843

Federal Aid Project
ACNH-Q101(202)N

Dated: April 11, 2011

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Exhibits

Exhibit A	Acronyms and Definitions
Exhibit B	RESERVED
Exhibit C	RESERVED
Exhibit D	Federal Laws for Federal-Aid Contracts
Exhibit E	Disadvantaged Business Enterprise (DBE) Special Provisions for Design-Build Projects
Exhibit F	Federal and State Prevailing Wage Requirements
Exhibit G	Key Personnel
Exhibit H	RESERVED
Exhibit I	Designation of Initial Representatives
Exhibit J	Dispute Resolution Board Agreement
Exhibit K	Form of Performance Bond
Exhibit L	Form of Payment Bond
Exhibit M	Form of Warranty Bond

THIS Design-Build Contract is entered into by and between the State of California through its Director ("Department") and *[to be provided with executed contract]* ("Design-Builder"), effective as of the last date set forth on the signature page hereto, with reference to the definitions contained in Exhibit A hereto and the following facts:

Recitals [Project Specific Recitals]

A. The Project is located in San Mateo County, California. The Project limits extend a total of approximately 18.4 miles on US Route 101 near the San Francisco/San Mateo County lines (SM-101-PM 25.9) to 7.5 miles north of the Santa Clara/San Mateo County lines (SM-101-PM 7.5). The Project generally consists of upgrading or installing new ramp metering systems.

B. The California Transportation Commission authorized the use of design-build for Project on February 24, 2010 pursuant to Public Contract Code 6802 (b).

C. The parties intend for the Contract to be a lump-sum design-build contract obligating Design-Builder to perform all work necessary to complete the Project by the deadlines specified herein, for the Contract Price, subject only to certain specified limited exceptions. To allow Department to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting Design-Builder's ability to make claims for an increase to the Contract Price or an extension of the Completion Deadlines. Design-Builder has agreed in the Contract to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Contract Price.

D. If Design-Builder fails to complete the Project within the time limitations set forth in the Contract Documents, then Department will suffer substantial losses and damages. The Contract Documents therefore provide that Design-Builder shall pay Department substantial Liquidated Damages if such completion is delayed.

E. Department has provided the Basic Configuration to Design-Builder for the purpose of defining certain aspects of the Project. Department has also provided Reference Information Documents (RID) to Design-Builder. Design-Builder has no right to rely on the RID except to the extent specifically permitted in the Contract Documents. Department and Design-Builder both intend for Design-Builder to assume full responsibility and liability with respect to the design of the Project, including correction of any Errors in the Basic Configuration or RID, and Department and Design-Builder both intend for Design-Builder to indemnify and hold harmless Department and others with respect to any defects in the Project which may relate to Errors in the Basic Configuration or RID.

NOW, THEREFORE, in consideration of the sums to be paid to Design-Builder by 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 Contract Documents

The term "Contract Documents" shall mean the documents listed in Section 1.3, including all exhibits thereto.

1.3 Order of Precedence

Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract. In the event of any conflict among the Contract Documents, the order of precedence, from highest to lowest, shall be as set forth below:

(a) Amendments, including Change Orders, to Book 1, as executed by Department and Design-Builder (Design-Build Contract)

(b) Book 1, as executed by Department and Design-Builder (Design-Build Contract)

(c) Amendments, including Change Orders, to Book 2 (Project Requirements)

(d) Book 2 (Project Requirements)

(e) Amendments, including Change Orders, to Book 3 (Applicable Standards)

(f) Book 3 (Applicable Standards)

(g) The Proposal, except if the Proposal includes statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to Department than the requirements of the Contract Documents, as determined by Department, Design-Builder's obligations hereunder shall include compliance with all such statements, offers and terms.

Notwithstanding the foregoing, in the event of conflicting requirements involving any requirement established by reference contained in the Contract Documents, Department shall have the right to determine, in its sole discretion, which requirement applies. Design-Builder shall request Department's determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4 Interpretations

In the Contract Documents, where appropriate, the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to; the words "including," "included," "includes," and "include" are deemed to be followed by the words "without limitation"; unless the context requires otherwise, in phrases involving performance by a Person, the word "shall" indicates a requirement imposed on the Person; unless otherwise indicated, references to sections, appendices and exhibits are to the document which contains such references; 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; words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings; 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 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. Design-Builder 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 who prepared them, and instead other rules of interpretation shall be used. Department's final answers to the questions posed during the proposal process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

1.5 Referenced Standards and Specifications

Except as otherwise specified in the Contract Documents or otherwise directed by Department, Work specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Due Date.

1.6 Omission of Details; Clarification by Department

Design-Builder shall not take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Design-Builder shall apply to Department in writing for such further written explanations as may be necessary and shall conform to the explanation provided. Design-Builder shall promptly notify Department of all Errors which 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. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed under similar circumstances, shall not relieve Design-Builder from performing such omitted Work or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.7 Computation of Periods

References to “days” or “Days” contained in the Contract Documents shall mean Calendar Days unless otherwise specified, provided that 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-Working Day, such act or notice may be timely performed on the next succeeding day which is a Working 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 Section 5.3 and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, shall be required to be performed as specified, even though the date in question may fall on a non-Working Day.

1.8 Standard for Approvals

In all cases where approvals, acceptances or consents are required to be provided by Department or Design-Builder hereunder, such approvals, acceptances or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified, and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the

decision shall not be subject to dispute resolution or other legal challenge; provided, however, the issue of whether the decision was arbitrary or capricious shall be subject to dispute resolution hereunder.

1.9 Federal Requirements

Additional Federal Requirements and Federal Prevailing Wage Requirements are provided in Exhibits D and F. 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.

1.10 Reserved

2 OBLIGATIONS OF DESIGN-BUILDER

2.1 Performance Requirements

2.1.1 Performance of Work

All materials, services and efforts necessary to achieve each Intermediate Completion, Substantial Completion and Final Acceptance on or before the applicable Completion Deadline shall be 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

Design-Builder shall furnish the design of the Project and shall construct the Project as designed, in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State (but at least meeting the requirements of the Contract Documents), in a good and workmanlike manner, free from defects except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents unless (a) Design-Builder has actual or constructive knowledge of such defects, and (b) Design-Builder fails to request a change thereto by Department, and in accordance with the terms and conditions set forth in the Contract Documents.

2.1.3 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Design-Builder shall perform as directed by Department in a diligent manner and without delay, shall abide by Department's decision or order, and shall comply with all applicable provisions of the Contract Documents. 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

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

(a) furnish all design and other services, provide all materials and labor and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts which the Contract Documents specify will be undertaken by other Persons): (i) to construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, all Governmental Rules, all Governmental Approvals, and all other applicable safety, environmental, licensing and other requirements, taking into account the R/W Work Map and other constraints affecting the Project, so as to achieve, each Intermediate Completion, Substantial Completion and Final Acceptance by the applicable Completion Deadlines; and (ii) otherwise to do everything required by and in accordance with the Contract Documents;

(b) at all times provide Design-Builder's Project Manager, Approved by 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 Design-Builder, (iii) will be present (or its Approved designee will be present) at the Site at all times that Work is performed, and (iv) will have authority to bind Design-Builder on all matters relating to the Project;

(c) obtain all Governmental Approvals (other than the Environmental Approvals and certain New Environmental Approvals as provided in Section 6.3, but specifically including any

Governmental Approvals required to implement any Approved ATCs incorporated in the Contract Documents);

(d) 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;

(e) provide such assistance as is reasonably requested by Department in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to, or arising out of the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, maintain insurance in compliance with contract requirements; indemnify, hold harmless, and defend Department in compliance with contract requirements.

(f) comply with all requirements of all Governmental Rules, including: (i) the Environmental Laws, including all environmental mitigation and monitoring measures required for the Project, including those set forth in Book 2, Section 4, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Materials; (ii) the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., including any amendments, as well as all applicable regulations and guidelines; and (iii) the Federal Requirements;

(g) comply with the Quality Manual requirements in Book 2, Section 2.4;

(h) cooperate with Department and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work;

(i) supervise and be responsible to Department for acts and omissions of all Design-Builder-Related Entities, as though all such Persons were directly employed by Design-Builder;

(j) mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating or redeploying Design-Builder's forces to other work, as appropriate; and

(k) 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.

2.3 Representations, Warranties and Covenants

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

2.3.1 Maintenance of Professional Qualifications

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

2.3.2 Evaluation of Constraints

Design-Builder has evaluated the constraints affecting delivery of the Project, including the R/W Work Map and Basic Configuration as well as the conditions of the Environmental Approvals and has reasonable grounds for believing and does believe that the Project can be delivered within such constraints.

2.3.3 Feasibility of Performance

Design-Builder has evaluated the feasibility of performing the Work within the time specified herein and for the Contract Price, and has reasonable grounds for believing and does believe that such performance (including achievement of each Intermediate Completion, Substantial Completion and Final Acceptance by the applicable Completion Deadlines, for the Contract Price) is feasible and practicable.

2.3.4 Review of Site Information

Design-Builder has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed the boring logs when applicable, and undertaken appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Project, to the extent Design-Builder deemed necessary or advisable for submittal of a Proposal. Said activities have included inspection and examination of the Site and surrounding locations, to the extent possible. Based on its review, inspection, examination and other activities, Design-Builder is familiar with and accepts the physical requirements of the Work, subject to the right to receive a Change Order for Differing Site Conditions as specified herein. Before commencing any Work on a particular aspect of the Project, Design-Builder shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work which may have an impact on such Work. Design-Builder shall be responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 Governmental Approvals

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

2.3.6 Progression of Work

Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve each Intermediate Completion, Substantial Completion and Final Acceptance by the applicable Completion Deadlines and in accordance with the Contract Schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts and overtime operations) as may be necessary to achieve such goals, all at Design-Builder's own expense, except as otherwise specifically provided in Section 13.

2.3.7 Design and Engineering Personnel

All design and engineering Work furnished by 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 careful, 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 and Construction Documents prepared or checked by them.

2.3.8 Organization

Design-Builder is a *[to be provided with executed contract]* duly organized and validly existing under the laws of the State of , with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Design-Builder is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents. [*If Design-Builder is a joint venture, limited or general partnership or other similar business structure, executed contract to identify Design-Builder's members and provide organizational information, qualification to do business and good standing representations regarding each member*.]

2.3.9 Authorization

The execution, delivery and performance of the Contract have been duly authorized by all necessary actions of Design-Builder, and, if applicable, 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 or any Guarantor is a party or by which their properties and assets may be bound or affected.

2.3.10 Legal, Valid and Binding Obligation

The Contract constitutes the legal, valid and binding obligation of Design-Builder and, if applicable, of each member of Design-Builder, enforceable in accordance with its terms. If applicable, each Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms.

2.3.11 False or Fraudulent Statements and Claims

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 its actions hereunder. Accordingly, by signing the Contract, Design-Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, 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 Design-Builder to the extent the federal government deems appropriate. Design-Builder also recognizes that the California False Claims Act (Government Code §12650 et seq) apply to its action hereunder.

2.4 Design Requirements

2.4.1 Required Approval

Approval by Department, is required prior to commencing any Work that would necessitate a modification in the Basic Configuration, regardless of whether the modification is required by a Governmental Approval, is desired by Design-Builder for its benefit or for any other reason. Design-Builder acknowledges and agrees that constraints set forth in the Contract Documents, as well as Site conditions, the R/W Work Map and the requirement to obtain Approval, will impact Design-Builder's ability to revise the Basic Configuration. Department commits to work in good faith with Design-

Builder on all reasonable modifications and will not unreasonably withhold approval of modifications.

2.4.2 Design Review Process; Compliance with Design

2.4.2.1 Design Review Process

Design-Builder shall furnish the Released for Construction Documents and other Design Documents to Department in accordance with Book 2, Section 2.4. Design-Builder shall obtain Department's Approval of the Released for Construction Documents in accordance with Book 2, Section 2.4 and, if required, shall obtain Department's Acceptance or Approval of the other Design Documents (as applicable) in accordance with Book 2. Department shall have the right to review and comment on all Released for Construction Documents and other Design Documents for compliance with the requirements of the Contract Documents in accordance with Book 2, Section 2.4. Design-Builder shall notify Department in writing within 14 Days after receipt of any such comments if Design-Builder believes incorporation of the comments would cause the Released for Construction Documents, other Design Documents or any Contract Documents to contain Errors in any respect or which would otherwise adversely affect in any manner the design or construction of the Project or the Contract Schedule, and Department shall have the right to modify its comments. Any failure of Design-Builder to so notify Department shall constitute Design-Builder's full acceptance of all responsibility for changes made to the Released for Construction Documents and other Design Documents in response to such Department comments and will be treated for all purposes hereunder as if Design-Builder had initiated such changes. Within 14 Days of receipt of comments (including modifications to previous comments) or such longer period as may be allowed by Department, Design-Builder shall revise and modify all such documents or materials so as to fully reflect all such comments.

2.4.2.2 Design Reviews Required by Third Parties

Design-Builder, in coordination with Department, shall be responsible for giving and obtaining all design reviews required by Utility Owners, Governmental Persons, Railroad owners and any other Persons other than Department, as applicable.

2.4.2.3 Compliance with Contract Documents and Design

Design-Builder shall deliver the Project in accordance with and otherwise meet the requirements of the Contract Documents and Design Documents. To the extent of any conflicts between the Contract Documents and the Design Documents, the Contract Documents shall have precedence over the Design Documents.

2.4.3 Ownership of Design

Released for Construction Documents and other Design Documents become Department's property upon preparation. Other documents prepared or obtained by Design-Builder in connection with the performance of its obligations under the Contract, including Construction Documents, studies, manuals, as-built drawings, calculations, technical and other reports and the like, become Department's property upon Design-Builder's preparation or receipt thereof.

2.5 Alternative Technical Concepts

Design-Builder acknowledges that any approvals from Persons other than Department required to implement Approved Alternative Technical Concepts (ATC) incorporated in the Contract Documents are Design-Builder's sole responsibility to obtain and may be disapproved for any reason (or for no stated reason). Design-Builder agrees that if Design-Builder fails to obtain any such approval,

Design-Builder shall comply with the corresponding baseline requirements (unmodified by the ATC) without any increase in the Contract Price or extension of the Completion Deadlines.

Notwithstanding anything herein to the contrary, if implementation of an ATC will require additional real property or Utility Work, Design-Builder shall have full responsibility for paying for any such real property and any related costs including any necessary Environmental Approvals, or performing and paying for any such Utility Work, without the right to a Change Order.

3 INFORMATION SUPPLIED TO DESIGN-BUILDER; RESPONSIBILITY FOR DESIGN; DISCLAIMER

3.1 Information Supplied

Department has made available to Design-Builder information which is described in the Contract Documents and certain Reference Information Documents (RID) regarding the Project, and has allowed Design-Builder access to the Site for purposes of inspection and testing.

3.2 Responsibility for Design

Design-Builder agrees that it has full responsibility for the design of the Project and that Design-Builder shall furnish the design of the Project, regardless of the fact that certain conceptual design work occurred and was provided to Design-Builder prior to the date of execution of the Contract. Design-Builder specifically acknowledges and agrees that:

(a) The Basic Configuration is preliminary and conceptual in nature.

(b) Design-Builder is not entitled to rely on and has not relied on (i) the RID or (ii) any other documents or information provided by Department, except to the extent specifically permitted in the Contract Documents.

(c) Design-Builder is responsible for correcting any Errors in the Basic Configuration through the design and/or construction process as set forth in Book 2 without any increase in the Contract Price or extension of a Completion Deadline.

(d) Design-Builder's Warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors in the Basic Configuration or RID.

3.3 Reliance of Specified RID Information

3.3.1 No Other Liability Regarding RID

Design-Builder understands and agrees that 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 RID or any action or forbearance in reliance thereon, except to the extent that Department has specifically agreed herein that Design-Builder shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter. Design-Builder further acknowledges and agrees that (a) if and to the extent Design-Builder or anyone on Design-Builder's behalf uses any of said information in any way, such use is made on the basis that Design-Builder, not Department, has approved and is responsible for said information, and (b) Design-Builder is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at Design-Builder's own risk and at its own discretion.

3.3.2 No Representation or Warranty Regarding Basic Configuration and RID

DEPARTMENT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE BASIC CONFIGURATION AND RID IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION CONFORMS WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. THE FOREGOING SHALL IN NO WAY AFFECT DEPARTMENT'S AGREEMENT HEREIN TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13.

3.4 Professional Licensing Laws

Department does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Contract, Design-Builder acknowledges that Department has no such intent. It is the intent of the parties that 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 Design-Builder's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that Design-Builder shall "furnish" the design for the Project. The terms and provisions of this Section 3.4 shall control and supersede every other provision of the Contract Documents with respect to this issue.

3.5 Notification of Third Party Claims

Department and Design-Builder shall each provide timely written notification to the other party of the receipt of any third party claim relating to, arising out of, or connected with work, operations or responsibilities performed by or on behalf of Design-Builder under this Contract.

4 TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; SCHEDULING

4.1 Time of Essence

Time is of the essence for this Contract.

4.2 Notices to Proceed

4.2.1 Issuance of NTP1

Design-Builder shall begin performance of certain limited Work as directed and described in NTP1 issued by Department. Limited Work may include non-permanent construction such as preliminary design, final design if specifically authorized in writing by Department, tree removal, clearing and grubbing, utility coordination, soil borings, temporary construction, and other items specifically authorized in writing by Department. Department anticipates that it will issue NTP1 within 14 Days after all the following events have been fully satisfied with respect to the Work proposed to be constructed.

(a) Design-Builder has notified Department in writing of the work to be performed and has received Department Approval, which may require Released for Construction Documents with Department Approval. Department Approval does not relieve Design-Builder of any responsibility for the design.

(b) 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.

(c) All insurance policies and bonds required to be delivered to Department as set forth in Section 9 of the Contract have been received and Accepted or Approved by Department as applicable and remain in full force and effect prior to the start of the Project.

(d) All necessary rights of access for such portion of the Project have been obtained.

(e) Design-Builder has submitted for Department Approval a Preliminary Schedule in accordance with Book 2, Section 2.3.

4.2.2 Issuance of NTP2

Design-Builder shall begin performance of the remainder of the Work as directed and described in NTP2 issued by Department. Department anticipates that it will issue NTP2 within 14 Days after the occurrence of all of the following:

(a) Approval of the Environmental Management Plan in accordance with Book 2, Section 4;

(b) Approval of the Traffic Management Plan in accordance with Book 2, Section 18.

(c) Design-Builder has submitted for Department Approval a Baseline Schedule in accordance with Book 2, Section 2.3.

4.3 Completion Deadlines

4.3.1 Reserved

4.3.2 Substantial Completion Deadline

Design-Builder shall achieve Substantial Completion by August 1, 2012. Said deadline for Substantial Completion, is referred to herein as the “Substantial Completion Deadline.”

4.3.3 Final Acceptance Deadline

Design-Builder shall achieve Final Acceptance within 90 Calendar Days following Substantial Completion. See Section 11.3 on Limitations on Payment. Said deadline for Final Acceptance, as it may be extended hereunder, is at Department's sole discretion and is referred to herein as the "Final Acceptance Deadline."

4.3.4 No Time Extensions

Except as otherwise specifically provided in Section 13, Department shall have no obligation to extend any Completion Deadline and Design-Builder shall not be relieved of its obligation to comply with the Contract Schedule and achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines for any reason.

4.4 Contract Schedule

Design-Builder shall deliver the Project, including planning, design, construction, management, development and completion, in accordance with the Contract Schedule, as described in Section 2.3 of Book 2. Such schedule shall also be the basis for determining the amount of monthly progress payments to be made to Design-Builder.

4.5 Prerequisites for Start of Construction

Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project, except Work specifically authorized under NTP1, until all the following events have been fully satisfied with respect to the Work proposed to be constructed.

(a) Department has issued a Notice to Proceed authorizing such Work.

(b) All requirements of the Quality Manual that are a condition to construction have been met.

(c) Design-Builder has furnished the Released for Construction Documents to Department and has received Department's Approval thereof in accordance with Book 2, Section 2.4 relating to such portion of the Project, unless waived in writing by Department

(d) All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals or the application to the Governmental Persons which allow construction to proceed during the application process, that are a prerequisite to commencement of such construction have been performed.

(e) All insurance policies and bonds required to be delivered to Department hereunder have been received and Accepted or Approved by Department as applicable and remain in full force and effect.

(f) All necessary rights of access for such portion of the Project have been obtained.

(g) Design-Builder has furnished to Department and Department has Approved the drawings set forth in Book 2, Section 14.5.

(h) Any additional conditions for construction set forth in the Contract Documents.

4.6 Reserved

5 CONTROL OF WORK

5.1 Control and Coordination of Work

Design-Builder shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures, public safety 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

Design-Builder shall take all reasonable precautions 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 Department and its consultants, visitors to the Site, traffic and the public who may be affected by the Work. Design-Builder shall immediately notify Department if Design-Builder believes that any Contract requirement creates a safety risk. By so doing, Design-builder is not relieved of responsibility for safety on the Site. Should the Department point out to Design-Builder a perceived safety hazard, or lack of adequate warning devices and protective measures, that action by the Department shall not relieve Design-Builder from responsibility for public safety. Conformance by Design-Builder with the Safety Management Plan or any other safety provisions in this contract shall not relieve Design-Builder of it's responsibility for safety on the Site

5.3 Process to be Followed for Discovery of Certain Site Conditions

5.3.1 Notification to Department

5.3.1.1 Discovery of Certain Site Conditions

If Design-Builder becomes aware of (a) any on-Site material that Design-Builder believes may contain Hazardous Materials that is required to be removed or treated, (b) any paleontological, cultural or biological resources, or (c) any Differing Site Conditions, as a condition precedent to Design-Builder's right to a Change Order, Design-Builder shall immediately notify Department via telephone or in person, to be followed immediately by written notification. In such event, Design-Builder shall immediately stop Work in the affected area and secure the affected area pending receipt of direction from Department. Department will view the location within two Working Days of receipt of such notification and will advise Design-Builder at that time whether to resume Work or whether investigation is required. Any delay resulting from Department viewing the location up to two Working Days shall not be considered a Department-Caused Delay.

5.3.1.2 Identified Conditions; Alternative Procedure

Notwithstanding the foregoing, Design-Builder shall not be obligated to stop Work upon discovery of any materials, resources, species or conditions which the Contract Documents indicate are present in the location in question. Furthermore, if any Governmental Approval specifies a procedure to be followed which differs from the procedure set forth herein, Design-Builder shall follow the procedure set forth in the Governmental Approval.

5.3.2 Further Investigation & Mitigation Work

Design-Builder shall promptly conduct such further investigation as Department deems appropriate.

If Differing Site Conditions are discovered, Design-Builder shall advise Department within one Working Day after the initial notification to Department required in Section 5.3.1, of any action recommended to be taken regarding the situation in a written action plan. Department then will determine whether Design-

Builder's findings and proposed actions are acceptable within three Working Days of receipt of Design-Builder's proposed action plan and either Approve, or require modification of, Design-Builder's proposed action plan.

If Hazardous Materials are involved, see Book 2, Section 4.

If paleontological, cultural or biological resources are present, Department will either perform the necessary Mitigation Work or direct Design-Builder to perform the necessary Mitigation Work pursuant to a Change Order issued under Section 13.

5.3.3 Recommence Work

Department shall have the right to require 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 Governmental Rules or Governmental Approvals). Design-Builder shall promptly recommence Work in the area upon receipt of notification from Department to do so. On recommencing Work, Design-Builder shall follow all applicable procedures contained in the Contract Documents and all other Governmental Rules with respect to such Work, consistent with Department's determination or preliminary determination regarding the nature of the material, resources, species or condition.

5.4 Obligation to Minimize Impacts

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. Design-Builder and all Design-Builder Related Entities shall perform work as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work that can be prosecuted properly with due regard to the rights of the public.

5.5 Quality Management

5.5.1 Design-Builder Quality Management

Design-Builder shall perform the quality management necessary for Design-Builder to comply with its obligations under the Contract Documents.

5.5.2 Oversight, Inspection, and Testing by Department and Others

All materials and each part or detail of the Work shall also be subject to oversight, inspection and testing by Department and other Persons designated by Department. When any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect and test the Work. Such oversight, inspection and/or testing does not make such Person a party to the Contract nor will it change the rights of the parties hereto. Design-Builder hereby consents to such oversight, inspection and testing. Upon request from Department, 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.

5.5.3 Obligation to Uncover Finished Work

At all times before Final Acceptance, Design-Builder shall remove or uncover such portions of the finished construction Work as directed by Department. After examination by Department and any other Persons designated by Department, Design-Builder shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to

the Critical Path occasioned thereby shall be at Design-Builder's expense and Design-Builder shall not be entitled to a time extension. Furthermore, any Work done or materials used without notice to and opportunity for prior inspection by Department as provided in Book 2, Section 2.4 may be ordered uncovered, removed or restored at Design-Builder's expense and without a time extension, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing and restoring Work shall be considered a Department-Caused Delay, and Design-Builder shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to the Critical Path occasioned thereby, subject to the provisions of Section 13.

5.6 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances, and Approvals

5.6.1 Oversight and Acceptance

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 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 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. Department may reject or require Design-Builder to remedy any Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were conducted by any Person. Department's Approval or Acceptance of Design Documents for construction as described by the Contract Documents shall constitute approval of the design by Department for purposes of Government Code section 830.6, but shall not be deemed to relieve Design-Builder of liability for the design.

5.6.2 No Estoppel

Department shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after Final Acceptance and payment therefor, 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 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, Department shall not be precluded or estopped from recovering from Design-Builder and its Surety(ies) such damages as Department may sustain by reason of Design-Builder's failure to comply or to have complied with the terms of the Contract Documents.

5.7 Nonconforming Work

5.7.1 Rejection, Removal and Replacement of Work

Subject to Department's right, in its sole discretion, to Accept or reject Nonconforming Work, Design-Builder shall remove and replace rejected Nonconforming Work so as to conform with the requirements of the Contract Documents, at Design-Builder's expense and without any time extension; and Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that Department may not have discovered the Nonconforming Work shall not constitute an Acceptance or Approval of such Nonconforming Work. If Design-Builder fails to correct any

Nonconforming Work within five Days of receipt of notice from Department requesting correction (or, for Nonconforming Work which cannot be corrected within five Days, if Design-Builder fails to provide to Department a schedule for correcting any such Nonconforming Work Approved by Department within such five-Day period, begin correction within such five-Day period and thereafter diligently prosecute such correction in accordance with such Approved schedule to completion), then Department may cause the Nonconforming Work to be remedied or removed and replaced, and may deduct the cost of doing so from any moneys due or to become due Design-Builder and/or obtain reimbursement from Design-Builder for such cost.

5.7.2 Acceptance of Nonconforming Work

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 Contract Price, if applicable). In certain events, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, without limiting the foregoing, Design-Builder's failure to perform such items to be paid in equal monthly amounts indicated in Book 2, Section 2.2 during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at Department's election, (a) Design-Builder's cost savings associated with its failure to perform the Work in accordance with the Contract requirements and/or (b) the amount deemed appropriate by 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, Department shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents.

6 ACCESS TO SITE; UTILITY RELOCATIONS; ENVIRONMENTAL MITIGATION

6.1 Access to Site

6.1.1 Access to Right of Way Identified on R/W Work Map

6.1.1.1 Obligation to Provide Access to Right of Way

Department shall provide access to the Right of Way identified on the R/W Work Map.

6.1.1.2 Right of Way Access Requirements

Concurrently with review of the Baseline Schedule, Design-Builder and Department shall discuss the access requirements for the Right of Way identified on the R/W Work Map associated with the scheduled activities, mutually determine which parcels are on the Critical Path and establish dates to be included in the Baseline Schedule for activities associated with provision of access. Design-Builder shall be provided access to those parcels identified on the R/W Work Map that have not been obtained by the Proposal Due Date no later than the deadline specified in Book 2, Section 7. For Approval, the Baseline Schedule must be structured to provide reasonable work-arounds to progress the Project until these parcels become available, and reasonably minimize dependence on these parcels.

6.1.1.3 Delay in Providing Access

If Department at any time determines it will be unable to provide access to a particular parcel by the scheduled date (on the Contract Schedule), Department shall notify Design-Builder regarding the revised projected date for delivery of access 45 days prior to the current scheduled date for delivery of access. 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. Subject to Section 6.1.1.4, to the extent that a delay to the Critical Path cannot be avoided, such delay to the Critical Path shall be considered a Department-Caused Delay.

6.1.1.4 Obligation to Provide Written Notice

In addition to the requirements of Section 6.1.1.3, and as a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline related to Department's delivery of access to the parcels identified on the R/W Work Map, Design-Builder shall provide Department with a 30-Day written notice when lack of availability of a given parcel will result in an impact to the cost or schedule.

6.1.2 Access to Right of Way Not Identified on R/W Work Map

6.1.2.1 Unidentified Right of Way as a Result of a Department-Directed Change

Any Right of Way not identified on the R/W Work Map that is required as the result of a Department-Directed Change will be addressed in the respective Change Order for the Department-Directed Change.

6.1.2.2 Right of Way Associated with a Design-Builder Initiated Change Order

The cost of obtaining any Right of Way not identified on the R/W Work Map associated with a Design-Builder-initiated Change Order under Section 13.3 will be considered in determining the Contract Price adjustment under Section 13.

6.1.2.3 Reimbursement of Department Costs

Subject to Department Approval, Design-Builder shall reimburse Department for any costs (including but not limited to attorneys', accountants' and expert witness fees and costs) of acquiring any real property

that is not Department's responsibility under Sections 6.1.1.1, 6.1.2.1 or 6.1.2.2 which Design-Builder determines is necessary or advisable in order to complete the Project, including obtaining any Construction Easements. Department may deduct such amounts from payments otherwise owing hereunder, or may separately invoice Design-Builder. Design-Builder shall reimburse Department for any such amounts paid by Department within 10 Days after receipt of an invoice from Department therefor.

6.1.2.4 Additional Requirements

Additional requirements applicable to Design-Builder are set forth in Section 7 of Book 2.

6.1.3 Sharing of Cost Savings For Avoided Right of Way Acquisitions

Design-Builder is encouraged to evaluate design alternatives that would avoid the need to acquire Right of Way. If any such design alternative is Approved, resulting in reduction of Department's costs, change in the Contract Price will be negotiated.

6.2 Utility Relocations

This Section 6.2 describes how the risk of increased costs and delays associated with the Utility Work is allocated between Department and Design-Builder through the Change Order process, and contains certain additional terms relating to Utility Work to supplement those set forth in Section 6 of Book 2. Design-Builder agrees that (a) the Contract Price covers all of the Relocations and other Utility Work to be furnished or performed by Design-Builder described in Section 6 of Book 2 and in this Section 6.2, and (b) it is feasible to obtain and/or perform all necessary Utility Work within the time deadlines of the Contract Documents. Accordingly, Design-Builder shall be entitled to receive a Change Order for additional costs and delays associated with the Utility Work only as permitted by this Section 6.2 or in circumstances for which such a Change Order is otherwise permitted under Section 13 (such as for Department-Directed Changes which increase the Utility Work to be furnished or performed by Design-Builder). A deductive Change Order for reductions in the Utility Work to be furnished or performed by Design-Builder shall be issued only when permitted by this Section 6.2 or in circumstances for which a deductive Change Order is otherwise permitted under Section 13. Notwithstanding the foregoing, Design-Builder's entitlement to any Change Orders pursuant to Section 13 relating to the Utility Work shall be subject to any applicable limitations and restrictions set forth in this Section 6.2, and Design-Builder's entitlement to any Change Orders pursuant to this Section 6.2 shall be subject to the limitations, restrictions and procedures set forth in Section 13, except as otherwise set forth in Section 6.2.8.

6.2.1 Accuracy of Design and Data

6.2.1.1 "Reasonable Accuracy" Defined (this section should be moved before 6.2.1.1)

6.2.1.1.1 Reasonable Accuracy

For purposes of Sections 6.2.1.1 and 6.2.1.2, a Utility shall be deemed indicated with reasonable accuracy if:

(a) with respect to the "Quality Level A" Utility information provided by Department (as indicated therein), the Utility's actual location is within 2 feet of the indicated horizontal and vertical locations at the "xyz" coordinates in the Certified SUE Plans or Test Hole Matrices showing Verified Utility Information in Book 2; or

(b) with respect to the "Quality Level B" Utility information provided by Department (as indicated therein), the Utility's actual location is within 2 feet of the indicated horizontal location at the "xy" coordinates in the Certified SUE Plans or Test Hole Matrices showing Verified Utility Information in Book 2 (with no limitation on vertical location).

6.2.1.1.2 Inconsistency Among Verification Data Sheets

If there is any inconsistency between any two or more Certified SUE Plans or Test Hole Matrices showing Verified Utility Information cited in Section 6.2.1.3.1, the most accurate of the indications will be used for purposes of Section 6.2.1.3.1.

6.2.1.1.3 Design-Builder Acknowledgment Regarding RID

Design-Builder acknowledges that statements in the RID as to the extent or nature of the work required to Relocate any Utility shall have no relevance to the determination of reasonable accuracy, and shall not be considered in calculating the amount of the Change Order, if any, to which either party is entitled pursuant to this Section 6.2.1.

6.2.1.2 Inaccuracy Increasing the Work

In general, if any existing underground Utility identified in Book 2, Section 6.2 as part of the Work (or any portion of such Utility) is not indicated at all in the Certified SUE Plans or Test Hole Matrices showing Verified Utility Information provided in Book 2 or is not indicated therein with "reasonable accuracy" (as defined in Section 6.2.1.3) therein, then, upon Design-Builder's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, Department shall be responsible for, and agrees to issue a Change Order to (a) compensate Design-Builder for additional costs of the Utility Work (other than Betterments added to the Work pursuant to Section 6.2.4) to be furnished or performed by Design-Builder which are directly attributable to such lacking or incorrect information and/or (b) to extend the Completion Deadlines as a result of any delay in the Critical Path caused by any such conditions. Notwithstanding the foregoing, Design-Builder shall be responsible for, and no Change Order shall be issued under this Section 6.2.1.1 with respect to:

(i) any Utility (or portion thereof) which a surface inspection of the area would have shown the existence or the likelihood of existence thereof in the correct location and/or size, as applicable, by reason of above-ground facilities such as buildings, meters, junction boxes or identifying markers;

(ii) Service Lines; or

(iii) any costs or delays associated with the performance of Incidental Utility Work by Design-Builder or by any Utility Owner.

6.2.1.3 Inaccuracy Decreasing the Work

If any existing underground Utility identified in Book 2, Section 6 as part of the Work (or any portion of such Utility) is not indicated with "reasonable accuracy" in the Certified SUE Plans or Test Hole Matrices showing Verified Utility Information provided in Book 2, then Department shall have the right to issue a Change Order reducing the Contract Price and/or Completion Deadlines to reflect the value of any reduction in the costs and/or duration of the Utility Work (other than Betterments added to the Work pursuant to Section 6.2.4) to be furnished or performed by Design-Builder which is directly attributable to the correction of such information. The amount of any such Change Order shall be determined in accordance with Section 13.

6.2.1.4 Partial Inaccuracy

If only a portion of an existing underground Utility identified in Book 2, Section 6.2 is not indicated at all in the Certified SUE Plans or Test Hole Matrices showing Verified Utility Information provided in Book 2 or is not indicated with "reasonable accuracy" therein, then a Change Order pursuant to Sections 6.2.1.1 or 6.2.1.2 shall be allowed only for the resulting increased or decreased costs (respectively) of the Utility Work incurred by Design-Builder with respect to that portion of such Utility (subject, in the case of any increase in the Contract Price, to the restrictions set forth in clauses (i), (ii) and (iii) of Section 6.2.1.1).

6.2.2 Change in Allocation of Responsibility

6.2.2.1 Change in Allocation of Responsibility Increasing the Work

The scope of the Work with respect to Utilities may be increased by reallocating Utility Work from a Utility Owner to Design-Builder by Change Order.

Upon Design-Builder's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, Design-Builder shall be entitled to an increase in the Contract Price to compensate Design-Builder for its additional costs directly attributable to any increase in the scope of the Work pursuant to this Section 6.2.2.1; provided, however, that if Department determines in its sole discretion that Department is entitled to reimbursement by the Utility Owner for the cost of such Relocation, then the amount of such resulting increase in the Contract Price shall instead be determined in the same manner as that provided in Section 6.2.4 for a Betterment, subject to the requirements of any applicable Utility Agreement. Design-Builder is responsible for scheduling all Utility Work so as to meet all applicable Completion Deadlines, without regard to whether such Utility Work is performed by Design-Builder or the affected Utility Owner; accordingly, Design-Builder shall not be entitled to an extension of any Completion Deadline on account of any increase in the scope of the Work pursuant to this Section 6.2.2.1. Any increase in the scope of the Work pursuant to this Section 6.2.2.1 shall not be considered a Department-Directed Change.

6.2.2.2 Change in Allocation of Responsibility Decreasing the Work

Any Utility Work initially included in the scope of the Work may be deleted from the scope of the Work pursuant to either of the following:

(a) The scope of the Work may be reduced pursuant to Book 2, Section 6.2.1; or

(b) Upon Approval or direction by Department, design and/or construction of Utility Relocations identified in Book 2, Section 6.2 or Incidental Utility Work may be removed from the Work.

Department shall be entitled to a reduction in the Contract Price to reflect any reduction in the scope of the Work pursuant to this Section 6.2.2.2. The amount of any such deductive Change Order shall be determined in accordance with Section 13. Any reduction in the scope of the Work pursuant to this Section 6.2.2.2 shall not be considered a Department-Directed Change

6.2.3 Added Utility Work

Upon Design-Builder's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, Design-Builder shall be entitled to (a) an increase in the Contract Price to compensate Design-Builder for its additional costs and/or (b) an extension of the applicable Completion Deadlines as the result of any delay in the Critical Path directly attributable to any Utility Work added after the Proposal Due Date in accordance with Book 2, Section 6.2.2.1.2.

6.2.4 Betterments

Utility Betterments may be added to the Work pursuant to this Section 6.2.4 and Book 2, Section 6.4.6.

6.2.4.1 Procedure

Any Utility Owner may request Department to permit Design-Builder to perform work relating to Betterments as a part of the Work, at the Utility Owner's expense. If Department Approves any such request, Design-Builder will have the obligation to perform such work, with the right to receive additional payment and an extension of any affected Completion Deadline to the extent that any delay in the Critical Path is directly attributable to the Betterment. The price charged by Design-Builder for such Betterment shall either be a lump sum amount negotiated with the Utility Owner or determined on a time and

materials cost basis as specified below. Any extension of any Completion Deadline(s) or Contract Price increase requested for any Betterment shall be subject to the requirements of Sections 6.2 and 13, as applicable.

6.2.4.1.1 Pricing

If a Utility Owner requests that Design-Builder design and/or construct a Betterment, Design-Builder shall use its best efforts to negotiate a lump sum price or unit prices for such work with the Utility Owner, in good faith. If Design-Builder and the Utility Owner are unable to agree on a lump sum price or unit prices, then Department will direct Design-Builder to perform such work on a time and materials basis pursuant to Section 13.7, provided that the conditions set forth in Section 6.2.4.1.3 are satisfied.

6.2.4.1.2 Change Order Increasing the Contract Price

A proposed Betterment will be added to the scope of the Work if Approved by Department pursuant to Section 6.2.4.1.3. Department agrees to issue a Change Order increasing the Contract Price on account of any Betterment added to the Work pursuant to this Section 6.2.4.1. The amount of any Change Order issued under this Section 6.2.4.1 shall be a direct pass-through of the lump sum price negotiated by Design-Builder and the Utility Owner (with no additional mark-ups) or, if no such price has been negotiated, an amount determined on a time and materials basis pursuant to Section 13.7. Design-Builder shall not request or accept any payment directly from the Utility Owner for any Betterment added to the Work.

6.2.4.1.3 Department's Approval of Betterments

Department will Approve the addition of a Betterment to the scope of the Work under this Section 6.2.4.1 only if: (a) the Utility Owner has agreed to the addition of such Betterment to the Work, (b) such Betterment is compatible with the Project, (c) the Utility Owner has agreed to reimburse Department for all the costs thereof, (d) the Utility Owner has agreed as to the method (e.g., negotiated lump sum amount, unit prices or time and materials cost basis) of pricing such Work, and (e) it is feasible to separate the cost/pricing of the Betterment work from that for any related Utility Work being furnished or performed by Design-Builder. Design-Builder shall provide Department with such information, analyses and certificates as may be requested by Department in connection with its Approval.

6.2.4.1.4 Change Order Reducing the Contract Price

If any Betterment has been added to the Work and the Contract Price has been increased accordingly by Change Order, but subsequently for any reason the Betterment is deleted from the Work, or the scope of Design-Builder's Work with regard to such Betterment is materially reduced, then Department shall be entitled to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Work that is directly attributable to such deletion or reduction. Such Change Order shall be equal to the lump sum amount added to the Contract Price pursuant to Section 6.2.4.1.2, if applicable and if the entire Betterment has been deleted from the Work; otherwise, the amount of such Change Order shall be determined in accordance with Section 13.

6.2.4.1.5 Betterment Not Considered Department-Directed Change

Any change in the scope of the Work pursuant to this Section 6.2.4 shall not be considered a Department-Directed Change.

6.2.5 Utility Delays

Design-Builder shall give written notice to Department of any circumstance which may lead to a claim under this Section 6.2.5 immediately after Design-Builder's becoming aware that such circumstance has occurred or is likely to occur.

6.2.5.1 Allocation of Risk of Schedule Impacts

Design-Builder shall bear the risk of schedule impacts associated with the first four Days of Utility Delays per Utility Owner for the Project. Subject to the limitations and conditions set forth herein, if aggregate Utility Delays caused by a particular Utility Owner exceed four Days, then any Completion Deadline(s) affected thereby shall be extended for one Day for every Day of Utility Delay caused by such Utility Owner in excess of the initial aggregate of four Days of Utility Delay caused by such Utility Owner so long as the Utility Delay impacts the Project's Critical Path.

Failure of the parties to reach agreement regarding Design-Builder's entitlement to an extension due to Utility Delays shall be a Dispute to be resolved in accordance with Section 19. Design-Builder shall not be entitled to any extension of any Completion Deadline on account of any Utility Delay except as provided in this Section 6.2.5.1.

6.2.5.2 Conditions to Extensions for Utility Delays

With respect to each Utility Delay claimed by Design-Builder, Design-Builder shall not be entitled to any extension of any Completion Deadline(s) pursuant to Section 6.2.5.1, and such Utility Delay shall not be counted toward the four-Day cap on Design-Builder's risk per Utility Owner set forth in Section 6.2.5.1, unless all of the following conditions are satisfied:

(a) Design-Builder has provided evidence reasonably satisfactory to Department that (i) Design-Builder has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays, and (ii) Design-Builder has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation;

(b) If Design-Builder is responsible for the Relocation, Design-Builder has provided a reasonable Relocation plan to the Utility Owner and Design-Builder has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options and/or rulings required by or with any Governmental Person in order to design and construct such Relocation; and

(c) No circumstances exist which have delayed or are delaying the affected Relocation, other than those which fit within the definition of a Utility Delay.

6.2.5.3 Concurrent Delays

To the extent one or more Utility Delays is or are concurrent with any other delay which is Design-Builder's responsibility hereunder but which is not a Utility Delay, whether or not such other delay is on the Critical Path, then such Utility Delay(s) shall not be considered in calculating any four-Day cap on Design-Builder's risk pursuant to Section 6.2.5.1. Furthermore, to the extent two or more Utility Delays occur concurrently with each other (whether caused by the same Utility Owner or by different Utility Owners), then only one of such Utility Delays shall be considered in calculating a four-Day cap on Design-Builder's risk pursuant to Section 6.2.5.1 (in selecting between two or more Utility Owners for such purpose, the Utility Delay caused by the Utility Owner with the least amount of accrued Utility Delay shall be selected and applied to the four-Day cap on Design-Builder's risk for such Utility Owner).

6.2.6 Certain Obligations of Design-Builder; Utility-Related Right of Way Costs

6.2.6.1 Multiple Relocations of the Same Utility

Design-Builder shall endeavor to avoid multiple Relocations of the same Utility, whether by the Utility Owner or by Design-Builder. Accordingly, after a Utility has been Relocated once in order to accommodate the Project, Design-Builder shall be responsible for all costs incurred by either Design-

Builder or the Utility Owner in order to subsequently Relocate such Utility to accommodate the Project. If the Utility Owner performs such subsequent Relocation at Department's expense, then Design-Builder shall reimburse Department for all amounts paid by Department to such Utility Owner in reimbursement for such subsequent Relocation. If Design-Builder performs such subsequent Relocation, then Design-Builder shall not receive any extension of any Completion Deadline or increase in the Contract Price on account of the performance of such subsequent Relocation.

6.2.6.2 Minimizing Department's Reimbursement Obligation

In designing and constructing the Project, Design-Builder shall take all reasonable steps to minimize costs to the Utility Owners which will be subject to reimbursement by Department, to the extent practicable and otherwise consistent with other requirements of the Contract Documents.

6.2.6.3 Utility-Related Right of Way Costs

6.2.6.3.1 Department's Responsibility

With respect to Utility Easements other than those described in Section 6.2.6.3.2, Department shall be responsible for any compensation required to be paid to Utility Owners for relinquishing their Utility Easements.

6.2.6.3.2 Design-Builder's Responsibility

With respect to Utility Easements resulting from a change in Basic Configuration, Design-Builder shall be responsible for, and shall reimburse Department within 10 Days after receiving an invoice therefor, any compensation which Department may be obligated to pay to the Utility Owners for relinquishing such Utility Easements.

6.2.7 Additional Restrictions on Change Orders

In addition to all of the other requirements and limitations contained in this Section 6.2 and in Section 13, the entitlement of Design-Builder to any Change Order under this Section 6.2 shall be subject to the restrictions and limitations set forth in this Section 6.2.7.

6.2.7.1 Burden of Proof

Design-Builder shall provide adequate support, by documentation acceptable to Department, to prove that the amount of any additional costs and/or time incurred by Design-Builder are both necessary and reasonable. For Relocations, Design-Builder shall also bear the burden of proving that the Relocation cannot reasonably be avoided.

6.2.7.2 Incremental Costs Only

Any Change Order increasing the Contract Price pursuant to this Section 6.2 shall include only the incremental costs arising from the circumstances giving rise to such Change Order.

6.2.7.3 Coordination Costs

Design-Builder shall not be entitled to an increase in the Contract Price for any costs of coordinating with Utility Owners or for assisting Department in coordinating with Utility Owners.

6.2.7.4 Voluntary Action by Design-Builder

If Design-Builder elects to make payments to Utility Owners or to undertake any other efforts which are not required by the terms of the Contract Documents, Design-Builder shall not be entitled to a Change Order in connection therewith. Design-Builder shall promptly notify Department of the terms of any such arrangements.

6.2.8 Special Provision Regarding Change Orders

Notwithstanding any contrary provision of Section 13, Department reserves the right, in its sole discretion, to waive certain of the requirements set forth in Section 13 with respect to any Change Order to be issued pursuant to this Section 6.2.

6.3 Environmental Compliance

In performance of the Work, Design-Builder shall comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued thereunder, whether obtained by Department or Design-Builder. Design-Builder acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure to comply with such requirements.

6.3.1 Mitigation Requirements

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 Design-Builder's performance of all such mitigation measures and for performance of all mitigation measures arising from New Environmental Approvals which Section 6.3.2 designates as Design-Builder's responsibility as well as the cost of all activities to be performed by Design-Builder as described in Section 4 of Book 2.

6.3.2 New Environmental Approvals

6.3.2.1 Approvals To Be Obtained by Department

Department shall be responsible for obtaining any New Environmental Approvals necessitated by a Department-Directed Change, Department-Caused Delay, change in a Governmental Rule under Section 13.3.1.2(d)(v), or Force Majeure event. Design-Builder shall provide support services to Department with respect to obtaining any such New Environmental Approval. Any Change Order covering a Department-Directed Change, Department-Caused Delay, change in a Governmental Rule under Section 13.3.1.2(d)(v) or Force Majeure event may include compensation to Design-Builder for any changes in the Work (including performance of additional mitigation measures but excluding performance of such support services) resulting from such New Environmental Approvals, as well as any time extension necessitated by the Department-Directed Change, Department-Caused Delay, change in Governmental Rule under Section 13.3.1.2(d)(v) or Force Majeure event , subject to the conditions and limitations contained in Section 13.

6.3.2.2 Approvals To Be Obtained by Design-Builder

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 6.3.2.1, Design-Builder shall be fully responsible for obtaining the New Environmental Approval and any other environmental approvals that may be necessary, and for all requirements resulting there from, as well as for any litigation arising in connection therewith. Department will reasonably assist Design-Builder in obtaining any New Environmental Approvals.

7 EQUAL EMPLOYMENT OPPORTUNITY; SUBCONTRACTS; LABOR

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Policy

Design-Builder shall comply with the Equal Employment Opportunity (EEO) requirements set forth in Exhibits D and F.

7.1.2 Inclusion in Subcontracts

Design-Builder shall include Sections 7.1.1 and Exhibits D and F in every Subcontract over $10,000 (including purchase orders), and shall require that they be included in all Subcontracts over $10,000 at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.2 Disadvantaged Business Enterprises

7.2.1 Disadvantaged Business Enterprises Policy

Design-Builder shall comply with the requirements set forth in Exhibit E.

7.2.2 Inclusion in Subcontracts

Design-Builder shall include Section 7.2.1 and Exhibit E in every Subcontract (including purchase orders), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.3 Subcontracting Requirements

Design-Builder shall comply with all applicable requirements of the Contract Documents relating to Subcontracts (including Exhibits D, E and F), and shall ensure that its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents relating to subcontracting (including Exhibits D, E and F).

7.3.1 Major Participants

Design-Builder shall not add, delete, or change the role of, any Major Participant as set forth in its Proposal without the prior Approval of Department.

7.3.2 Assignment of Subcontract Rights

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to Department, (a) 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, (b) all guarantees and warranties, express and implied, shall inure to the benefit of Department, its successors and assigns, as well as Design-Builder, and (c) the rights of Design-Builder under such instrument are assigned to Department contingent upon delivery of written request from Department following default by Design-Builder or termination or expiration of the Contract, allowing Department to assume the benefit of Design-Builder's rights with liability only for those remaining obligations of Design-Builder accruing after the date of assumption by Department, but shall not release or relieve Design-Builder from its obligations or liabilities under the assigned Subcontract.

7.3.3 Subcontract Terms

Each Subcontract 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. Each Subcontract shall include terms that are substantially similar to those terms required by Sections 5.1, 5.2, 5.3, 5.4, 7.1 (as appropriate), 7.2, 7.3.1, 7.4.3, 10.1, 13.7, 14, 15, 19, 20.3 and 23.6 and Exhibits D (as appropriate), E, and F (as appropriate), specifically 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 the dispute; and each Subcontract other than Subcontracts with Suppliers shall include terms that are substantially similar to those contained in Sections 2.2(e), 2.2(f), 2.2(h), 2.3.1, 21.3, 22.2 (as appropriate), 22.3 and 22.4.

7.3.4 Subcontract Data

Design-Builder shall notify Department, in writing, of the name and address of, licenses held by, and any insurance documents required pursuant to Section 9 of, each Subcontractor (excluding Suppliers), as soon as the potential Subcontractor has been identified by Design-Builder, but in no event less than 14 Days prior to the scheduled initiation of Work by such proposed Subcontractor.

Design-Builder shall provide requests to sublet any portion of the Contract to Department on a form provided by Department, at least 10 Days in advance of the date on which the Subcontractor intends to start work. Design-Builder shall allow Department access to all Subcontracts and records regarding Subcontracts within 7 Days following receipt of Department's request. All Subcontracts shall be in writing and shall include design costs (if applicable).

7.3.5 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Builder shall be fully responsible for all of the Work. Department shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind Department. Each Subcontract shall include the following provision:

> Nothing contained herein shall be deemed to create any privity of contract between the State of California through its Director of Transportation (Department) and Subcontractor, nor does it create any duties, obligations or liabilities on the part of Department to Subcontractor except those allowed under California law. In the event of any claim or dispute arising under this Subcontract and/or Design-Builder's contract with Department, Subcontractor shall look only to Design-Builder for any payment, redress, relief or other satisfaction. Subcontractor hereby waives any claim or cause of action against Department arising out of this Subcontract or otherwise arising out of or in connection with Subcontractor's work.

7.3.6 Subcontract Work

Design-Builder shall coordinate the Work performed by Subcontractors.

7.3.7 Debarred Subcontractors

Design-Builder shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

7.4 Key Personnel; Character of Workers

7.4.1 Key Personnel

Exhibit G hereto identifies certain key positions for the Project. Department shall have the right to review the qualifications and character 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. Design-Builder shall notify Department in writing of any proposed changes in any Key Personnel, and shall not change any Key Personnel without the prior written Approval of Department.

7.4.2 Representations, Warranties and Covenants

Design-Builder acknowledges and agrees that the award of the Contract by Department to Design-Builder was based, in large part, on the qualifications and experience of the personnel listed in the Statement of Qualifications, the Proposal and Design-Builder's commitment that such individuals would be available to undertake and perform the Work. 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. Unless otherwise agreed to by Department in writing, individuals filling key personnel roles shall devote a sufficient amount of their time for the applicable role with respect to the prosecution and performance of the Work and Design-Builder shall document such commitment to Department's satisfaction upon Department's request.

7.4.3 Employee Performance Requirements

All individuals performing the Work by or on behalf of Design-Builder shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If Department determines in its sole discretion that any Person employed by Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, or who is intemperate or disorderly, then, at the written request of Department, Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior Approval of Department in its sole discretion. If 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 Department may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to Design-Builder. Such suspension shall in no way relieve Design-Builder of any obligation contained in the Contract Documents or entitle Design-Builder to a Change Order. Once compliance is achieved, Design-Builder shall be entitled to and shall promptly resume the Work.

Surveys performed to progress the construction activities on the Project are covered by the Contract labor requirements. The workers performing the Work shall be paid at a minimum wage based on the most similar trade or occupation as set forth in Exhibit F.

8 SURETY BONDS

Design-Builder shall provide to Department and maintain at all times during the term of the Contract security for performance of the Work as described below (or other assurance satisfactory to Department in its sole discretion). Each bond required hereunder shall be provided by a Surety licensed as surety and qualified to do business in the State. The Surety shall have a "Best's Rating" of A- or better and Financial Size Category of VIII or better by A.M. Best Co.

8.1 Payment and Performance Bonds

Design-Builder has provided to Department and shall maintain in full force and effect the Payment Bond in the form of Exhibit K in the amount of 100% of the Contract Price and the Performance Bond in the form of Exhibit L in the amount of 100% of the Contract Price.

8.2 Warranty Bond

After Final Acceptance has occurred, Design-Builder may obtain a release of the Performance Bond by providing to Department and maintaining full force and effect a warranty bond which shall guarantee performance of all obligations of Design-Builder that survive Final Acceptance under the Contract Documents. The warranty bond (a) shall be in an amount equal to four percent of the Contract Price during the first two years following Final Acceptance and shall be in an amount equal to two percent of the Contract Price during the third year following Final Acceptance and (b) shall be in the form set forth in Exhibit M.

8.3 Utility Work

The Utility Work furnished or performed by Design-Builder hereunder will automatically be covered by the Payment and Performance Bond and any warranty bond or other security to be provided by Design-Builder pursuant to Section 8.2. At their request, Utility Owners whose Utilities are being Relocated by Design-Builder shall be added as additional obligees to the Payment and Performance Bond (as their interests may appear), as well as to such replacement bond or other security (as their interests may appear), to the limited extent of the amount of the Utility Work required on behalf of the Utility Owner. The Payment and Performance Bond shall be provided in their full amount, however, on behalf of Department, with no riders that reduce Department's potential of recovery based on the Utility Owner's limited obligee amounts. Alternatively, Design-Builder may provide separate bonds satisfactory to the Utility Owners. Design-Builder shall provide all information necessary for such coverage to the surety(ies) providing such bonds. All cost estimates required to be provided under the Contract Documents with respect to Utility Work furnished or performed by Design-Builder shall include the cost of bond premiums.

8.4 Guaranty

Design-Builder has provided to Department and shall maintain in full force and effect the Guaranty (if required). Each Guarantor (if any) shall have a credit rating for senior unsecured debt of at least Baa1 by Moody's Investors Services or BBB+ by Standard & Poor's Corporation.

8.5 No Relief of Liability

Notwithstanding any other requirements of the Contract Documents, performance by a Surety or any Guarantor of any of the obligations of Design-Builder shall not relieve Design-Builder of any of its obligations hereunder.

9 INSURANCE

9.1 General Insurance Requirements

No work shall start until compliance with all insurance requirements has been met and approved by the Department. Insurance shall conform to the following requirements:

9.1.1 Evidence of Insurance

Design-Builder shall provide evidence of insurance as proof of compliance for all insurance requirements contained in this Section 9. Evidence of insurance in the form of copies of insurance policies, Certificates of Insurance and any self-insurance coverage documentation, including the required "additional insured" endorsements, shall be furnished by Design-Builder to the Department. The evidence of insurance shall provide that no lapse, cancellation, or reduction of coverage without thirty (30) days' prior written notice to Department. Insurance policies and Certificates of Insurance, furnished as evidence of required insurance, for the General Liability, Umbrella-Excess Liability and Professional Liability (Errors and Omissions) policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy. Allowance of any additional exclusions is at the sole discretion of Department. Regardless of the allowance of exclusions or deductions by Department, Design-Builder shall be responsible for any deductible amount and shall warrant that the coverage provided to Department is consistent with the requirements of Section 9 herein.

9.1.2 Submission of Insurance Documentation

Design-Builder shall submit, prior to commencement of work, the following:

1. The Design-Builder's General Liability Insurance shall be provided under Commercial General Liability policy form No. CG 001 as published by the Insurance Services office (ISO), or under a policy form at least as broad as policy form No. CG 001, as long as not inconsistent with the provisions of Section 9 herein.

2. Copy of its commercial general liability policy and its excess policy, including the declarations page, all amendments, riders, endorsements, and other modifications in effect at the time of contract execution.

3. Certificate of Insurance showing all other required coverages, including, but not limited to Professional Liability (Errors and Omissions), auto liability insurance, and workers compensation insurance. Design-Builder shall provide to Department, in advance of the start of work, each policy and all exclusions, amendments, riders, declarations pages, and other modifications in effect at the time of contract execution.

9.1.3 A.M. Best Rating

All insurance companies providing policies obtained to satisfy the insurance requirements must have an A.M. Best rating of A- or better, a Financial Size Category of VII or better and be authorized to do business in the State of California.

9.1.4 Full Force and Effect

All policies will remain in full force and effect throughout the term of the Project and, when there is an extended reporting period, shall remain in effect for the time stipulated. The Design-Builder shall maintain completed operations coverage with a carrier acceptable to the Department through the expiration of the statute of repose set forth in Code of Civil Procedure Section 337.1.

9.1.5 No Recourse

There shall be no recourse against the State for payment of premiums or other amounts with respect to the insurance provided by Design-Builder, or for deductibles under these policies.

9.1.6 Indemnification and Duty to Defend

The insurance coverage provided hereunder shall support, but is not intended to limit, Design-Builder's indemnification and duty to defend obligations under Section 18.

9.1.7 Primary and Non-contributory

The policy shall stipulate that for claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in the Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents and consultants shall be excess of such insurance and shall not contribute with it.

9.1.8 Deductibles

Department may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the Department. Regardless of the allowance of exclusions or deductions by the Department, the Design-Builder is responsible for any deductible amount and shall warrant that the coverage provided to the Department is in accordance with Section 9.

9.1.9 Self-Insurance

Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and approval by Department.

If Design-Builder uses a self-insurance program or self-insured retention, Design-Builder shall provide Department with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the contract is the Design-Builder's acknowledgement that the Design-Builder will be bound by all laws as if the Design-Builder were an insurer as defined under Insurance Code Section 23 and that the self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code Section 22.

9.1.10 Enforcement

Department may take any steps necessary to assure Design-Builder's compliance with its insurance obligations. Should any insurance policy lapse or be canceled during the contract period Design-Builder shall, no less than thirty (30) days prior to the effective expiration or cancellation date, furnish Department with written evidence of renewal or replacement of the policy. Failure to continuously maintain insurance coverage as herein required is a material breach of this contract. The required insurance shall be subject to the approval of Department, but any acceptance of copies of insurance policies, insurance certificates and self-insurance documentation by Department shall in no way limit or relieve Design-Builder of its duties and responsibilities under this contract to indemnify, defend and hold harmless Department, it's officers, agents and employees. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Design-Builder for liability in excess of such coverage, nor shall it preclude Department from taking other actions available to it under any other provision of the contract or law, including the withholding of funds under this contract. Failure of Department to enforce in a timely manner any of the provisions of Section 9 shall not act as a waiver to enforcement of any of these provisions at a later time.

If Design-Builder fails to maintain any required insurance coverage, Department may maintain this coverage and withhold or charge the expense to Design-Builder or terminate the Design-Builder's control of the work in accordance with Section 16.

Design-Builder is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless the Department, its officers, agents, and employees by Department's acceptance of insurance policies and certificates.

Minimum insurance coverage amounts do not relieve Design-Builder for liability in excess of such coverage, nor do they preclude Department from taking other actions available to it, including the withholding of funds under this contract.

9.2 Design-Builder Provided Insurance

Design-Builder shall procure, at its own expense, insurance acceptable to Department, as described herein, and shall maintain such insurance, as specified herein, in accordance with the requirements stated in Section 9.1, or as otherwise Approved by Department at its sole discretion. Nothing in the contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

9.2.1 Worker's Compensation and Employer's Liability Coverage

In accordance with Labor Code Section 1860, Design-Builder shall provide Worker's Compensation coverage in accordance with Labor Code 3700.

In accordance with Labor Code Section 1861, the Design-Builder shall submit to the Department the following certification before performing the Work:

> I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this contract.

Contract execution constitutes certification submittal.

Design-Builder shall provide Employer's Liability Insurance in amounts not less than:

1. $1,000,000 for each accident for bodily injury by accident
2. $1,000,000 policy limit for bodily injury by disease
3. $1,000,000 for each employee for bodily injury by disease.

If there is an exposure of injury to the Design-Builder's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

9.2.2 Liability Insurance

Design-Builder shall provide General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Design-Builder providing insurance for bodily injury and property damage written on an occurrence form that shall be no less comprehensive or more restrictive than the coverage provided by Insurance Services Office (ISO) form CG0001 or under a policy form at least as broad as policy form No. CG0001.

(a) Limits of liability shall be at least the amounts shown in the following table:

Total Bid	For Each Occurrence [1]	Aggregate for Products/Completed Operation	General Aggregate [2]	Umbrella or Excess Liability [3]
≤$1,000,000	$1,000,000	$2,000,000	$2,000,000	$5,000,000
>$1,000,000 ≤$10,000,000	$1,000,000	$2,000,000	$2,000,000	$10,000,000
>$10,000,000 ≤$25,000,000	$2,000,000	$2,000,000	$4,000,000	$15,000,000
>$25,000,000	$2,000,000	$2,000,000	$4,000,000	$25,000,000

1. Combined single limit for bodily injury and property damage.
2. This limit shall apply separately to the Design-Builder's work under this Contract.
3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

The aggregate limits shall apply separately to the Project (Endorsement CG-25-03)

(b) The State and the Department, including its officers, directors, agents (excluding agents who are design professionals), and employees, shall be named as additional insureds under the General Liability Policy and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or operations performed by or on behalf of the Design-Builder under this contract. Coverage for such additional insureds does not extend liability:

1. Arising from any defective or substandard condition of the roadway which existed at or before the time the Design-Builder started work, unless such condition has been changed by the work or the scope of the work requires the Design-Builder to maintain existing roadway facilities and the claim arises from the Design-Builder's failure to maintain;
2. For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Design-Builder that occurred during the course of the Work; or
3. To the extent prohibited by Insurance Code Section 11580.04.

Additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured endorsement form CG 2010 and form CG 2037, as published by the Insurance Services Office, or other form designated by the Department. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance. Any other insurance or self-insurance maintained by Department will be excess only and shall not be called upon to contribute with this insurance. Such additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO)

9.2.3 Automobile Liability Insurance

Design-Builder shall provide comprehensive automobile liability insurance covering the ownership, maintenance and use of all owned, non-owned and hired vehicles used in the performance of Work, both on and off the Site, including loading and unloading.

The following limits of liability and other requirements shall apply:

(a) $2 million combined single limit each accident for bodily injury and property damage liability.

(b) The policy will include uninsured and underinsured in compliance with California law.

9.2.5 Pollution/Environmental Impairment Liability Insurance

Design-Builder agrees to maintain pollution liability insurance applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically damaged or destroyed; cleanup costs; and defense, including costs, fees and expenses incurred in the investigation, defense, or resolution of claims. Coverage shall apply to sudden and non-sudden pollution conditions. Coverage shall apply to construction activities and to acts, errors or omissions arising out of or in connection with Design-Builder's scope of work under this contract. Coverage may be arranged under a contractor's pollution liability, as part of a professional liability policy, by any combination thereof, or by other insurance, as long as pollution liability coverage is provided for both construction activities and professional services. Coverage shall include transport and disposal of contaminants and shall include liability assumed under contract. Coverage is preferred by the Department to be occurrence based. However, if provided on a claims-base, Design-Builder warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage shall be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time work under this contract is completed. Limits shall be no less than five million dollars ($5,000,000) per loss and annual aggregate.

9.2.6 Professional Liability Insurance

Design-Builder agrees to maintain, and shall cause to be maintained by other Major Participants who are involved in design work or other professional services, professional liability insurance specifically designed to protect against acts, errors or omissions of the Design-Builder or other Major Participant as appropriate, and "Professional Services" as designated in any such policy must specifically include Services performed under this contract with a retroactive date no later than the date of this contract execution. The policy limit shall be no less than two million dollars ($2,000,000) per claim and in the aggregate and shall either be in the form of a practice policy or a project specific policy. Design- Builder or other Major Participant as appropriate shall maintain this professional liability insurance throughout the term of this contract and for at least three (3) years after the date of completion and Acceptance of the project whether through terms or endorsements providing for an extended reporting period (ERP), or through renewals and replacement coverage with preservation of the retroactive date. All such ERP's, renewals and replacement coverage are subject to approval by the Department.

9.2.6.1 A Practice Policy as follows:

(a) Limits of Liability shall be $2 million per claim and an annual aggregate of $2 million.

(b) The policy shall be renewed for five years after the Final Acceptance Date.

(c) The policy shall have a retroactive date of no later than April 11, 2011, and shall provide coverage for any negligent act, error or omission arising out of design or engineering activities with respect to the Project.

9.2.6.2 A Project-Specific Policy as follows:

(a) Limit of Liability shall be $4 million in the aggregate.

(b) The policy shall remain in force 10 years from the date of Notice to Proceed with respect to all events that occurred, but were not reported, during the term of the policy.

(c) The policy shall have an effective date of no later than the date that design of the Project commences.

(d) The policy shall provide coverage for any negligent act, error or omission arising out of design or engineering activities with respect to the Project.

(e) The retroactive or prior acts date of such coverage shall not be after the effective date of this contract. Design-Builder shall maintain such insurance for a period of at least 10 years, following completion of the Work. If Design-Builder discontinues such coverage, then extended reporting period coverage must be purchased to fulfill this requirement.

10 RISK OF LOSS

10.1 Site Security

Design-Builder shall provide appropriate security for the Site, 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 Design-Builder, Department, or any other Person. Design-Builder shall at all times keep the Site in a neat and clean condition, including performing litter removal, removal of graffiti and weed control.

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Design-Builder

Design-Builder shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether Department has title thereto under the Contract Documents) that is injured or damaged prior to the date of acceptance of maintenance liability by Department or third parties as specified in Section 10.2.3. All such work shall be at no additional cost to Department except to the extent that Department is responsible for such costs as provided in Section 13.. Additional requirements regarding maintenance of highways during construction are set forth in Book 2, Section 19.

For damage within the Right of Way that Department would typically seek compensation from the insurance company of the responsible party, Department will subrogate its right to seek said financial reimbursement to Design-Builder. Department will provide copies of accident reports, when they exist, to Design-Builder. Department makes no guarantee that Design-Builder will be able to obtain any financial reimbursement based on this subrogation of Department's rights.

10.2.2 Highway Planting Establishment

Notwithstanding anything to the contrary in Section 10.2, requirements regarding maintenance of trees, shrubs, vines and perennials furnished under the Contract Documents are set forth in Section 20 of the Standard Specifications.

10.2.3 Relief from Liability for Maintenance

Effective as of the date on which Substantial Completion occurs, Department shall be considered to have Accepted maintenance liability for all elements of the Project which are 100 percent complete as of such date and placed in service. All remaining elements of the Project shall be considered Accepted for maintenance purposes as of the date on which Final Acceptance occurs. Notwithstanding the foregoing, all elements of the Work which will be owned by Persons other than 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.

10.3 Damage to Off-Site Property

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. Design-Builder, at its sole expense, 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 Title

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 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 Department, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by Department to Design-Builder of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, and subject to Section 10.1, Design-Builder shall retain sole care, custody and control 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 Design-Builder is removed from the Project.

11 PAYMENT

11.1 Contract Price

11.1.1 Contract Price

As full compensation for the Work and all other obligations to be performed by Design-Builder under the Contract Documents, Department shall pay to Design-Builder a lump sum amount of $_____ [*executed contract to include amount from Line 24 of Proposal Form 9 (Proposal Price)*] (such amount, as it may be adjusted from time to time to account for Change Orders, is referred to herein as the "Contract Price"). The Contract Price shall be increased or decreased only by a Change Order issued in accordance with Section 13, by a Contract amendment or as specifically provided elsewhere in the Contract Documents.

11.1.2 Items Included in Contract Price

Design-Builder acknowledges and agrees that, subject only to Design-Builder's rights under Section 13, the Contract Price includes:

(a) performance of each and every portion of the Work;

(b) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to Design-Builder's performance of its obligations under the Contract Documents (including all Work, Warranties, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work);

(c) the cost of obtaining all Governmental Approvals (except for approvals which are the responsibility of Department, as specifically provided elsewhere in the Contract Documents);

(d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Governmental Rules; and

(e) payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein.

11.1.3 Delay in Issuance of NTP1

11.1.3.1 Delays beyond 14 Days

If Department has not issued NTP1 on or before 14 Days after satisfaction of all conditions precedent to issuance of NTP1 set forth in Section 4.2.1, to the extent provided in Section 4.2.1, Design-Builder may seek to negotiate a Change Order including an extension in the time allowed to Department for issuance of NTP1 and an increase in the Contract Price mutually acceptable to Design-Builder and Department. If Design-Builder does not wish to seek a Change Order as provided above or Department fails to issue a Change Order acceptable to Design-Builder, then Design-Builder's sole remedy shall be to terminate the Contract by delivery of notice of termination to Department, with the right to receive payment as specified in Section 15.

11.1.3.2 Allocation of Price Increase

Any price increase under this Section 11.1.3 shall be amortized proportionally over all Work remaining to be performed, and shall be evidenced by a Change Order.

11.1.4 Reserved

11.2 Invoices and Payment

Requirements relating to invoicing are set forth in Section 2.2 of Book 2. Within 30 Days after receipt by Department of each invoice, Department shall pay Design-Builder the amount of the invoice Approved for payment less any amounts which Department is entitled to withhold.

11.3 Limitations on Payment

In no event shall Department have any obligation to pay Design-Builder any amount which would result in (a) payment for any activity in excess of the value of the activity times the completion percentage of such activity, or (b) aggregate payments hereunder in excess of (i) the overall completion percentage for the Project times the Contract Price or (ii) the payment caps described herein. That portion of price allocated to those activities leading to Final Acceptance is not payable until Final Acceptance is achieved.

11.3.1 Reserved

11.3.2 Reserved

11.3.3 Reserved

11.3.4 Unincorporated Materials (Materials on Hand)

Department will not pay for materials associated with a progressed WBS activity prior to their incorporation into the Project, except under the circumstances described in this Section 11.3.4.

11.3.4.1 Delivery of Materials

Materials shall be delivered to the Site, or delivered to Design-Builder and promptly stored by Design-Builder in storage Approved by Department. Materials that have not been delivered to or adjacent to the Site will be eligible for payment only if they were specifically manufactured or produced for the Project, and then only after being irrevocably assigned to Department. As a condition to inclusion of such materials in any invoice, Design-Builder shall submit certified bills for such materials with its invoice. Payment will not be made when the invoice value of such materials, as determined by Department, amounts to less than $2,000 or if materials are to be stored less than 30 Days.

11.3.4.2 Title to Materials

All such materials so delivered shall become the property of Department. Payment for stockpiled materials will not constitute final acceptance of such materials. At Department's request, Design-Builder at its own expense shall promptly execute, acknowledge and deliver to Department actual bills of sale or other instruments in a form acceptable to Department, conveying and assuring to Department title to such materials included in any invoice, free and clear of all Liens. Design-Builder at its own expense shall conspicuously mark such materials as the property of Department, shall not permit such materials to become commingled with non-Department-owned property and shall take such other steps, if any, as Department may require or regard as necessary to vest title to such materials in Department free and clear of Liens. The required invoice, billing, title, or assignment documents, furnished by Design-Builder, shall contain complete material description and identification data.

11.3.4.3 Deductions

The amount shown in an invoice for material which is subsequently lost, damaged or unsatisfactory will be deducted from succeeding invoices until the material is repaired or replaced (at Design-Builder's expense). In case any Supplier claims against Design-Builder remain (for materials so paid for)

unsatisfied for more than 30 Days following issuance of payment to Design-Builder, the applicable payment may be canceled on the next invoice.

11.3.4.4 Not to Exceed Amount

Payment for material furnished and delivered as indicated in this Section 11.3.4 will not exceed the amount paid by Design-Builder as evidenced by a bill of sale supported by paid invoice, or 75 percent of the in-place price, whichever is less.

11.3.5 Materials Ineligible for Payment

11.3.5.1 Equipment

Department will not pay directly for equipment costs. Payment for equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Book 2, Section 2.2, will be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 13.7.3.

11.3.5.2 Perishable Materials

Department will make no partial payment on living or perishable materials until incorporated as specified in the Contract.

11.3.5.3 Design-Builder's Election

Department will make no payment for materials brought onto the Site at Design-Builder's election that may be incorporated into the Project such as fuels, supplies, metal decking forms, ties or supplies used to improve efficiency of operations.

11.3.6 Nonconforming Work

Department will make no payment for Nonconforming Work, except as provided under Section 5.7.

11.4 Mobilization

The Department makes the partial payments under Public Contract Code § 10264.

The Department pays the item total for mobilization in excess of 10 percent of the total bid in the first payment after Final Acceptance.

11.5 Deductions

Department may deduct from any amounts otherwise owing to Design-Builder, including each progress payment and the final payment, the following:

(a) any anticipated or accrued losses, liability, Liquidated Damages or other damages for which Design-Builder is responsible hereunder;

(b) the estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of contract by Design-Builder;

(c) any amounts that Department deems advisable, in its sole discretion, to cover any existing or threatened claims, Liens and stop notices by Subcontractors, Suppliers, laborers, Utility Owners or other third parties relating to the Project;

(d) any sums expended by Department in performing any of Design-Builder's obligations under the Contract which Design-Builder has failed to perform; and

(e) any other sums which Department is entitled to recover from Design-Builder under the terms of the Contract.

Department's failure to deduct from a progress payment any amount which Department is entitled to recover from Design-Builder under the Contract shall not constitute a waiver of Department's right to such amounts.

11.6 Final Payment

Final payment will be made in accordance with this Section 11.6.

11.6.1 Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, Design-Builder shall prepare and submit a proposed Application for Final Payment to Department showing the proposed total amount due Design-Builder. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall list all outstanding or pending Change Notices and all existing or threatened claims, Liens and stop notices by Subcontractors, laborers, Utility Owners or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue associated with each such notice. The Application for Final Payment shall be accompanied by (a) complete and legally effective releases or waivers of Liens and stop notices satisfactory to Department, from all Persons legally eligible to file Liens and stop notices in connection with the Work, (b) consent of Surety(ies) to final payment, (c) the release and affidavit required by Section 11.6.2 and (d) such other documentation as Department may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. Change Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Sections 13 and 19. If a Subcontractor refuses to furnish a release or waiver required by Department, Design-Builder may furnish a bond satisfactory to Department to indemnify Department against such Lien.

Department will review Design-Builder's proposed Application for Final Payment, and changes or corrections will be forwarded to Design-Builder for correction.

11.6.2 Payment

11.6.2.1 Release and Affidavit as Condition to Final Payment

As a condition to its obligation to make payment to Design-Builder based on the Application for Final Payment, Department shall have received an executed release from Design-Builder for any and all claims arising from the Work, releasing and waiving any claims against the Indemnified Parties, excluding only those matters identified in any Change Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to Department.

The release shall be accompanied by an affidavit from Design-Builder certifying:

(a) that it has resolved any claims made by Subcontractors, Utility Owners and others against Design-Builder or the Project;

(b) that it has no reason to believe that any Person has a valid claim against Design-Builder or the Project which has not been communicated in writing by Design-Builder to Department as of the date of the certificate; and

(c) that all guarantees and warranties are in full force and effect.

The release and the affidavit shall survive final payment. The payment amount will be reduced by any amounts deductible under Section 11.5.

11.6.2.2 Partial Estimates and Payments Subject to Correction

All prior partial estimates and payments shall be subject to correction in the final payment.

11.7 Payments to Subcontractors

Within 10 Days after receipt of payment from Department, Design-Builder shall pay each Subcontractor, out of the amount paid to Design-Builder on account of such Subcontractor, all undisputed amounts (less any retainage and any other offsets and deductions provided in the Subcontract or by law) due and owing in accordance with the Subcontract. Within 10 Days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Design-Builder shall return any moneys withheld in retention from the Subcontractor. Design-Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its lower tier Subcontractors in a similar manner. Department shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

11.8 Reserved

11.9 Disputes

Subject to Department's right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Section 11, any disagreement between Department and Design-Builder relating to this Section 11 shall be subject to Section 19. Failure by Department to pay any amount in dispute shall not alleviate, diminish or modify in any respect Design-Builder's obligation to perform under the Contract Documents, including Design-Builder's obligation to achieve Final Acceptance in accordance with the Contract Documents, and Design-Builder shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Design-Builder shall proceed as directed by Department pending resolution of the dispute. Upon resolution of any such dispute each party shall promptly pay to the other any amount owing.

12 RESERVED

13 CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under the Contract. Design-Builder hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section 13, and that Department is subject to constraints which limit its ability to increase the Contract Price or extend the Completion Deadlines. Design-Builder hereby waives the right to make any claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract, except as set forth in this Section 13. To the extent that any other provision of the Contract expressly provides for a Change Order to be issued, such provision is hereby incorporated into this Section 13.

13.1 Circumstances under which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 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. Department may issue unilateral Change Orders as specified in Section 13.2. A Change Order shall not be effective for any purpose unless executed by Department, as specified herein. As used herein, execution of a Change Order by Department shall mean that the Change Order has been fully executed with all the required signatures by Department and any other necessary parties of the State. Change Orders may be requested by Design-Builder only pursuant to Section 13.3. Change Orders may be issued for the following purposes (or combination thereof):

(a) to modify the scope of the Work;

(b) to revise a Completion Deadline;

(c) to revise the Contract Price; and

(d) to revise other terms and conditions of the Contract Documents.

A Change Order may, at the sole discretion of Department, direct Design-Builder to proceed with the Work with the amount of any adjustment of a Completion Deadline or the Contract Price to be determined in the future.

13.1.1.2 Issuance of Directive Letter

Department may at any time issue a Directive Letter to Design-Builder in the event of any desired change in the Work or of any Dispute regarding the scope of the Work. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Design-Builder shall proceed immediately with the Work as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within the original scope of the Work, Design-Builder shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that Department issue a Change Order with respect thereto).

13.1.1.3 Performance of Changed or Extra Work

As a condition precedent to Design-Builder's right to receive additional payment or an extension of a Completion Deadline for changed or extra work, Design-Builder shall have received either a Directive Letter from Department stating that it is issued pursuant to Section 13.1.1.2 or a Change Order for such work executed by Department. To the extent that Design-Builder undertakes any such work without receiving a Directive Letter or Change Order executed by Department, 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, Design-Builder may be required to remove or otherwise undo any such work, at its sole cost.

13.1.2 Directive Letter as Condition Precedent to Claim That a Department-Directed Change Has Occurred

In addition to provision of a Change Notice and subsequent Request for Change Order pursuant to Section 13.3.2, receipt of a Directive Letter from Department is a condition precedent to Design-Builder's right to claim that a Department-Directed Change has occurred, provided that no Directive Letter shall be required for alleged Department-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by Department. The fact that a Directive Letter was issued by Department shall not be considered evidence that in fact a Department-Directed Change occurred. The determination whether a Department-Directed Change in fact occurred shall be based on an analysis of the original Contract requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for Design-Builder to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

13.1.3 Significant Changes in the Character of Work

If a Department-Directed Change significantly changes the character of the Work, whether the alterations or changes included in such direction are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to performance of such Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against Design-Builder in such amount as Department may determine to be fair and equitable, subject to resolving the Dispute in accordance with Section 19. The term "significant change" shall be construed to apply only when (a) the changes materially modify the general definition of the Project or the design-build character of the Work, or (b) Department requires Work to be performed that is physically remote from the original Project and not necessary for completion of the original Project. Changes that are specifically contemplated by the Contract shall not be considered significant changes in the character of the Work. If the changes do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract.

13.2 Procedure for Department-Initiated Change Orders

This Section 13.2 concerns Change Orders issued by Department following a Request for Change Proposal and Change Orders unilaterally issued by Department.

13.2.1 Request for Change Proposal

13.2.1.1 Issuance of Request

If Department desires to issue a Department-Directed Change or to evaluate whether to initiate such a change, then Department may, at its discretion, issue a Request for Change Proposal.

13.2.1.2 Initial Consultation

Within two Days after Design-Builder's receipt of a Request for Change Proposal, Department and Design-Builder shall consult to define the proposed scope of the change. Within seven Days after the initial consultation, Department and Design-Builder shall consult concerning the estimated cost and time impacts. Design-Builder shall provide data regarding such matters as requested by Department.

13.2.1.3 Notification by Department

Within seven Days after the second consultation and provision of any data as described in Section 13.2.1.2, Department shall notify Design-Builder whether Department:

(a) wishes to issue a Change Order;

(b) wishes to request Design-Builder to prepare a Change Order form as discussed at the meeting; or

(c) no longer wishes to issue a Change Order.

Department may at any time, in its sole discretion, require Design-Builder to provide two alternative Change Order forms, one of which shall provide for a time extension 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.

13.2.1.4 Submittal of Change Order Form

If so requested, Design-Builder shall, within 21 Days after receipt of the notification described in Section 13.2.1.3, prepare and submit to Department for review and Approval by Department a Change Order form for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by Department. Design-Builder shall bear the cost of developing the Change Order form, including any modifications thereto requested by 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 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, otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 Order To Proceed

If Department and 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 the Contract Price or a Completion Deadline, Department may, in its sole discretion, order Design-Builder to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at Department's option, be in the form of:

(a) a Time and Materials Change Order as provided in Section 13.7; or

(b) a Directive Letter as described in Section 13.1.1.2.

13.2.2 Unilateral Change Orders

Department may issue a Change Order at any time, regardless of whether it has issued a Request for Change Proposal.

13.2.2.1 Additive and Deductive Change Orders

Additive unilateral Change Orders shall state that Design-Builder shall be entitled to compensation in accordance with Section 13.7 for the additional Work required thereby. The Change Order may contain a price deduction deemed appropriate by Department, and Design-Builder shall have the right to submit the amount of such price deduction to dispute resolution in accordance with Section 19.

13.2.3 Changes in Law

Department shall be entitled to a decrease in the Contract Price for any change in Governmental Rules that reduces the cost of the Work, if and to the extent that the change (a) allows a material modification in

the design of the Project resulting in a net cost savings or (b) reduces the requirements of complying with environmental approvals.

13.3 Procedure for Design-Builder Initiated Change Orders

13.3.1 Eligible Changes

This section outlines instances whereby Design-Builder shall submit Change Notice and subsequent Request for Change Orders to Department.

13.3.1.1 Time Extension

Design-Builder may submit a Request for Change Order to extend a Completion Deadline, subject to certain limitations, only for the following excusable delays changing the duration of the Critical Path:

(a) Department-Caused Delays;

(b) delays directly attributable to Differing Site Conditions, to the extent permitted by Section 13.8;

(c) delays directly attributable to Force Majeure events;

(d) certain delays relating to Hazardous Materials, as described in Section 13.10, to the extent permitted therein and in Section 5.3; and

(e) certain delays relating to Utilities, as described in Section 6.2.

13.3.1.2 Contract Price Increase

Design-Builder may submit a Request for Change Order to increase the Contract Price, subject to certain limitations, including with respect to delay damages, as specified in Section 13.5.2, only for increased costs in the Work as follows:

(a) additional costs directly attributable to additional Work resulting from Department-Directed Changes for which Department has not submitted a Change Order or a Request for Change Proposal;

(b) additional costs directly attributable to Department-Caused Delays;

(c) additional costs directly attributable to Differing Site Conditions, to the extent provided in Section 13.8;

(d) additional costs directly attributable to the following:

(i) an earthquake or tidal wave;

(ii) any rebellion, war, riot, sabotage, terrorism or civil commotion;

(iii) the discovery at, near, or on the Site of any paleontological, cultural or biological resources or any species presently or in the future listed as threatened or endangered under the federal or state endangered species act, provided that the existence of such resources was not disclosed in the RFP documents;

(iv) the suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval or New Environmental Approval, except as otherwise provided in Section 6.3; and

(v) any change in a Governmental Rule, change in the judicial interpretation of a Governmental Rule, or adoption of any new Governmental Rule, which is materially inconsistent with Governmental Rules in effect on the Proposal Due Date (excluding any such change or new Governmental Rule which was passed or adopted but not yet effective as of the Proposal Due Date), and which (A) requires a material modification in

the Project design, (B) requires Design-Builder to obtain a major State or federal environmental approval not previously required for the Project or (C) specifically targets the Project or Design-Builder;

(e) certain additional costs relating to Hazardous Materials, as described in Section 13.10, to the extent provided therein and in Section 5.3;

(f) certain additional costs relating to Utility Work, as described in Section 6.2, to the extent provided therein;

(g) additional costs directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section 5.5.3; and

(h) certain costs relating to partnering, as described in Section 19.1, to the extent provided therein.

13.3.1.3 Design-Builder Initiated Change Proposal

Design-Builder at any time may submit a Request for Change Order to Department that proposes changes to the scope of work of the Contract. Proposals can include changes to add or reduce the scope of work or implement changes to the Contract that are "equal to or better" than the existing requirements. Provisions of Section 13.3.2 regarding delivery of Change Notice do not apply to a Design-Builder-initiated change proposal under this Section 13.3.1.3.

13.3.2 Conditions Precedent

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Design-Builder's entitlement to request and receive a Change Order in all circumstances except those involving a Request for Change Proposal by Department, a share of cost savings under Section 6.1.3, or a price increase under Section 11.1.3. Design-Builder agrees that the filing of Change Notices and subsequent filing of Requests for Change Orders with Department pursuant to this Section 13.3.2 are necessary in order to begin the administrative process for Design-Builder-initiated Change Orders. Design-Builder understands that it shall be forever barred from recovering against Department under this Section 13 if it fails to give notice of any act, or failure to act, by Department or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper Change Notice, and thereafter complies with the remaining requirements of this Section 13.3.

13.3.2.1 Delivery of Change Notice

Design-Builder shall deliver to Department written notice ("Change Notice") stating that an event or situation has occurred within the scope of Section 13.3.1.1 and/or 13.3.1.2 and shall state which subsection thereof is applicable. The first notice shall be labeled "Change Notice No. 1" and subsequent notices shall be numbered sequentially.

13.3.2.1.1 Importance of Prompt Delivery

Each Change Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any Change Notice is delivered later than five Days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the Change Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in the Critical Path which accrued prior to the date of delivery of the written notice. Furthermore, if any Change Notice concerns any condition or material described in Section 5.3, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that Department is not afforded the opportunity to inspect such material or condition before it is disturbed. Design-Builder's failure to provide a Change Notice within 30 Days after Design-Builder first discovered (or should have discovered in the exercise of

reasonable prudence) the occurrence of a given event or situation shall preclude Design-Builder from any relief, unless Design-Builder can show, based on a preponderance of the evidence, that (a) Department was not materially prejudiced by the lack of notice, or (b) Department's designated representative specified in accordance with Section 23.5.1 had actual knowledge (including items (a) through (f) of Section 13.3.2.1.2), prior to the expiration of the 30-Day period, of the event or situation and that Design-Builder believed it was entitled to a Change Order with respect thereto. A Change Notice shall be deemed delivered only if it fully conforms to the requirements of Section 13.3.2.1.2.

13.3.2.1.2 Contents of Change Notice

The Change Notice shall: (a) state in detail the facts underlying the potential Change Order, the reasons why Design-Builder believes additional compensation or time will or may be due and the date of occurrence; (b) state in detail the basis that the work is not required by the Contract, if applicable; (c) identify particular elements of Contract performance for which additional compensation may be sought under this Section 13; (d) identify any potential Critical Path impacts; (e) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance; and (f) time impact analysis.

13.3.2.1.3 Facts Supporting Objection to Decision

If the Change Notice relates to a decision which the Contract leaves to the discretion of a Person or as to which the Contract provides that such Person's decision is final, the Change Notice shall set out in detail all facts supporting Design-Builder's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

13.3.2.1.4 Notices Under Other Contract Provisions

The written notification under Section 5.3 may also serve as a Change Notice provided it meets the requirements for Change Notices.

13.3.2.1.5 Failure to Provide Information

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from Design-Builder's failure to provide requested additional information under this Section 13.3.2.1.

13.3.2.2 Delivery of Requests for Change Orders

Design-Builder shall deliver a Request for Change Order to Department within 30 Days after delivery of the Change Notice. Department may require design and construction costs to be covered by separate Request for Change Orders, in which case Design-Builder shall deliver each such Request for Change Order to Department within 30 Days after delivery of the Change Notice. If Design-Builder requests a time extension, then Department, in its sole discretion, may require Design-Builder to provide two alternative Request for Change Orders within 30 Days after delivery of the Change Notice, one of which shall provide for a time extension 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 Design-Builder fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all the requirements of Section 13.3.2.3 within the appropriate time period, Design-Builder shall be required to provide a new Change Notice before it may submit a Request for Change Order.

13.3.2.3 Incomplete Change Orders

Each Request for Change Order provided under Section 13.3.2.2 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature of the occurrence, Design-Builder shall provide an incomplete Request for Change Order which shall:

(a) comply with all requirements capable of being met;

(b) include a list of requirements which are not fulfilled together with an explanation reasonably satisfactory to Department stating why such requirements cannot be met;

(c) provide such information regarding projected impact on the Critical Path as is requested by Department; and

(d) 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.

Design-Builder shall furnish, when requested by Department, such further information and details as may be required to determine the facts or contentions involved. Design-Builder agrees that it shall give Department access to any and all of Design-Builder's books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that Department can investigate the basis for such Request for Change Order. Design-Builder shall provide Department with a monthly update to all outstanding incomplete Requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to Department, time expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. Department may reject Design-Builder's claim at any point in the process. Once a complete Request for Change Order is provided, Department's failure to respond thereto within 14 Days of delivery of the request shall be deemed a rejection of such request. Although Department intends to review incomplete Request for Change Orders for the purposes described in Section 13.3.2.4, Department shall have no obligation to review the back-up associated with any Request for Change Order until a complete Request for Change Order is provided.

13.3.2.4 Importance of Timely Delivery

Design-Builder acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and Request for Change Orders and updates thereto are of vital importance to Department. Department is relying on Design-Builder to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether Design-Builder believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect the Contract Price or a Completion Deadline, Department will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within Department's funding and time restraints.

The following matters (among others) shall be considered in determining whether Department has been prejudiced by Design-Builder's failure to provide timely notice:

(a) the effect of the delay on alternatives available to Department (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given when required under the Contract); and

(b) the impact of the delay on Department's ability to obtain and review objective information contemporaneously with the event.

13.3.2.5 Subcontractor Claims

All claims shall be submitted through Design-Builder. Submission of claims directly from Subcontractors shall constitute a waiver of that portion of the claim.

13.3.3 Performance of Disputed Work

If Department refuses to issue a Change Order based on Design-Builder's request, Design-Builder shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to dispute resolution in accordance with Section 19. Design-Builder shall maintain and deliver to Department, upon request, contemporaneous records, meeting the requirements of Section 13.7.2, for all work performed which Design-Builder believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Reserved

13.4.2 Scope of Work, Cost Estimate, Delay Analysis, and Information Regarding Change

Design-Builder shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 13.4.2 for each Request for Change Order.

13.4.2.1 Scope of Work

The scope of work shall describe in detail satisfactory to Department all activities associated with the Request for Change Order, including a description of additions, deletions and modifications to the existing Contract requirements.

13.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless Department agrees otherwise. The estimate shall include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Design-Builder shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Design-Builder's estimate. No mark-up shall be allowed in excess of the amounts allowed under Sections 13.5.2 and 13.7. Design-Builder shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

13.4.2.3 Impacted Delay Analysis

If Design-Builder claims that such event, situation or change affects the Critical Path, it shall provide an impacted delay 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 Department, which compares the proposed new schedule to the Baseline Schedule or Revised Baseline Schedule, as appropriate. The revision to the Contract Schedule associated with the time extension shall not modify the "early and late start cost curves" of the Contract Schedule, except with respect to activities which have been impacted by the event which justifies the extension. Design-Builder may reschedule activities not otherwise affected by the event, in order to take advantage of additional Float available as the result of the time extension. Any such rescheduling shall be reflected in the Contract Schedule.

13.4.2.4 Other Supporting Documentation

Design-Builder shall provide such other supporting documentation as may be required by Department.

13.4.3 Reserved

13.4.4 Design-Builder Representation

Each Change Order (other than Change Orders issued unilaterally by Department) shall contain a sworn certification in form acceptable to Department by Design-Builder that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change and that Design-Builder has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude:

(a) costs caused by the breach of contract or fault or negligence, or act or failure to act of any Design-Builder-Related Entity;

(b) costs which could reasonably have been avoided by 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

(c) costs for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by Department as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.2. Other delay and disruption damages shall be compensable hereunder only in the case of a delay which qualifies as a Department-Caused Delay to the extent that it entitles Design-Builder to an extension of a Completion Deadline. Without limiting the generality of the foregoing, costs of rearranging Design-Builder's work plan to accommodate Department-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 13.5.2.1 and mark-ups thereon in accordance with Section 13.7 and any additional field office and jobsite overhead costs incurred by Design-Builder directly attributable to such delays. In addition, before Design-Builder may obtain any increase in the Contract Price to compensate for extended overhead, Acceleration Costs or other damages relating to delay, Design-Builder shall have demonstrated to Department's satisfaction that:

(a) its schedule which defines the affected Critical Path in fact set forth a reasonable method for completion of the Work;

(b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity;

(c) the delay or damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Design-Builder-Related Entity, and could not reasonably have been avoided by Design-

Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment);

(d) the delay for which compensation is sought is not concurrent with any other delay, whether or not such other delay is on the Critical Path, excluding Department-Caused Delays; and

(e) Design-Builder has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to Department.

13.5.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it:

(a) did not impact the Critical Path;

(b) was due to the fault or negligence, or act or failure to act of any Design-Builder-Related Entity; or

(c) could reasonably have been avoided by 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, Department shall have agreed, if requested to do so, to reimburse Design-Builder for its costs incurred, if any, in resequencing, reallocating or redeploying its forces).

Design-Builder shall be required to demonstrate to Department's satisfaction that the change in the Work or other event or situation which is the subject of the request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity.

13.6 Negotiated Price Change Orders

Department and 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, provided that Change Orders issued under Section 13.2.2 are not subject to negotiation. In general, the price of a Change Order shall be negotiated in accordance with this Section 13.6 or shall be based on time and materials records pursuant to Section 13.7.

13.6.1 Reserved

13.6.2 Unit Price Change Orders

Instead of negotiating the price for a Change Order in accordance with Section 13.6.3, 13.6.4 or 13.6.5, Department and Design-Builder may agree to negotiate unit prices for changed Work. Measurement of unit-priced quantities will be as specified in the Change Order. The unit prices shall be deemed to include all costs for the Work, including labor, material, overhead, markups and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. The final price of a Change Order may be lump sum or may be based upon a final determination of the quantities.

13.6.3 Added Work

When the Change Order adds Work to Design-Builder's scope, the increase in the Contract Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with Section 13.7. Mark-ups for profit and overhead shall be as provided in Section 13.7, and risk associated with the Work described in the Change Order shall be addressed through an additional amount agreed to by Department and Design-Builder not to exceed 8 percent of the total Change Order amount (excluding the amount allocated to risk).

13.6.4 Deleted Work

When the Change Order deletes Work from Design-Builder's scope (including deletion of any Work contained in the Contract that is found to be unnecessary), the amount of the reduction in the Contract Price shall be based upon a current estimate including a bill of material, a breakdown of labor and equipment costs and overhead and profit associated with the deleted work. Credits for mark-up for profit and overhead shall be as provided in Section 13.7. Department reserves the right to request a credit for risk up to 8 percent of the total Change Order amount (excluding amount allocated to risk). When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

13.6.5 Work Both Added and Deleted

When the Change Order includes both added and deleted Work, Design-Builder shall prepare separate cost breakdowns for added Work and deleted Work in accordance with Sections 13.6.3 and 13.6.4.

(a) The cost (or credit) amount of the Change Order shall be the difference between the added Work and deleted Work cost breakdowns.

(b) If the change results in a net change of zero, there will be no change in the Contract Price.

13.7 Time and Materials Change Orders

Department may at its discretion issue a Time and Materials Change Order whenever Department determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Design-Builder to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, Department shall issue a modified Change Order setting forth the final adjustment to the Contract Price. The following costs and mark-ups (and no others) shall be used for calculating the change in the Contract Price. No direct compensation will be allowed for other miscellaneous costs for which no specific allowance is provided in this Section 13.7.

13.7.1 Determination of Costs

Compensation for Time and Materials Change Orders shall be in accordance with Department Standard Specification 9-1.03 and this Section 13.7.

13.7.1.1 Non-Construction Labor Costs

The cost of labor for non-construction-related Work (including designers), whether provided by Design-Builder or a Subcontractor, will equal the sum of the following:

(a) Actual unburdened wages (i.e., the base wage paid to the employee exclusive of any fringe benefits), plus

(b) Unless already included in the wage rates paid, the actual Department Approved labor-related costs incurred by reason of subsistence and travel allowances, plus

(c) A labor surcharge of 140 percent of actual unburdened wages, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance and bond premiums, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the worker, as well as overhead and profit.

13.7.1.2 Reserved

13.7.1.3 Evidence of Materials Cost

If Design-Builder or any Subcontractor (as applicable) does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within 60 Days after the date of delivery of the material, Department reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available, in the quantities needed and delivered to the Site.

13.7.1.4 Permit Fees

Design-Builder will be reimbursed for the cost of any additional permit fees payable as the result of the change in the Work. Back-up documentation supporting each cost item for this category shall be provided by Design-Builder and Approved by Department prior to any payment authorization being granted.

13.7.1.5 Credit Items

Where Design-Builder's or any Subcontractor's portion of a change involves credit items, or the proposed change is a net deductive change, Design-Builder shall include all Design-Builder's and Subcontractor's overhead and profits in computing the value of the credit.

13.7.2 Time and Materials Records

13.7.2.1 Collection and Maintenance of Data

Design-Builder shall maintain its records in such a manner as to provide a clear distinction between (a) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and (b) the costs of other operations. Design-Builder shall contemporaneously collect, record in writing, segregate and preserve (y) all data necessary to determine the costs described in this Section 13.7 with respect to all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Relocations, but specifically excluding all negotiated Change Orders, and (z) all data necessary to show the actual impact (if any) of the change on the Critical Path with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Contract Schedule is in dispute. Such data shall be provided to Department, and its authorized representatives as directed by Department, on forms Approved by Department. The cost of furnishing such reports is included in Design-Builder's predetermined overhead and profit mark-ups.

13.7.2.2 Daily Reports

Design-Builder shall furnish daily reports, on forms Approved by Department, of Time and Materials Change Order Work. The cost of furnishing such reports shall be included in Design-Builder's overhead and fee percentages. The reports shall include:

(a) name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman;

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

(c) quantities of materials, prices and extensions;

(d) transportation costs of materials, machinery, and equipment;

(e) invoices for materials used and for transportation charges; and

(f) location and summary of work completed.

The reports shall also state the total costs to date for the Time and Materials Change Order Work.

13.7.2.3 Reports As Basis for Payment

All Time and Materials Change Order reports shall be signed by Design-Builder's Project Manager. Department will compare its records with Design-Builder's reports, make the necessary adjustments and compile the costs of Time and Materials Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. Design-Builder's (and each Subcontractor's) cost records pertaining to Work paid for on a time and materials basis shall be open, during all regular business hours, to inspection or audit by representatives of Department during the life of the Contract and for a period of not less than seven years after Final Acceptance, and Design-Builder (and each Subcontractor) shall retain such records for that period. If an audit is to be commenced more than 60 Days after Final Acceptance, Design-Builder will be given a 20 Day notice of the time when such audit is to begin.

13.7.3 Compliance with the Federal Acquisition Regulation

Reimbursable expenses under Time and Materials Change Orders shall be limited to and comply with the FAR. Expenses excluded by the FAR shall not be reimbursed. If FHWA asserts that any claimed reimbursable expenses are not reimbursable under FAR, Department will allow Design-Builder the opportunity to respond to FHWA and defend the allowability of the expenses.

13.8 Differing Site Conditions

13.8.1 Responsibilities of Department

Upon Design-Builder's fulfillment of all applicable requirements of Sections 5.3 and 13, and subject to the limitations contained therein, Department shall be responsible for, and agrees to issue Change Orders, (a) to compensate Design-Builder for additional costs directly attributable to changes in the scope of the Work arising from Differing Site Conditions in accordance with the Approved action plan under Section 5.3.2, and (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any such conditions.

13.8.2 Burden of Proof

Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

13.9 Certain Events

Upon Design-Builder's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, Department shall be responsible for, and agrees to issue Change Orders, (a) to compensate Design-Builder for additional costs directly attributable to the events set forth in Section 13.3.1.2(d) and/or (b) to extend the applicable Completion Deadlines as the result of any delay in the Critical Path caused by a Force Majeure event.

13.10 Hazardous Materials Management

13.10.1 Price Increase

Subject to Section 13.10.3, Design-Builder shall be entitled to payment for Remediation Work (excluding those conditions for which Design-Builder has agreed to be responsible as described in Section 18.1.1(g) and Book 2, Section 4) through a Change Order priced in accordance with Section 13.6 or 13.7.

13.10.2 Time Extension

Design-Builder shall be entitled to an extension of the Completion Deadlines to the extent that any delay in the Critical Path is directly attributable to Remediation Work compensable under Section 13.10.1.

13.10.3 Limitations on Change Orders

All Change Orders authorized by this Section 13.10 shall be subject to the restrictions, limitations and procedures set forth in Section 13. Allowable costs shall be limited to the incremental costs associated with the fact that Hazardous Materials subject to Remediation Work compensable under Section 13.10.1 are present (deducting any avoided costs such as re-use and/or disposal of non-Hazardous Materials) after completion of the testing process to determine whether Hazardous Materials are present. Design-Builder shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under Section 13.10.1 will not be allowed unless Design-Builder demonstrates to Department's satisfaction that (a) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques and (b) Design-Builder's plan for the Remediation Work represents the approach which is most beneficial to the Project and the public. Design-Builder shall provide Department with such information, analyses and certificates as may be requested by Department in order to enable a determination regarding eligibility for payment.

13.11 Matters Not Eligible for Change Orders

Design-Builder acknowledges and agrees that no increase in the Contract Price or extension of a Completion Deadline is available except in circumstances expressly provided for in the Contract, that such price increase and time extension shall be available only as provided in this Section 13, and that Design-Builder shall bear full responsibility for the consequences of all other events and circumstances. Matters which are Design-Builder's exclusive responsibility include the following:

(a) Errors in the Design Documents and Construction Documents (including Errors directly attributable to Errors in the Basic Configuration or RID).

(b) subject to Sections 13.3.1.2(d)(iv) and (v), any design changes required by Department as part of the process of Accepting the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals and/or Governmental Rules;

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (except to the extent arising from causes which otherwise give rise to a right to a Change Order);

(d) action or inaction of Design-Builder's employees, Suppliers, Subcontractors or any Design-Builder-Related Party (unless arising from causes which otherwise give rise to a right to a Change Order);

(e) groundwater levels or subsurface moisture content;

(f) untimely delivery of equipment or material, or unavailability, defectiveness, or increases in costs of material, equipment or products specified by the Contract Documents (except to the extent arising from causes which otherwise give rise to a right to a Change Order);

(g) delays not on the Critical Path;

(h) costs covered by insurance proceeds received by or on behalf of Design-Builder;

(i) correction of Nonconforming Work and oversight and related activities in connection therewith by Department (including rejected design submittals);

(j) failure by Design-Builder to comply with Contract requirements;

(k) all other events beyond the control of Department for which Department has not agreed to assume liability hereunder; and

(l) any situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract or arise out of the nature of the Work.

Design-Builder hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by Design-Builder of responsibility for such risks, and the consequences, costs and delays resulting therefrom, is reasonable under the circumstances of the Contract and that contingencies included in the Proposal Price in Design-Builder's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

13.14 Waiver

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 DESIGN-BUILDER FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT 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 DESIGN-BUILDER IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

13.15 Disputes

If Department and Design-Builder agree that a request to increase the Contract Price and/or extend any Completion Deadline by Design-Builder has merit, but are unable to agree as to the amount of such price increase and/or time extension, Department agrees to mark up the Change Order request or Change Order form, as applicable, provided by Design-Builder to reduce the amount of the price increase and/or time extension as deemed appropriate by Department. In such event, Department will execute and deliver the marked-up Change Order to Design-Builder within a reasonable period after receipt of a request by Design-Builder to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of Department and Design-Builder to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the Contract Price 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 Design-Builder of any nature arising from or relating to the Work covered by the Change Order. Design-Builder's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by Design-Builder with respect to the disputed matter (crediting Department for any corresponding reduction in Design-Builder's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.16 No Release or Waiver

13.16.1 Extension of Time for Performance

No extension of time granted hereunder shall release Design-Builder's Surety or any Guarantor from its obligations. Department shall not be deemed to have waived any rights under the Contract (including its right to abrogate the Contract 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 time beyond the date fixed for the completion of any part of the Work, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to Design-Builder after such date.

13.16.2 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 Department has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, 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. Design-Builder shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, Department may require Design-Builder to remove or otherwise undo any such work, at Design-Builder's sole cost.

14 SUSPENSION OF WORK

14.1 Suspension for Convenience

Department may, at any time and for any reason, by written notice, order Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that Department deems appropriate for the convenience of Department. Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from Department directing Design-Builder to resume Work. Suspensions related to seasonal or climatic conditions, or Force Majeure events shall not be considered Department-Caused Delays.

14.2 Suspension for Cause

Department has the authority by written order to suspend the Work without liability to Department wholly or in part for Design-Builder's failure to:

(a) correct conditions unsafe for the Project personnel or general public;

(b) comply with any Governmental Approval, Governmental Rule or otherwise carry out the requirements of the Contract;

(c) carry out orders of Department duly given; or

(d) comply with environmental requirements or requirements for developing and implementing the Quality Manual.

Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from Department directing Design-Builder to resume Work.

14.3 Design-Builder Responsibilities During Suspension

During periods that Work is suspended, 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 Department, Design-Builder shall continue to be responsible for maintenance of traffic in accordance with the requirements of the Contract, for plant and landscape maintenance in accordance with Section 14 of Book 2 and for maintenance during construction in accordance with Section 19 of Book 2. If the suspension is for Department's convenience, the additional work performed by Design-Builder during the suspension period shall be considered Department-Directed Changes.

15 TERMINATION FOR CONVENIENCE

15.1 Notice of Termination

Department may terminate the Contract and the performance of the Work by Design-Builder in whole or, from time to time, in part, if Department determines, in its sole discretion, that a termination is in the best public, State or national interest to do so. Department shall notify Design-Builder of its decision to terminate by delivering to Design-Builder a written Notice of Termination specifying the extent of termination and its effective date. Termination (or partial termination) of the Contract shall not relieve any Surety or Guarantor of its obligation for any claims arising out of the Work performed.

15.2 Design-Builder's Responsibilities Upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by Department, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 15.

(a) Stop Work as specified in the notice;

(b) Communicate such notice to all affected Subcontractors and that their Subcontracts are not to be further performed unless otherwise authorized in writing by Department;

(c) 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;

(d) Terminate all Subcontracts to the extent that they relate to the Work terminated;

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

(f) Subject to the prior Approval of Department, settle all outstanding liabilities and claims arising out of such termination of Subcontracts;

(g) Provide 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 Department, and such other information as Department may request; and transfer title and deliver to Department, in the manner, at the times, and as and to the extent, if any, directed by 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, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to Department if the Work had been completed;

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

(i) Take all action that may be necessary, or that Department may direct, for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the Work and (c) the equipment, machinery, materials and property related to the Contract Documents that is in the possession of Design-Builder and in which Department has or may acquire an interest;

(j) As authorized by 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 Department, any property of the types referred to in Section 15.2(g); provided, however, that 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 Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Department under the Contract Documents or paid in any other manner directed by Department;

(k) If requested by Department, withdraw from the portions of the Site designated by Department and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, Design-Builder and any Subcontractor in the performance of the Work as Department may direct; and

(l) Take other actions directed by Department.

15.3 Responsibility After Notice of Termination

Design-Builder shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

(a) Design-Builder's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when Department certifies that those materials have been stored in the manner and at the locations directed by Department.

(b) Design-Builder's responsibility for damage to materials purchased by Department subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of those materials has been taken by Department.

Immediately after Department determines that 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, Design-Builder will not be required to provide for continuing safety, security and maintenance at the Site.

15.4 Negotiated Termination Settlement

15.4.1 Settlement Proposal

After receipt of a Notice of Termination, Design-Builder shall submit a final termination settlement proposal to Department in the form and with the certification prescribed by Department. Design-Builder shall submit the proposal promptly, but no later than 60 Days from the effective date of termination, unless Design-Builder has requested a time extension in writing within such 60-Day period and Department has agreed in writing to allow such an extension. Department will then review Design-Builder's termination settlement proposal and will act upon it, return it with comments or reject it. If Design-Builder fails to submit the proposal within the time allowed, Department may determine, on the basis of information available to it, the amount, if any, due Design-Builder because of the termination and shall pay Design-Builder the amount so determined.

15.4.2 Negotiated Settlement Amount

Design-Builder and Department may agree, as provided in Section 15.4.1, upon the whole or any part of the amount or amounts to be paid to Design-Builder by reason of the total or partial termination of Work pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently Accepted by Department. Such agreed amount(s), exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Upon determination of the settlement amount the Contract will be amended accordingly, and Design-Builder will be paid the agreed amount. Nothing in Section 15.5, prescribing the amount to be paid to Design-Builder in the event that Design-Builder and Department fail to agree upon

the whole amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount(s) which may be agreed upon to be paid to Design-Builder pursuant to this Section 15.4. Department's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve Design-Builder from its obligations with respect thereto, including Warranties, or affect Design-Builder's rights under the Payment and Performance Bond and Payment as to such completed or non-terminated Work.

15.5 Determination of Settlement Amount If Negotiations Fail

If Design-Builder and Department fail to agree, as provided in Section 15.4.2, upon the whole amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by Department in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section 15.4:

15.5.1 Payment Amount

Department will pay Design-Builder the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination, as such amounts are determined by Department:

(a) Design-Builder's actual reasonable out-of-pocket cost (without profit, and including equipment costs only to the extent permitted by Section 13) for all Work performed, including mobilization, demobilization and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to Department's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by Design-Builder, amounts realized by the sale of materials and for other appropriate credits. Deductions will also be made for the cost of damaged materials. When, in the opinion of Department, the cost of an item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost will be disallowed.

(b) As profit on clause (a) above, a sum determined by Department to be fair and reasonable; provided, however, that if it appears that Design-Builder would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Section 15.5.1 and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss.

(c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2(f), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination under the Contract, which amounts shall be included in the cost on account of which payment is made under clause (a) above.

(d) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2(i) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract, including the reasonable cost to Design-Builder of handling material returned to the vendor, delivered to Department or otherwise disposed of as directed by Department, and including a reasonable allowance for Design-Builder's administrative costs in determining the amount due to Design-Builder as the result of the termination of Work under the Contract.

(e) If the termination occurs prior to issuance of NTP2, the stipend amount included in the ITP.

15.5.2 Maximum Compensation

Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.5.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the Contract. However, the total amount to be paid to Design-Builder, exclusive of costs described in Sections 15.5.1(c), (d) and (e), may not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any Work not terminated. Furthermore, if any refund is payable with respect to insurance or bond premiums, deposits or similar items which were previously passed through to Department by Design-Builder, such refund shall be paid directly to Department or otherwise credited to Department. [*Instruction to Drafter: If the Contract includes an NTP 1 Payment Cap as described in Section 11.3.1, include:* The total amount payable to Design-Builder shall in no event exceed the NTP1 Payment Cap if termination occurs prior to issuance of NTP 2.]

15.5.3 Excluded Items

Except for normal spoilage, and except to the extent that Department will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Design-Builder under Section 15.5.1, the fair value, as determined by Department, of equipment, machinery, materials and property which is destroyed, lost, stolen or damaged so as to become undeliverable to Department, or to a buyer pursuant to Section 15.2(j). The amount set forth in the Proposal by Design-Builder for the Work terminated shall be a factor to be analyzed in determining the value of the Work terminated.

15.5.4 Payment of Termination Amount

Upon determination of the amount of the termination payment, the Contract shall be amended to reflect the agreed termination payment, and Design-Builder shall be paid the agreed amount.

15.6 Partial Termination

If a termination hereunder is partial, the Contract Price for the remainder of the Work shall be adjusted as appropriate to account for the change in the overall scope of the Project.

15.7 Reduction in Amount of Claim

The amount otherwise due Design-Builder under this Section 15 shall be reduced by (a) all unliquidated advance or other payments made to or on behalf of Design-Builder applicable to the terminated portion of the Contract, (b) the amount of any claim which Department may have against any Design-Builder-Related Entity in connection with the Contract, (c) the agreed price for, or the proceeds of the sale of, any property, materials, supplies or other things acquired by Design-Builder or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to Department, (d) amounts that 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, (e) the cost of repairing any Nonconforming Work and (f) any amounts due or payable by Design-Builder to Department.

15.8 Partial Payments

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 Design-Builder in connection with the terminated portion of the Contract, whenever in the opinion of Department the aggregate of such payments shall be within the amount to which Design-Builder will be entitled under this Section 15. If the total of such payments is in excess of the amount finally agreed or determined to be due under this

Section 15, such excess shall be payable by Design-Builder to Department upon demand together with interest thereon as set forth in Section 11.8.

15.9 Inclusion in Subcontracts

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 from Department in accordance with this Section 15, and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

15.10 Limitation on Payments to Subcontractor

For the purposes of Sections 15.4.2 and 15.5, upon termination under Section 15.2(d) of Work under any Subcontract, 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.

15.11 No Unearned Profits or Consequential Damages

Under no circumstances shall 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 Design-Builder determined in accordance with this Section 15 constitutes Design-Builder's sole and exclusive remedy for a termination under this Section 15.

15.12 No Waiver

Anything contained in the Contract to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages which Department may have, and Department may pursue any cause of action which it may have at law or in equity or under the Contract.

15.13 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.

15.14 Allowability of Costs

All costs claimed by Design-Builder under this Section 15 shall, at a minimum, be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

15.15 Suspension of Work

In the event of any suspension of Work by Department, after issuance of NTP1, for more than 180 consecutive Days, Design-Builder shall have the right to consider the Contract to have been terminated for convenience under this Section 15. Design-Builder shall notify Department of such election by delivering to Department a written notice of termination due to such suspension specifying its effective date. Upon delivery by Design-Builder to Department of a notice of termination due to suspension, the provisions of this Section 15 shall apply.

15.16 Termination Due to Non-Appropriation of Funds

15.16.1 Availability of Funds

The obligation of Department to make any payments to Design-Builder hereunder is contingent upon funds being appropriated, budgeted, allocated and otherwise made available by Department in amounts to

meet its funding obligations for the Contract. Design-Builder is not obligated to perform Work, and correspondingly is not entitled to any compensation for Work performed, in any fiscal year beyond the amount, if any, appropriated and made available by Department in amounts to meet its funding obligations for the Contract.

15.16.2 Anticipated Appropriations

Department anticipates that sufficient funds will be authorized to allow Department to make all payments owing hereunder.

15.16.3 Remedy for Failure To Appropriate

If funds are not budgeted, allocated or otherwise made available by Department or the State or federal Legislature fails to make an appropriation, resulting in stoppage of Work, Design-Builder agrees to resume performance of the Work without any modification to the terms and conditions hereof, provided that an appropriation therefor is approved or funds are made available within 60 Days after Design-Builder stops Work under Section 15.16.1. Any such Work stoppage shall be considered a suspension for convenience under Section 14.1. If funds are not appropriated or made available before expiration of such 60-Day period, either party may terminate the Contract.

16 DEFAULT

16.1 Default by Design-Builder

16.1.1 Events of Default

Design-Builder shall be in breach under the Contract upon the occurrence of any one or more of the following events or conditions:

(a) Design-Builder fails to promptly begin the Work under the Contract Documents following issuance of a Notice to Proceed authorizing such Work;

(b) Design-Builder does not comply with Public Safety and Public Convenience requirements of this Contract or fails to correct any safety hazards promptly.

(c) Design-Builder fails to perform the Work with sufficient resources to ensure the prompt completion thereof (i.e., Design-Builder fails to execute remedial action in accordance with the Quality Manual and Book 2, Section 2.4);

(d) 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 Department under Section 7.4.3;

(e) Design-Builder discontinues or suspends the prosecution of the Work (exclusive of Work stoppage due to [i] termination by Department, [ii] a Force Majeure event or suspension by Department, or [iii] nonpayment by Department not related to a breach by Design-Builder);

(f) Design-Builder fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from Department to do so or (if applicable) after cessation of the event preventing performance;

(g) Design-Builder breaches any other agreement, representation or warranty contained in the Contract Documents, or Design-Builder fails to perform any other obligation under the Contract Documents, including EEO and DBE requirements;

(h) Design-Builder fails to provide and maintain the required insurance;

(i) Design-Builder fails to provide and maintain the required payment and performance bond or Design-Builder assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under Section 23.4.2;

(i) 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 Governmental Rule or Governmental Approval; or fails reasonably to comply with the instructions of Department consistent with the Contract Documents;

(k) Design-Builder fails to discharge or obtain a stay within 10 Days of any final judgment(s) or order for the payment of money against it in excess of $100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order shall be deemed an effective stay);

(l) Design-Builder, any Guarantor or any Major Participant 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;

(m) Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against Design-Builder, any Guarantor or any Major Participant and not dismissed within 60 Days;

(n) Any representation or warranty made by Design-Builder or any Guarantor in the 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;

(o) Design-Builder or any Guarantor is a party to fraud; or

(p) Any Guarantor revokes or attempts to revoke its obligations under the Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect.

16.1.2 Right to Cure

Department agrees to allow Design-Builder and Surety 15 Days notice and opportunity to cure any breach before declaring an Event of Default, provided that the notice and cure period shall only be three days for a breach under Section 16.1.1(g) and no such notice and opportunity to cure is required for any breach which by its nature cannot be cured. If a breach for which a 15-Day cure period is provided is curable but by its nature cannot be cured within 15 Days, as determined by Department, Department agrees not to declare an Event of Default provided that Design-Builder commences such cure within such 15-Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period exceed 60 Days in total. Design-Builder hereby acknowledges and agrees that the events described in Sections 16.1.1(h), (k), (m), (n) and (o) are not curable. For breach of any insurance requirements, the provisions of Section 9 apply. Notwithstanding the foregoing, if Department believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, Department may, without notice and without awaiting lapse of any cure period, rectify the condition at Design-Builder's cost, and so long as Department undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose Department to liability to Design-Builder and shall not entitle Design-Builder to any other remedy, it being acknowledged that Department has a paramount public interest in providing and maintaining safe public use of and access to the Project. 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 Department

If an Event of Default occurs, then, in addition to all other rights and remedies provided by law or equity or available under the Contract or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the surety bonds required hereby, any Guaranty and/or other performance security, 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 Design-Builder from any obligations, and Design-Builder shall have the following obligations (as applicable):

(a) Department may order Design-Builder to suspend or discontinue the Work or any portion of the Work;

(b) Department may terminate the Contract or a portion thereof, in which case, the provisions of Sections 15.2 and 15.3 shall apply;

(c) If and as directed by Department, 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;

(d) Design-Builder shall deliver to Department possession of any or all facilities of Design-Builder located on the Site as well as any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings and other documents, that Department deems necessary for completion of the Work;

(e) Design-Builder shall confirm the assignment to Department of the Subcontracts requested by Department, and Design-Builder shall terminate, at its cost, all other Subcontracts;

(f) Department may deduct from any amounts payable by Department to Design-Builder such amounts payable by Design-Builder to Department, including Liquidated Damages or other damages payable to Department under the Contract Documents;

(g) Department shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required;

(h) Department, without incurring any liability to Design-Builder, shall have the rights (i) to take the performance of all or a portion of the Work from Design-Builder (either with or without the use of Design-Builder's materials, equipment, tools and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) to use such other methods, as in the opinion of Department, will be required for the completion of the Project; and/or

(i) If Department exercises any right to perform any obligations of Design-Builder, in the exercise of such right 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 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

16.2.2.1 Occurrence of an Event of Default

If an Event of Default has occurred, Design-Builder and Surety shall be jointly and severally liable to Department (in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable hereunder) for all costs reasonably incurred by Department or any party acting on 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, Department shall be entitled to withhold all or any portion of further payments to Design-Builder until such time as Department is able to determine how much (if any) remains owing to Design-Builder. Promptly upon such determination, Department shall notify Design-Builder in writing of the amount, if any, that Design-Builder shall pay Department or that Department shall pay Design-Builder with respect thereto. All costs and charges incurred by 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 Design-Builder. If such expense exceeds the sum which would have been payable under the Contract, then Design-Builder and its Surety(ies) and any Guarantor shall be liable and shall pay to Department the amount of such excess.

16.2.2.2 Assurance of Future Performance

It is recognized that if a default under Section 16.1.1(k) or (l) occurs, such event could impair or frustrate Design-Builder's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, Department shall be entitled to request of 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 10 Days of delivery of the request shall entitle Department to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, 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 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 the Contract, any Guaranty and Payment and Performance Bond.

16.2.2.3 Alternative to Terminating the Contract and Completing the Work

In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work, Department may pay 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 the Contract. No claim under this provision will be allowed Design-Builder for prospective profits on, or any other compensation relating to, Work uncompleted by Design-Builder.

16.2.2.4 Termination Deemed to Constitute a Termination for Convenience

If the Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

16.2.2.5 Damages Resulting From Design-Builder's Breach or Failure to Perform

If Department suffers damages as a result of Design-Builder's breach or failure to perform an obligation under the Contract Documents, then Department shall be entitled to recovery of such damages from Design-Builder regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

16.2.2.6 Cumulative Remedies

The exercise or beginning of the exercise by Department of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by Department of any or all other rights or remedies, each of which shall be cumulative.

16.2.2.7 Continued Liability of Design-Builder and Surety

Design-Builder, any Guarantor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by Design-Builder hereunder or by Department's declaration of an Event of Default, or by actions taken by Department under this Section 16.2.

16.3 Right to Stop Work If Undisputed Payment Is Not Made

Design-Builder shall have the right to stop Work if Department fails to make an undisputed payment due hereunder within 30 Days after receipt of notice of nonpayment. Any such Work stoppage shall be considered a suspension under Section 14.1. Design-Builder shall not have the right to terminate the Contract for default as the result of any failure by Department to make an undisputed payment due hereunder, but Design-Builder shall have the right to declare a termination for convenience under Section 15 upon meeting the requirements of Section 15.15.

16.4 Notice and Opportunity to Cure Other Types of Department Breaches

In the event of any breach of the Contract by Department other than a failure to make payments to Design-Builder, Design-Builder shall provide to Department a written notice describing the breach and the opportunity to cure such breach. Department shall be entitled to 30 days notice and opportunity to cure any such breach; provided that if such breach is capable of cure but by its nature cannot be cured within 30 days, Department shall have such additional period of time as may be reasonably necessary to

cure the breach so long as Department commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion. Design-Builder shall have no right to exercise any remedies to which it may be entitled at law or in equity until the foregoing notice is delivered and the foregoing cure period lapses without cure of the breach.

17 DAMAGES

17.1 Liquidated Damages and Disincentives

17.1.1 Failure to Meet Completion Deadlines

Design-Builder understands and agrees that if Design-Builder fails to complete the Work in accordance with the Contract Documents, Department will suffer substantial losses and damages. Design-Builder agrees that it shall be liable for all such losses and damages. Design-Builder acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the California State highway system and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to Department and the public in the event of Design-Builder's failure to achieve any Intermediate Completion, Substantial Completion, and/or Final Acceptance by the applicable Completion Deadlines. Therefore, Design-Builder and Department have agreed to stipulate the amount payable by Design-Builder in the event of its failure to meet a Completion Deadline. Design-Builder acknowledges and agrees that such Liquidated Damages are intended to compensate Department solely for Design-Builder's failure to meet the Completion Deadlines, and shall not excuse Design-Builder from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that Department has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude Department from exercising its other rights and remedies respecting the delay set forth in Section 16.2 other than the right to collect other damages due to the delay, except that Department agrees not to exercise such other rights and remedies respecting the delay so long as Design-Builder diligently performs the Work in accordance with the Contract Schedule.

If Design-Builder fails to achieve any Intermediate Completion, Substantial Completion or Final Acceptance by the applicable Completion Deadline, Design-Builder agrees to pay Department Liquidated Damages in the following amounts:

(a) $5,400 per Day for Design-Builder's failure to achieve Substantial Completion by the Substantial Completion Deadline, until the date Design-Builder achieves Substantial Completion; and

(b) $3,800 per Day for Design-Builder's failure to achieve Final Acceptance by the Final Acceptance Deadline, until the date Design-Builder achieves Final Acceptance.

17.1.2 Reasonableness of Liquidated Damage Amounts

Design-Builder understands and agrees that any Liquidated Damages payable in accordance with this Section 17.1 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of the Contract. Design-Builder further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

17.2 Offset; Waiver

17.2.1 Offset

Department shall have the right to deduct any amount owed by Design-Builder to Department hereunder from any amounts owed by Department to Design-Builder.

17.2.2 Waiver

Department may reduce or waive all or any portion of the Liquidated Damages, in its sole discretion, if the Project is in condition for safe and convenient use by the traveling public.

Permitting or requiring Design-Builder to continue and finish the Work or any part thereof after a Completion Deadline shall not act as a waiver of Department's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to Department. Neither the act of taking over the work nor a termination of the Contract or Default shall forfeit Department's right to recover Liquidated Damages from Design-Builder or Design-Builder's Sureties.

17.3 Payment of Liquidated Damages

Liquidated Damages, to the extent not paid as provided in Section 17.2, shall be payable by Design-Builder to Department within 10 Days after Design-Builder's receipt of an invoice therefor from Department.

18 INDEMNIFICATION

18.1 Indemnifications by Design-Builder

18.1.1 General Indemnities

With the exception that this section shall in no event be construed to require indemnification by the Design-Builder to a greater extent than permitted by law, the Design-Builder shall defend, indemnify and hold harmless the State and the Department, including its officers, directors, agents and employees, and each of them (Indemnitees) from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever (Claims), arising out of or in connection with the Design-Builder's performance of this contract for:

A. Bodily injury including, but not limited to: Bodily injury, sickness or disease, emotional injury or death to persons, including but not limited to the public, any employees, or agents of the Design-Builder, State, Department, or any other Contractor and;

B. Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Design-Builder or its agents, or anyone directly or indirectly employed or retained by the Design-Builder or anyone for whose acts or omissions the Design-Builder may be liable.

Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence or degree of fault of Indemnitees. The Design-Builder, however, shall not be obligated to indemnify Indemnitess for Claims arising from conduct delineated in California Civil Code Section 2782. Further, the Design-Builder's indemnity obligation shall not extend to Claims to the extent they arise from any defective or substandard condition of the roadway which existed at or prior to the time the Design-Builder commenced work, unless this condition has been changed by the work or the scope of the work requires the Design-Builder to maintain existing roadway facilities and the Claim arises from the Design-Builder's failure to maintain. The Design-Builder's indemnity obligation shall extend to Claims arising after the work is completed and accepted only if these Claims are directly related to alleged acts or omissions of the Design-builder which occurred during the course of the work. No inspection, oversight,approval or acceptance by the Department, its employees or agents shall be deemed a waiver by the Department of full compliance with the requirements of this Section.

The Design-Builder's obligation to defend and indemnify shall not be excused because of the Design-builder's inability to evaluate liability or because the Design-Builder evaluates liability and determines that the Design-Builder is not liable to the claimant. The Design-Builder will respond within thirty (30) days to the tender of any claim for defense and indemnity by the Department, unless this time has been extended by the Department. If the Design-Builder fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the Design-Builder under and by virtue of the contract as shall be reasonably necessary by the Department, may be retained and withheld by the Department until disposition has been made by the Claim or suit for damages, or until the Design-Builder accepts or rejects the tender of defense, whichever occurs first.

With respect to third party Claims against the Design-Builder, the Design-Builder waives any and all rights of any type to express or implied indemnity against the Department, its directors, officers, employees or agents.

Subject to Section 18.1.3, Design-Builder shall release, indemnify, defend, and hold harmless Department and its agents and their respective successors and assigns and their respective shareholders, officers,

directors, agents and employees (collectively referred to as the "Indemnitees") from and against any and all 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:

(a) the breach or alleged breach of the Contract by any Design-Builder-Related Entity;

(b) the failure or alleged failure by any Design-Builder-Related Entity to comply with any applicable Environmental Laws or other Governmental Rules (including Governmental Rules regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Materials) or Governmental Approvals in performing the Work;

(c) any alleged patent or copyright infringement or other allegedly 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 Indemnitees pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from Department's failure to comply with specific written instructions regarding use provided to Department by Design-Builder;

(d) the alleged negligent act or omission or willful misconduct of any Design-Builder-Related Entity;

(e) 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 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;

(f) 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 Department is not in default in payments owing to Design-Builder with respect to such Work;

(g) any spill or release or threatened spill or release of a Hazardous Material [i] attributable to the negligence, willful misconduct or breach of contract by any Design-Builder-Related Entity, or [ii] which was brought onto the Site by any Design-Builder-Related Entity; and/or

(h) 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 7-1.14 of the Standard Specifications, 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, Design-Builder shall release, indemnify, defend and hold harmless Indemnitees from and against any and all 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 Errors in the Design Documents, regardless of whether such Errors were also included in the Basic Configuration or RID. Design-Builder agrees that, because the Basic Configuration and RID are subject to review and modification by Design-Builder, it is appropriate for Design-Builder to assume liability for Errors in the completed Project even though they may be related to Errors in the Basic Configuration or RID.

18.1.5 Reliance on Design-Builder's Performance

Design-Builder hereby acknowledges and agrees that it is Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that Indemnitees are fully entitled to rely on Design-Builder's performance of such obligation. Design-Builder further agrees that any review, oversight, inspection, acceptance and/or approval by Department and/or others hereunder shall not relieve 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 pursuant to this contract.

18.2 Responsibility of Department for Certain Hazardous Materials

18.2.1 Pre-Existing Site Contamination

It is recognized that Department may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Materials which may currently be 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. It is not the intention of the parties that Design-Builder be exposed to any such liability to the extent arising out of (a) pre-existing Site contamination, whether known or unknown, except as otherwise provided in Section 18.1.1(g), (b) the performance not attributable to the negligence, willful misconduct or breach of contract by any Design-Builder-Related Entity in the handling of such Hazardous Materials, and/or (c) the activities of any Persons not described in clause (b) above, including Department.

Accordingly, to the extent that Design-Builder is required to perform Remediation Work hereunder, Department shall compensate Design-Builder for such performance (through payment of the Contract Price, as it may be increased by Change Order pursuant to Section 13), but specifically excluding those conditions for which Design-Builder has agreed to be responsible as described in Section 18.1.1(g).

18.2.2 Generator Number for Hazardous Waste Remediation

Except for Hazardous Materials for which Design-Builder is responsible as described in Section 18.1.1(g) and without contradiction of any assertion by Department of third-party liability:

(a) Design-Builder shall not be required to execute any hazardous waste manifests as a "generator"; and

(b) 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, Department or another Person designated by Department.

18.3 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 indemnified hereunder.

18.4 CERCLA Agreement

Without limiting their generality, the indemnities set forth in Section 18.1.1(g) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the Indemnified Parties.

18.5 Intent of Indemnity for Breach of Contract

The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(a) is intended to provide protection to Department with respect to third party claims associated with such breach. It is not intended to provide Department with an alternative cause of action for damages incurred directly by Department with respect to such breach.

19 PARTNERING, DISPUTE RESOLUTION

19.1 Partnering

19.1.1 General

The Department strives to work cooperatively with all design-builders; partnering is our way of doing business. The Department encourages project partnering among the project team, made up of significant contributors from the Department and the Design-Builder, and their invited stakeholders.

For a project with a total bid between $1 million and $10 million, professionally facilitated project partnering is encouraged.

For a project with a total bid greater than $10 million, professionally facilitated project partnering is required.

In implementing project partnering, you and the Department manage the contract by:

(a) Using early and regular communication with involved parties
(b) Establishing and maintaining a relationship of shared trust, equity, and commitment
(c) Identifying, quantifying, and supporting attainment of mutual goals
(d) Developing strategies for using risk management concepts
(e) Implementing timely communication and decision making
(f) Resolving potential problems at the lowest possible level to avoid negative impacts
(g) Holding periodic partnering meetings and workshops as appropriate to maintain partnering relationships and benefits throughout the life of the project
(h) Establishing periodic joint evaluations of the partnering process and attainment of mutual goals

Partnering does not void any contract part.

The Department's "Field Guide to Partnering on Caltrans Construction Projects" current at the time of bid is available to the project team as reference. This guide provides structure, context, and clarity to the partnering process requirements. This guide is available at the Department's Partnering Program website:

http://www.dot.ca.gov/hq/construc/partnering.html

In implementing project partnering, the project team must:

(a) Create a partnering charter that includes:

- Mutual goals, including core project goals and may also include project-specific goals and mutually supported individual goals.
- Partnering maintenance and close-out plan.
- Dispute resolution plan that includes a dispute resolution ladder and may also include use of facilitated dispute resolution sessions.
- Team commitment statement and signatures.

(b) Participate in monthly partnering evaluation surveys to measure progress on mutual goals and may also measure short-term key issues as they arise.

(c) Evaluate the partnering facilitator on Forms CEM-5501 and CEM-5502. The Engineer provides the evaluation forms to the project team and collects the results. The Department makes evaluation results available upon request. Facilitator evaluations must be completed:

- At the end of the initial partnering workshop on Form CEM-5501.
- At the end of the project close-out partnering workshop on Form CEM-5502.

(d) Conduct a project close-out partnering workshop.

(e) Document lessons learned before contract acceptance.

19.1.2 Partnering Facilitator, Workshops, and Monthly Evaluation Surveys

The Engineer sends you a written invitation to enter into a partnering relationship after contract approval. Respond within 15 days to accept the invitation and request the initial and additional partnering workshops. After the Engineer receives the request, you and the Engineer cooperatively:

(a) Select a partnering facilitator that offers the service of a monthly partnering evaluation survey with a 5-point rating and agrees to follow the Department's "Partnering Facilitator Standards and Expectations" available at the Department's Partnering Program website

(b) Schedule initial partnering workshop

(c) Determine initial workshop site and duration

(d) Agree to other workshop administrative details

Additional partnering workshops and sessions are encouraged throughout the life of the project as determined necessary by you and the Engineer, recommended quarterly.

19.1.3 Training in Partnering Skills Development

For a project with a total bid of $25 million or greater, training in partnering skills development is required.

For a project with a total bid between $10 million and $25 million, training in partnering skills is optional.

You and the Engineer cooperatively schedule the training session and select a professional trainer, training site, and 1 to 4 topics from the following list to be covered in the training:

(a) Active Listening

(b) Building Teams

(c) Change Management

(d) Communication

(e) Conflict Resolution

(f) Cultural Diversity

(g) Dealing with Difficult People

(h) Decision Making

(i) Effective Escalation Ladders

(j) Emotional Intelligence

(k) Empathy

(l) Ethics

(m) Facilitation Skills

(n) Leadership

(o) Partnering Process and Concepts

(p) Project Management

(q) Project Organization

(r) Problem Solving

(s) Running Effective Meetings

(t) Time Management

(u) Win-Win Negotiation

Before the initial partnering workshop, the trainer conducts a 1-day training session in partnering skills development for the Design-Builder's and the Engineer's representatives. This training session must be a separate session from the initial partnering workshop and must be conducted locally. The training session must be consistent with the partnering principles under the Department's "Field Guide to Partnering on Caltrans Construction Projects."

Send at least 2 representatives to the training session. One of these must be your assigned representative as specified in Section 2 “Obligations of Design-Builder” of the Contract Documents.

19.1.4 Payment

The Department pays you for:

(a) 1/2 of partnering workshops and sessions based on facilitator and workshop site cost

(b) 1/2 of monthly partnering evaluation survey service cost

(c) Partnering skills development trainer and training site cost

The Department determines the costs based on invoice prices minus any available or offered discounts. The Department does not pay markups on these costs.

The Department does not pay for wages, travel expenses, or other costs associated with the partnering workshops and sessions, monthly partnering evaluation surveys, and training in partnering skills development.

19.2 Dispute Resolution Procedures

19.2.1 General Provisions

The Design-Builder shall comply with the requirements of this section in order to pursue a claim, file for arbitration, or file for litigation.

The Parties shall use reasonable efforts to resolve Disputes under this Section 19.2 in a timely manner.

Use the informal dispute resolution process in accordance with Section 19.2.2 for all disputes.

Once the informal dispute resolution process has been exhausted, the following Disputes shall be referred to the Dispute Resolution Board (DRB) in accordance with Section 19.2.3: (a) Disputes arising from Construction Claims up to and before Final Acceptance; and (b) Disputes arising from Construction Claims after Final Acceptance.

If the Parties are unable to resolve Disputes regarding Construction Claims or non-Construction Claims (other than for tort liability claims arising out of personal injury or wrongful death) arising before Final Acceptance in accordance with this Section 19.2, the claiming Party may initiate a single legal action to resolve such Claims after Final Acceptance by filing a civil action in Sacramento Superior Court. Neither Party shall have the right to litigate its Construction Claims or non-Construction Claims arising before Final Acceptance in multiple civil actions. Neither Party shall have the right to assert, and each Party hereby waives the right to assert, the statute of limitations as a defense to any such Claims provided such Claims are stated in a complaint in a single civil action filed within 45 days after the Final Acceptance Date and conclusion of all DRB proceedings respecting such Claims.

19.2.2 Informal Dispute Resolution Process

19.2.2.1 Escalation Ladder

Prior to referring a dispute to the DRB, the Parties must attempt to resolve the dispute by elevating it through the three escalation ladder level reviews by and between the Department's Design-Build Contract Manager and the Design-Builder's equivalent manager, the Department's District Construction Engineer and the Design-Builder's equivalent manager, and finally the Department's District Director and the Design-Builder's equivalent manager.

19.2.2.2 Level One Review

The Department's Design-Build Contract Manager or the Design-Builder's equivalent manager may initiate the process of informal dispute resolution by providing the other Party with written notice of a Dispute. The written notice shall provide a clear statement of the Dispute, and shall refer to the specific contract provisions that pertain to the Dispute. The notice shall also include a detailed description of the facts and circumstances relating to the Dispute (including the relevant dates, locations, and items of work). Within five days of the receipt of the written notice, the Department's Design-Build Contract Manager and the Design-Builder's equivalent manager shall meet and review the Dispute. The Department's Design-Build Contract Manager and the Design-Builder's equivalent manager shall attempt to resolve the Dispute within ten days of the initial meeting. If the Dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

19.2.2.3 Level Two Review

If the Dispute is not resolved by the tenth day, the Dispute shall be escalated to the Department's District Construction Engineer and the Design-Builder's equivalent manager who shall meet and review the Dispute within five days. The Department's District Construction Engineer and the Design-Builder's equivalent manager shall attempt to resolve the Dispute within ten days of their initial meeting. If the

Dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

19.2.2.4 Level Three Review

If the Dispute is not resolved by the tenth day, the Department's District Director and the Design-Builder's equivalent manager shall meet and review the Dispute within five days. The Department's District Director and the Design-Builder's equivalent manager shall attempt to resolve the Dispute within ten days of the initial meeting. If the Dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

19.2.2.5 Unresolved Disputes

If the Dispute is not resolved by the tenth day by the Department's District Director and the Design-Builder's equivalent manager, the Parties shall proceed with the provisions of Section 19.2.3.

19.2.3 Dispute Resolution Board (DRB)

Prior to any DRB proceeding, the Parties must engage in informal dispute resolution, as provided in Section 19.2.2, to resolve the Dispute.

The DRB shall be established by the Department and the Design-Builder within 45 days after contract approval.

The DRB is a three member board established jointly by the Department and Design-Builder to assist in the resolution of Disputes described in Section 19.2.1. A dispute shall be referred to the DRB by either the Department or Design-Builder within ten days after the expiration of the time set forth in Section 19.2.2.4. The Party initiating the process shall notice the other Party of its intent to convene the DRB.

DRB members shall be knowledgeable in the type of construction and contract documents anticipated by the Contract and shall have completed training through the Dispute Resolution Board Foundation.

No DRB member shall have prior direct involvement in the Contract. No DRB member shall have a financial interest in this Contract, the Parties, Design-Builder-Related Entities, Affiliates, or legal and business service providers to either Party, at any time within 24 months prior to Financial Close or during the Term.

DRB members shall fully disclose, and continue to make future disclosures relating to, any and all direct or indirect professional or personal relationships with any and all key members and personnel of the Parties.

While both the Department and Design-Builder should consider the DRB's recommendation, it is not binding on either Party.

Design-Builder shall not use or permit use of the DRB for disputes between the Design-Builder and its Subcontractors or Suppliers that have no grounds for a lawsuit against the Department.

The Parties agree that each DRB member shall act in the capacity of an independent agent and not as an employee of either Party.

No Party shall bear a greater responsibility for damages or personal injury than is normally provided by Federal or State of California Law.

Notwithstanding the provisions of this Contract that require the Design-Builder to indemnify and hold harmless the Department, the Parties shall jointly indemnify and hold harmless the DRB members from

and against all claims, damages, losses, and expenses, including attorney's fees, arising out of and resulting from the findings and recommendations of the DRB.

19.2.4 Establishment of the DRB

19.2.4.1 Department and Design-Builder Selections

The DRB shall consist of one member selected by the Department and approved by Design-Builder, one member selected by Design-Builder and approved by the Department, and a third member selected by the first two members and approved by both the Department and Design-Builder. The approval of the third DRB nominee is subject to compliance with Sections 19.2.3

The Department and Design-Builder shall provide the other written notification requesting approval of the name of its DRB nominee along with the DRB nominee's disclosure statement. Disclosure statements shall include a résumé of the DRB nominee's experience and a declaration statement describing past, present, anticipated, and planned relationships with all Parties involved in this Contract. Objections to DRB nominees shall be based on a specific breach or violation of DRB nominee responsibilities or DRB nominee qualifications. The Department or Design-Builder may object to the other's DRB nominee in the event there is a failure on the part of the DRB nominee in making the required disclosure provided in Sections 19.2.3. The Department or the Design-Builder may also, on a one-time basis, object to the other's nominee without specifying a reason and this person shall not be selected for the DRB. Objection to such nomination must be made within five days of the written notification of the DRB nominee. If a Party objects to the other's DRB nominee, the nominating Party shall nominate another DRB nominee within five days of such objection.

19.2.4.2 Selection of Third Member

The two DRB members selected and subsequently approved by the Department and Design-Builder, respectively, shall proceed with the selection of the third DRB member immediately after receiving written notification from both Parties confirming approval of the first two DRB nominees. The two DRB members shall provide their recommendation simultaneously to the Parties within 15 days of their approval. The third DRB nominee shall provide a disclosure statement to the first two DRB members, the Department, and Design-Builder. The professional experience of the third DRB member shall complement that of the first two DRB members. The third DRB member shall be subject to the mutual approval of the Department and Design-Builder.

If the two DRB members do not agree on the third DRB nominee or if the Department or Design-Builder cannot mutually approve the third DRB nominee, the two DRB members shall submit a list of nominees, comprised of three names from each DRB member, to the Department and Design-Builder for final selection and approval.

If the Department and Design-Builder cannot agree on the third DRB member nomination selected from the listed provided under Section 19.2.4.2, the Department and Design-Builder shall each select three names from the current list of arbitrators certified by the Public Works Contract Arbitration Committee established by Public Contract Code §10245 et seq. The two DRB members shall then select one of the six names by a blind draw. The selected DRB member shall submit a disclosure in compliance with Sections 19.2.3. The selected DRB member shall be appointed as a third DRB member unless Design-Builder or the Department object to the nomination based on a failure to disclose as provided in Sections 19.2.3, or failure to comply with Sections 19.2.3., no later than five days following written notice of such appointment. If there is an objection against the selection of the third DRB member the Parties must repeat the blind draw until a third DRB member is selected and approved by both Parties.

19.2.4.3 DRB Chairperson

If there is no objection from either Party based on Section 19.2.3, the third DRB member shall become the DRB Chairperson.

19.2.5 Termination, Replacement of DRB Member

19.2.5.1 Termination

A DRB member may be terminated immediately, by either party, for failing to comply at all times with all required employment or financial disclosure conditions of DRB membership in conformance with the terms of the Agreement, and for violation of Sections 19.2.3.

Service of a DRB member may be terminated at any time upon not less than 15 days prior written notice to the DRB members and other Party, as follows: (a) the Department may unilaterally terminate service of the Department-appointed member; (b) Design-Builder may unilaterally terminate service of the Design-Builder-appointed member; and (c) upon the written recommendation of the Department and Design-Builder appointed members and the mutual written approval of the Parties, the appointed DRB members may replace the third member. Each Party shall document the need for the replacement and substantiate the replacement request in writing to the other Party and DRB members prior to the removal of a DRB member.

19.2.5.2 Resignation

A DRB member may resign upon not less than 15 days written notice of resignation to the Department and Design-Builder.

19.2.5.3 Replacement of DRB Member

When a member of the DRB is replaced, the replacement member shall be appointed in the same manner as the replaced member was appointed. The appointment of a replacement DRB member will begin promptly upon determination of the need for replacement and shall be completed within 15 days.

19.2.6 Role of the DRB

The DRB shall fairly and impartially consider Disputes placed before it and provide recommendations to the Parties for resolution of these Disputes. The DRB shall provide recommendations based on the facts related to the Dispute, the Contract Documents, and applicable Laws.

Except for those persons who provide technical services and are directly involved in the Project or who have direct knowledge of the Dispute, only the Department's Design-Build Contract Manager, District Construction Engineer, and District Director, and the Design-Builder's equivalent managers, may present information at the DRB meeting.

The DRB shall govern the conduct of its business and reporting procedures in accordance with the terms and conditions of this contract and the DRB Agreement. The DRB may establish further procedures that conform to the requirements of the DRB Agreement.

The Department will provide conference facilities for DRB meetings at no cost to Design-Builder.

The DRB Chairperson shall schedule DRB meetings and any other DRB activities.

DRB members shall have no claim against the Department or Design-Builder from any alleged harm arising out of the Parties' discussions and evaluations of the DRB's opinions and recommendations.

DRB members shall refrain, at all times, from expressing opinions on the merits of evidence and statements on matters under Dispute, except in the private sessions of the DRB members. Opinions of DRB members expressed in private sessions shall be kept strictly confidential. Individual DRB members shall not meet with, or discuss Disputes or other issues under the Contract Documents with the individual Parties. Discussions regarding the Project and Disputes among the DRB members and the Parties shall be in the presence of all three members and both Parties. Individual DRB members shall not undertake independent investigations of any kind pertaining to Disputes, except with the knowledge of both Parties and as expressly directed by the DRB Chairperson. No DRB member shall have any *ex parte* communication with any Party or their managers or agents regarding material issues in Dispute. Any such *ex parte* communications with either Party or their managers or agents will result in the immediate removal of the DRB member.

19.2.7 DRB Meeting Procedures and Recommendations

19.2.7.1 Referral of Disputes to DRB

If the Parties are unable to reach resolution of their Dispute as provided in Section 19.2.2 and the Dispute is governed by Section 19.2, either Party may submit its Dispute to the DRB. The referring Party shall submit a written request for the DRB to consider the Dispute. The Party initiating the request for the DRB shall simultaneously make the written request to the DRB Chairperson and the other Party.

The written Dispute referral shall describe the disputed matter in individual discrete segments, so that it will be clear to both Parties and the DRB what discrete elements of the Dispute have been resolved, and which remain unresolved, and shall include an estimate of the impacts on cost of the affected Work and impacts, if any, on Controlling Work Items, Critical Path and Completion Deadlines.

19.2.7.2 Written Documentation

The Parties shall each be afforded an opportunity to be present and to be heard by the DRB, and to offer evidence. Either Party furnishing written evidence (primary or additional) or documentation to the DRB must furnish copies of such information to the other Party a minimum of 15 days prior to the date the DRB is scheduled to convene the meeting for the Dispute. Either Party shall produce such additional evidence as the DRB may deem necessary to reach an understanding and a recommendation regarding the Dispute. The Party furnishing additional evidence shall furnish copies of such additional evidence to the other Party at the same time the evidence is provided to the DRB. The DRB shall not consider evidence that is not furnished in conformance with the terms specified herein.

19.2.7.3 DRB Meeting

Upon receipt by the DRB of a written referral of a Dispute, the DRB shall convene to review and consider the Dispute. The DRB meeting shall be held no later than 60 days after receipt of the written request unless otherwise agreed to by all Parties.

19.2.7.4 Clarification of Written Documentation

The DRB may request clarifying information from either Party within ten days after the DRB meeting. Requested information shall be submitted to the DRB within ten days of the DRB request, unless extended with the written approval of the DRB or the other Party.

19.2.7.5 DRB Report

The DRB shall furnish a written report to the Parties with its finding(s), conclusion(s) and recommendation(s). The DRB shall complete its report (DRB Report) (including any minority opinion) and submit it to the Parties within 30 days after the DRB meeting, except that time extensions may be granted at the request of the DRB with the written concurrence of the Parties. The DRB Report shall

summarize the facts considered, the contract language, Laws reviewed by the DRB as pertinent to the Dispute, and the DRB's interpretation and reasoning in arriving at its conclusion(s) and recommendation(s). If appropriate, the DRB Report also may recommend guidelines for determining compensation. The DRB Report shall stand on its own, without attachments or appendices. The DRB Chairperson shall furnish a copy of the DRB Report to the ADR Engineer, Division of Construction (address as of the Effective Date: MS 44, P.O. Box 942874, Sacramento, CA 94274).

19.2.7.6 Response to DRB Report

Within 30 days after receiving the DRB Report, the Parties shall respond to the DRB in writing stating whether the Dispute is resolved or remains unresolved. Failure to provide the written statement within the time specified, a written rejection of the DRB's recommendation, or a written statement requesting that the DRB reconsider their recommendation, shall conclusively indicate that the Party(s) failing to respond accepts the DRB recommendation. Immediately after responses have been received from both Parties, the DRB shall provide copies of both responses to the Parties simultaneously.

19.2.7.7 Clarifications of DRB Report

Either Party may request clarification of elements of the DRB Report from the DRB prior to responding to the DRB Report. The DRB shall consider any clarification request only if submitted within ten days after receipt of the DRB Report, and if submitted simultaneously in writing to both the DRB and the other Party. Each Party may submit only one request for clarification for any individual DRB Report. The DRB shall respond, in writing, to requests for clarification within ten days of receipt of such requests.

19.2.7.8 Reconsideration

Either Party may seek a reconsideration of the DRB's recommendation. The DRB shall only grant reconsideration if the Party seeking the re-consideration submits new evidence and if the request is submitted within the 30 day time limit specified for response to the DRB Report. Each Party may submit only one request for reconsideration regarding an individual DRB Report.

19.2.7.9 Resolution of Dispute

If the Parties are able to resolve their Dispute with the aid of the DRB Report, they shall promptly accept and implement the terms and conditions of the settlement. If the Parties cannot agree on compensation within 60 days of the acceptance by both Parties of the settlement, either Party may request that the DRB provide a written recommendation regarding compensation.

19.2.8 Payment of DRB Members and DRB Costs

19.2.8.1 DRB Member Compensation

Each DRB member shall be compensated at an agreed rate of $1,500 per day for each in-person, approved DRB meeting (and shall not include meetings attended via telephone or other remote communication method). A member serving on more than one Department DRB (regardless of the number of meetings per day) shall not be paid more than the agreed rate per day. The agreed rate shall be considered full compensation for on-site time, travel expenses, transportation, lodging, time for travel, and incidentals for each day or portion thereof that the DRB member attends (in person) an authorized DRB meeting.

No additional compensation will be made for time spent by DRB members in regard to review and research activities outside the official DRB meetings unless that time (such as time spent evaluating evidence and preparing recommendations and a DRB Report on Disputes presented to the DRB) has been specifically agreed upon in writing by the Department and Design-Builder in advance. Time away from the project, which has been specifically agreed upon by the Department and Design-Builder in advance, will be compensated at an agreed rate of $150 per hour. The agreed amount of $150 per hour shall include

all incidentals including but not limited to expenses for telephone, fax, and computer services. From time to time the Parties may reconsider and mutually revise the agreed rate, in which case they shall document the revised agreed rate in writing.

DRB members may submit invoices to the Department and Design-Builder for payment for work performed and services rendered for their participation in authorized meetings not more often than once per month. The invoices shall be in a format approved by the Parties and accompanied by a general description of activities performed during that billing period. Payment for hourly fees, at the agreed rate, shall not be paid to a DRB member until the amount and extent of those fees are mutually approved by the Department and Design-Builder.

19.2.8.2 Technical Services

If the DRB needs outside technical services, these technical services shall be pre-approved by both the Department and Design-Builder. The cost of the pre-approved technical services will be borne equally by the Department and Design-Builder.

19.2.8.3 Cost Sharing

The Department and Design-Builder shall equally bear the costs and expenses of the DRB. There will be no markups applied to expenses connected with the DRB.

Regardless of the DRB recommendation, neither Party shall be entitled to reimbursement of DRB costs from the other Party.

19.2.9 Confidentiality

The Parties agree that all documents and records provided by the Parties in reference to documents brought before the DRB that are marked "Confidential - for use by the DRB only" related to the Dispute shall be kept in confidence and used only for the purpose of resolution of the Dispute, and for assisting in development of DRB findings and recommendations; and that such documents and records will not be utilized or revealed to others, except to officials of the Parties who are authorized to act on the subject Disputes, for any purposes, during the life of this Contract. The foregoing shall not apply, however, to documents and records that prior to submission to the DRB were already subject to the Public Records Act. Upon termination of this Contract, such confidential documents and records, and all copies thereof, shall be returned to the respective Parties who furnished them to the DRB. However, the Parties understand that such documents may be subsequently discoverable and admissible in legal proceedings unless a protective order has been obtained by the Party seeking further confidentiality.

Notwithstanding the foregoing, the FHWA shall have the right to review the work of the DRB in progress (except for private meetings or deliberations of the DRB that do not become part of the project records.

19.2.10 Right to Litigate Dispute

The Department and Design-Builder agree that the submission of any unresolved Dispute to the informal dispute resolution process and the DRB (as applicable) under this Section 19.2 is a condition precedent to the Department or Design-Builder having the right to proceed to litigation of such unresolved Dispute.

The Department and Design-Builder shall not call DRB members who served on the DRB for this contract as witness in litigation proceedings which may arise from this contract, and all documents created by the DRB shall be inadmissible as evidence in such proceedings, except the DRB’s final written reports on each issue brought before it.

19.2.11 Continuance of Work During Dispute

During the course of any and all Dispute Resolution Procedures, Design-Builder shall proceed with the performance of the Work, including disputed Construction Work and any other disputed Work, unless otherwise specified or directed by the Department in accordance with the Contract Documents. Throughout the disputed Work, Design-Builder shall maintain records that provide a clear distinction between the incurred direct costs of disputed Work and that of undisputed Work. The Design-Builder shall allow the Department access to Design-Builder's project records on an Open Book Basis as the Department desires to evaluate the Dispute.

19.2.12 Jurisdiction and Venue

The Parties agree to exclusive jurisdiction and venue in the Sacramento Superior Court in any action by or against the Department or its successors and assigns arising out of the Contract Documents, the Project or the Work.

20 ACCEPTANCE OF PROJECT

20.1 Reserved

20.2 Substantial Completion

20.2.1 Notice by Design-Builder

Design-Builder shall provide written notice to Department when all of the following have occurred with respect to the Project:

(a) Design-Builder has completed all Work (except for Punch List items, maintenance, final cleanup, turf establishment, and other items only included in the requirements for Final Acceptance);

(b) Design-Builder has ensured that the Work has been performed in accordance with the requirements of the Contract Documents;

(c) Design-Builder has received all applicable Governmental Approvals required for Project use;

(d) Design-Builder has furnished to Department certifications from Design-Builder's Design Manager, in form and substance satisfactory to Department, certifying conformity of the Design Documents with the requirements of the Contract Documents;

(e) Design-Builder has furnished to Department certifications from Design-Builder's Project Manager, in form and substance satisfactory to Department, certifying conformity of the construction with the Design Documents;

(f) Design-Builder has furnished to Department certifications from Design-Builder's Construction Quality Manager, in form and substance satisfactory to Department, certifying that there are no outstanding nonconformances other than those identified on the Punch List;

(g) Design-Builder has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person;

(h) Design-Builder has obtained all applicable third party approvals relating to the Work (including Utility Owners as required under any applicable Utility Agreements and Section 6 of Book 2), and all third parties have completed all work that involves obligations by Design-Builder (including Utility Owners under any Utility Agreements and Section 6 of Book 2);

(i) The Project is fully opened to traffic and Design-Builder has ensured that no further work is required which would involve any lane or shoulder closure; and

(j) Quality Manager certifies the Work is completed in accordance with the Contract Documents.

20.2.2 Correction of Defects

Upon receipt of Design-Builder's notice under Section 20.2.1, Department will conduct such inspections, surveys and/or testing as Department deems desirable. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, Department will promptly advise Design-Builder as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Substantial Completion, Nonconforming Work (including incomplete Work) which may be corrected as Punch List items and/or whether Design-Builder shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to Department and Department will conduct additional inspections, surveys and/or tests as Department deems desirable. This procedure shall be repeated until Department finds that all prerequisites to Substantial Completion have been met.

20.2.3 Notice of Substantial Completion

Department will issue a Notice of Substantial Completion at such time as:

(a) Department determines that all conditions set forth in Section 20.2.1 have been satisfied;

(b) Department determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Substantial Completion has been corrected; and

(c) Design-Builder prepared and Department Approved a Punch List.

20.3 Final Acceptance

20.3.1 Conditions to Final Acceptance

20.3.1.1 Performance of Work after Substantial Completion

Promptly after Substantial Completion has occurred, Design-Builder shall perform all Work, if any, which was deferred for purposes of Substantial Completion, and shall satisfy all of its other obligations under the Contract Documents, including ensuring that the Project has been completed and all components have been properly adjusted and tested.

20.3.1.2 Conditions to Affidavit of Final Completion

Design-Builder shall provide to Department an executed sworn Affidavit of Final Completion in accordance with Section 20.3.1.3 when all of the following have occurred:

(a) all requirements for Substantial Completion and each Intermediate Completion have been fully satisfied;

(b) Department has received all Released for Construction Documents, Design Documents, As-Built Documents, right-of-way record maps, surveys, material certifications, test data and other deliverables required under the Contract Documents;

(c) all special tools, equipment, furnishings and supplies purchased by and/or used by Design-Builder as provided in the Contract Documents have been delivered to Department and all replacement spare parts have been purchased and delivered to Department free and clear of Liens;

(d) all of Design-Builder's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Site, Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of Department and the Site is in good working order and condition;

(e) Design-Builder has furnished to Department certifications from Design-Builder's Design Manager, in form and substance satisfactory to Department, certifying conformity of the Design Documents with the requirements of the Contract Documents;

(f) Design-Builder has furnished to Department certifications from Design-Builder's Project Manager, in form and substance satisfactory to Department, certifying conformity of the construction with the Design Documents;

(g) Design-Builder has furnished to Department certifications from Design-Builder's Construction Quality Manager, in form and substance satisfactory to Department, certifying that there are no outstanding nonconformances;

(h) Design-Builder has delivered to Department a notice of completion for the Project in recordable form and meeting all statutory requirements;

(i) the Punch List items have been completed to the satisfaction of Department;

(j) all of 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 Department) have been satisfied in full or waived in writing by Department; and

(k) Design-Builder has identified a single point of contact to address the Warranty requirements of Section 21 throughout the duration of the Project Warranty term.

20.3.1.3 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion referred to in Section 20.3.1.2 shall include the following statement:

> To the best of Design-Builder's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed work under the Contract, 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 Contract 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 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, Design-Builder and Subcontractors acknowledge that Department and any and all employees of 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 Contract.

If 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 Department. The affidavit shall include a representation of Design-Builder that it is diligently and in good faith contesting all 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.

20.3.2 Inspection and Issuance of Notice of Final Acceptance

Upon Department's receipt of the Affidavit of Final Completion, Department will make final inspection and Department will either issue a Notice of Final Acceptance or notify Design-Builder regarding any Work remaining to be performed. If Department fails to issue a Notice of Final Acceptance, Design-Builder shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Builder shall provide to Department a revised Affidavit of Final Completion with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until Department has issued a Notice of Final Acceptance.

20.3.3 Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent Department from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from Design-Builder, the Surety(ies) and/or any Guarantor, the amount of any overpayment sustained due to failure of Design-Builder to fulfill the obligations under the Contract. A waiver on the part of Department of any breach by Design-Builder shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve Design-Builder from any of its continuing obligations hereunder, or constitute any assumption of liability by Department.

20.4 Opening of Sections of Project to Traffic

20.4.1 Plan for Opening to Traffic

The Contract Schedule shall set forth Design-Builder's plan for completing sections of the Project and opening them to traffic. Department may request that Design-Builder expedite certain sections of the Project, and Design-Builder shall accommodate such requests to the extent that it can do so without significant disruption to its schedule or a significant increase in its costs. Notwithstanding the foregoing, if Department orders Design-Builder to open portions of the Project which cannot be accommodated without significant disruption to Design-Builder's schedule or a significant increase in Design-Builder's costs, such direction shall be considered a Department-Directed Change.

20.4.2 Direction to Open Following Design-Builder Failure to Perform

If Design-Builder is delinquent in completing shoulders, drainage structures or other features of the Work, Department may, but is not obligated to, order all or a portion of the Project opened to traffic notwithstanding such incomplete elements. Design-Builder shall then conduct the remainder of the construction operations, minimizing obstruction to traffic. Except as provided in Section 20.4.1, Design-Builder shall not receive any added compensation due to the added costs attributable to the opening of the Project to traffic. Should the Department open the Project to traffic, Design-Builder is not relieved of any responsibility for ensuring public safety and public convenience, nor is Design-Builder relieved from any insurance or indemnification obligations pursuant to this contract. Department's decision to open the road following Design-Builder's failure to perform shall not be construed as a waiver of any of the Department's rights under this Contract.

20.4.3 No Waiver

Opening of portions of the Project prior to Final Acceptance does not constitute Acceptance of the Work or a waiver of any provisions of the Contract Documents.

20.5 Assignment of Causes of Action

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

21 WARRANTIES

21.1 Warranties by Design-Builder

21.1.1 Project Warranties

Design-Builder warrants that:

(a) all design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State;

(b) the Project shall be free of defects (including design defects except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, unless (i) Design-Builder has actual or constructive knowledge of such defects and (ii) Design-Builder fails to request a change thereto by Department);

(c) materials and equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new;

(d) the Work shall meet all of the requirements of the Contract Documents;

(e) the specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use; and

(f) the Project shall be fit for use for the intended function.

21.1.2 Project Warranty Term

The Warranty term shall commence upon Substantial Completion or, if earlier, upon final acceptance of specific elements of the Project by a third party owner. Subject to extension under Section 21.2 and notwithstanding any shorter warranty term for specific Project elements that may be set forth elsewhere in the Contract Documents, the Warranties regarding structures and pavements of the Project shall remain in effect until three years after Substantial Completion. The warranties regarding all other elements of the Project shall remain in effect until two years after Final Acceptance.

If 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 period, then Design-Builder shall correct such Work as specified below, even if the performance of such corrective work extends beyond the stated warranty period.

21.1.3 Reserved

21.1.4 Corrective Work

Department and Design-Builder shall conduct a walkthrough of the Site together at least one time per year prior to the expiration of the Warranty period. On each walkthrough, Department will produce a punch list of items requiring Warranty Work. In addition, Department reserves the right at any time during the Warranty period to identify Work that fails to meet the warranty.

Design-Builder may also monitor the Site using non-destructive testing for any Warranty Work required during the Warranty period. Design-Builder shall provide advance notification to Department of all monitoring dates and times.

Department will notify Design-Builder of any failure of any of the Work that is Design-Builder's, or any Subcontractor's, responsibility to correct under the terms of the Warranty. Design-Builder shall correct any areas which exceed the warranty threshold limits established for the Project. Department may require corrective actions at any time within the Warranty period, or defer corrective action until the end of the initial Warranty period.

For all corrective actions required, Design-Builder shall provide a written proposal for performing Warranty Work within 10 Working Days from receiving notification from Department that corrective work is required. Design-Builder shall also provide a written proposal for performing the corrective Work if Design-Builder elects to perform this Work based on Design-Builder's assessment of the Site.

The proposal shall include, as a minimum:

(a) The proposed construction remedy;

(b) The proposed schedule for prosecution and completion of the Work; and

(c) The proposed traffic management plan.

Department shall respond as to the adequacy and suitability of the proposal within 10 Working Days of the date of Design-Builder's submittal. Department may agree to Accept Nonconforming Work in accordance with Section 5.7.2.

During the Warranty period, Design-Builder will not be held responsible for distresses caused by identifiable factors unrelated to materials and workmanship. Upon written request from Design-Builder and on a case-by-case basis, Department will consider other factors that appear to be beyond the control of Design-Builder and may relieve Design-Builder from its Warranty obligations with respect thereto.

Design-Builder shall commence corrective action Work within 30 Calendar Days after notice by Department of acceptance of the written plan for warranty correction. If the Work cannot be started then because of seasonal limitations, Design-Builder must so notify Department and submit (for Department approval) a schedule for completion of the corrective action Work. If Design-Builder does not use its best efforts to proceed to effectuate that corrective action Work within the agreed time, or if Design-Builder and Department fail to reach such an agreement, Department, after notice to Design-Builder, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Design-Builder. Design-Builder shall be responsible for the inspection and testing of the Warranty Work.

If Department determines that emergency repairs are necessary for public safety, Department may perform the corrective Work. Any such emergency repairs will be authorized by Department Project Manager, or his/her representative. Prior to making the emergency repairs, Department will document the basis for the emergency action, and will preserve evidence, such as photographs or videotapes, of the defective condition. Emergency repairs will be coordinated with Design-Builder when possible. All costs associated with the emergency repairs that are covered by the Warranty Work shall be borne by Design-Builder.

21.1.5 Costs of Correction of Work

All costs of correcting such rejected Work, including additional testing and inspections, shall be deemed included in the Contract Price. Design-Builder shall reimburse Department and pay Department's expenses made necessary thereby within 10 Days after Design-Builder's receipt of invoice therefor. 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 the Contract. 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 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 Design-Builder's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, Design-Builder shall obtain from all Subcontractors and cause to be extended to 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 under Book 2. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all Department and Design-Builder inspections, tests and approvals, and (b) shall run directly to and be enforceable by Design-Builder and/or Department and their respective successors and assigns. Design-Builder hereby assigns to Department all of Design-Builder's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Design-Builder from any of its Subcontractors.

21.3.2 Enforcement

Upon receipt from Department of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, Design-Builder shall enforce or perform any such representation, warranty, guarantee or obligation, in addition to Design-Builder's other obligations hereunder. 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 Design-Builder's relevant Warranty (including extensions thereof under Section 21.2). Until such expiration, Design-Builder shall be responsible for the cost of any equipment, material, labor (including re-engineering) or shipping, and 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 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; provided, however, that, upon expiration of the Warranties, Design-Builder shall have no further liability to Department hereunder for patent construction defects.

21.5 Warranty Beneficiaries

In addition to benefiting 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 Department's other rights and remedies hereunder, at law or in equity, 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 Department and Design-Builder relating to this Section 21 shall be subject to the dispute resolution provisions contained in Section 19, provided that Design-Builder shall proceed as directed by Department pending resolution of the dispute.

22 DOCUMENTS AND RECORDS

22.1 Escrowed Proposal Documents

Design-Builder shall submit the escrowed proposal documents (EPD) to Department in a container suitable for sealing no later than 10 Calendar Days following Award of the Contract by Department.

The container shall be clearly marked "Bid Documentation" and shall have entered on the face of the container, Design-Builder's name, the date of submittal, and the State Project Number. Failure to submit the EPD may result in cancellation of the Award, in which case Department will retain the Proposal Bond.

Upon receipt of the EPD, authorized representatives of Department and Design-Builder will review the EPD for accuracy and completeness. Should a discrepancy exist, Design-Builder shall furnish Department with any other needed bid documentation within three Working Days. Department, upon determining that the EPD appear to be complete, will immediately place the EPD and affidavit in the container in the presence of Design-Builder's representative, and seal it.

Department will retain the EPD for placement in a safety deposit box, vault or other secure accommodation. The cost of accommodation will be borne by Department. Payment for compilation of the data, container, cost of verification of the EPD or any other costs that may be incurred by Design-Builder in fulfilling these requirements shall be considered incidental to the Contract. The EPD will be returned to Design-Builder following Final Acceptance.

22.1.1 Review of EPD

The EPD shall be available during business hours for joint review by Design-Builder and Department in connection with the resolution of Disputes, an audit under Section 22.3.5 (if the EPD are the subject of an audit) and as described in Section 22.1.6. Subject to Section 22.1.7, Department shall be entitled to review all or any part of the EPD in order to satisfy itself regarding the applicability of the individual documents to the matter at issue and shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters. The foregoing shall in no way be deemed a limitation on Department’s discovery rights with respect to such documents.

22.1.2 Property of Design-Builder

The EPD are, and shall always remain, the property of Design-Builder, and shall be considered to be in Design-Builder’s possession, subject to Department’s right to review the EPD as provided herein. Department acknowledges that Design-Builder considers that the EPD constitute trade secrets or proprietary information. This acknowledgment is based upon Department’s understanding that the information contained in the EPD are not known outside Design-Builder’s business, is known only to a limited extent and by a limited number of employees of Design-Builder, is safeguarded while in Design-Builder’s possession, and may be valuable to Design-Builder’s business strategies, assumptions and intended means, methods and techniques. Department further acknowledges that Design-Builder expended money in developing the information included in the EPD and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. Department acknowledges that the EPD and the information contained therein are being provided to Department only because it is an express prerequisite to award of the Contract.

22.1.3 Representation and Warranty

Design-Builder represents and warrants that the EPD provided concurrently with the Proposal constitute all of the information used in the preparation of its Proposal and agrees that no other Proposal preparation

information will be considered in resolving Disputes or Claims. Design-Builder also agrees that the EPD are not part of the Contract and that nothing in the EPD shall change or modify the Contract.

22.1.4 Contents of EPD

The EPD provided with the Proposal shall, at a minimum, clearly detail how the components of the Proposal Price were determined and shall be adequate to enable a complete understanding and interpretation of how Design-Builder arrived at the Proposal Price. The EPD provided in connection with quotations and Change Orders shall, at a minimum, clearly detail how the total price and individual components of that price were determined and shall be adequate to enable a complete understanding and interpretation of how Design-Builder arrives at its quotation and/or Change Order price. All Work shall be separated into subitems as required to present a complete and detailed estimate of all costs. Crews, equipment, quantities and rates of production shall be detailed. Estimates of costs shall be further divided into Design-Builder's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Design-Builder's usual format. Design-Builder's allocation of plant and equipment, indirect costs, contingencies, mark-up and other items to each direct cost item shall be clearly identified. The EPD shall itemize the estimated costs of the Payment and Performance Bond and the insurance premiums for each coverage required to be provided by Design-Builder under Section 9. The EPD shall include all assumptions, quantity takeoffs, rates of production, Design-Builder internal equipment rental rates and progress calculations, quotes from Subcontractors (including Suppliers), memoranda, narratives and all other information used by Design-Builder to arrive at the Proposal Price or Change Order price, as applicable. For each item of Work, the EPD shall itemize any related amounts not included in the stated price for such item such as any amount allocated for contingency.

22.1.5 Format of EPD

Design-Builder shall submit the EPD in the format actually used by Design-Builder in preparing its Proposal. It is not intended that Design-Builder perform any significant extra work in the preparation of these documents. However, Design-Builder represents and warrants that the EPD related to the Proposal have been personally examined prior to delivery to Department by an authorized officer of Design-Builder and that they meet the requirements of Section 22.1.4 and are adequate to enable a complete understanding and interpretation of how Design-Builder arrived at its Proposal Price. Design-Builder further represents, warrants and covenants that the EPD related to each Change Order will be personally examined prior to delivery to escrow by an authorized officer of Design-Builder and that they meet the requirements of Section 22.1.4 and will be adequate to enable a complete understanding and interpretation of how Design-Builder arrived at its Change Order price.

22.1.6 Review by Department

Department may, at any time, conduct a review of the EPD to determine whether it is complete. If Department determines that the EPD are incomplete, Department may request Design-Builder to supply data to make the EPD complete. Design-Builder shall provide all such data within three Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. Design-Builder shall have no right to add documents to the EPD except upon Department's request. At Department's option, which may be exercised at any time, the EPD associated with any Change Order or contract amendment shall be reviewed, organized and indexed as described in ITP Section 6.1.

22.1.7 Confidentiality Agreement

Confidentiality agreements will be executed by all Department employees or agents who review or have access to the EPD.

22.2 Subcontractor Pricing Documents

Design-Builder shall require each Subcontractor of a Subcontract over $50,000 to submit to Design-Builder a copy of all documentary information used in determining its Subcontract price, immediately prior to executing the Subcontract or change orders or amendments thereto, to be held in the same manner as the EPD and which shall be accessible by Design-Builder, Department, and other dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that its EPD constitutes all the documentary information used in establishing its Subcontract price. Each Subcontract that is not subject to the foregoing requirement shall include a provision that requires the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Design-Builder and/or Department in connection with any claim made by such Subcontractor.

22.3 Project Records

22.3.1 Maintenance of Records

Design-Builder shall maintain at Design-Builder's Project Manager's office in the State a complete set of all books, records and documents prepared or employed by Design-Builder with respect to the Project.

22.3.2 Audit and Inspection Rights

Design-Builder grants to Department, FHWA, the U.S. Comptroller General and Utility Owners, and their respective authorized representatives, such audit and inspection rights and allows such Persons such access to and the right to copy such books and records (including all tax returns and supporting documentation filed with any Governmental Persons) as such Persons may request from time to time in connection with the issuance of Change Orders, the resolution of disputes, and such other matters as such Persons reasonably deems necessary for purposes of complying or verifying compliance with the Contract and Governmental Rules.

22.3.3 Audit of Time and Materials Work

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

22.3.4 Change Order Pricing Data

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

22.3.5 Claims Audits

All Claims filed against Department shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of Department or by an auditor under contract with Department. No notice is required before commencing any audit before 60 Days after Final Acceptance. Thereafter, Department shall provide 20 Days notice to Design-Builder, any Subcontractors or their respective agents before commencing an audit. Design-Builder, Subcontractors or their agents shall provide adequate facilities, acceptable to Department, for the audit during normal business hours. Design-Builder, Subcontractors and their agents shall cooperate with the auditors. Failure of 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 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:

(a) Daily time sheets and supervisor's daily reports;
(b) Union agreements;
(c) Insurance, welfare and benefits records;
(d) Payroll registers;
(e) Earnings records;
(f) Payroll tax forms;
(g) Material invoices and requisitions;
(h) Material cost distribution worksheet;
(i) Equipment records (list of company equipment, rates, etc.);
(j) Subcontractors' (including Suppliers) and agents' invoices;
(k) Subcontractors' and agents' payment certificates;
(l) Canceled checks (payroll and Suppliers);
(m) Job cost report;
(n) Job payroll ledger;
(o) General ledger;
(p) Cash disbursements journal;
(q) e-mail, letters and correspondence;
(r) network servers, data storage devices, backup media;
(s) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and
(t) 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 Design-Builder with the provisions of this Section 22.3.5 is a contractual condition precedent to Design-Builder's right to seek relief under Section 19. Design-Builder represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 22.3.

22.4 Retention of Records

Design-Builder shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to Department) at Design-Builder's Project Manager's office in the State until seven years after the earlier to occur of (a) the date Final Acceptance is achieved or (b) the termination date. If Approved by Department, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents. Design-Builder shall notify Department where such records and documents are kept.

Notwithstanding the foregoing, 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 Design-Builder's costs and expenses under the Contract Documents. Design-Builder shall make these records and documents available for audit and inspection to Department, at 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 Design-Builder).

22.5 California Public Records Act

22.5.1 Applicability of Act

Design-Builder acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in Department's possession or those to which Department is entitled to access, including materials submitted by Design-Builder, are subject to the provisions of the California Public Records Act. Design-Builder shall be solely responsible for all determinations made by it under such act and for clearly and prominently marking each and every page or sheet of its materials with "trade secret" or "non-public" as it determines to be appropriate. Design-Builder is advised to contact legal counsel concerning such act and its application to Design-Builder.

22.5.2 Confidential Materials

If any of the materials submitted by Design-Builder to Department are clearly and prominently labeled "trade secret" or "non-public" by Design-Builder, Department will endeavor to advise Design-Builder of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will Department be responsible or liable to 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 Department, except for any disclosure of trade secrets or proprietary information in violation of the confidentiality agreement described in Section 22.1.7.

22.5.3 Design-Builder to Defend Against Disclosure Request

In the event of litigation concerning the disclosure of any material submitted by Design-Builder to Department, Department's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and Design-Builder shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

23 MISCELLANEOUS PROVISIONS

23.1 Amendments

The Contract may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

23.2 Waiver

23.2.1 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 (including any agreement by Department to Accept Nonconforming Work under Section 5.7.2) 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.

23.2.2 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.

23.2.3 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.

23.3 Independent Contractor

Design-Builder is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with Department other than that of Project owner and independent contractor. In no event shall the relationship between Department and Design-Builder be construed as creating any relationship whatsoever between Department and any of Design-Builder's employees. Neither Design-Builder nor any of its employees is or shall be deemed to be an employee of Department. Except as otherwise specified in the Contract Documents, 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 Design-Builder or any Subcontractor hires or engages to perform or assist in performing the Work.

23.4 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of Department and Design-Builder and their permitted successors, assigns and legal representatives.

23.4.1 Assignment by Department

Department may assign all or part of its right, title and interest in and to the Contract, including rights with respect to the Payment and Performance Bond, any Guaranty and any other performance security provided, to any Person with the prior written approval of Design-Builder.

23.4.2 Assignment by Design-Builder

Design-Builder may collaterally assign its rights to receive payment under the Contract Documents and may subcontract Work in compliance with the requirements of the Contract Documents. Design-Builder shall not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with Department's prior Approval. Design-Builder's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve Design-Builder of its responsibility for the Work assigned or delegated, unless Department, in its sole discretion, has Approved such relief from responsibility. Any assignment of money shall be subject to all proper set-offs and withholdings in favor of Department and to all deductions provided for in the Contract. No partner, joint venturer, member or shareholder of Design-Builder may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Design-Builder without the prior Approval of Department, in Department's sole discretion.

23.5 Designation of and Cooperation with Representatives

23.5.1 Designation of Representatives

Department and Design-Builder shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Exhibit I provides the initial designations. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 23.10. 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 Department or Design-Builder.

23.5.2 Cooperation

Design-Builder shall cooperate with Department and all representatives of Department designated as described above.

23.6 Officials not to Benefit

Without prior written consent of State, Design-Builder must not employ any professional or technical personnel to provide services under the Contract who are or have been at any time during the time period of the Contract in the employ of State, except retired State employees, without written consent from State.

Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Design-Builder, to solicit or secure the Contract, and that Design-Builder has not paid or agreed to pay any company or person, other than a bona fide employee working for Design-Builder, any fee, commissions, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making of the Contract.

The rights and remedies of Department specified in this Section 23.6 are not exclusive and are in addition to any other rights and remedies allowed by law.

23.7 Survival

Design-Builder's representations and warranties, the dispute resolution provisions contained in Section 19, and all other provisions which by their inherent character should survive termination of the Contract, shall survive the termination of the Contract.

23.8 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 (such as Utility Owners) and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 23.8, the duties, obligations and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between Department and a Subcontractor or any other Person except Design-Builder.

23.9 No Personal Liability

Department's authorized representatives are acting solely as agents and representatives of 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 Department for actions in their ordinary course of employment. No agent, consultant, officer or employee of Department shall be personally responsible for any liability arising under the Contract.

23.10 Notices and Communications

23.10.1 Delivery of Notices

Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by via telephone communication followed by a hardcopy or with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with Design-Builder shall be sent to Design-Builder's Project Manager or as otherwise directed by such Project Manager. The address for such communications shall be [*to be provided with executed Contract*]:

_____

_____

_____

Attn.: _____

Telephone: _____

FAX: _____

In addition, copies of all notices to proceed and suspension, termination and default notices shall be delivered to the following persons:

_____

_____

Attn.: _____

Telephone: _____

FAX: _____

All communications to Department shall be marked with Department's project identification number and shall be delivered to Department's Project Manager, with copies to such additional Persons as may be designated by Department's Project Manager, at the address set forth below:

_____

_____

Attn.: _____

Telephone: _____

FAX: _____

In addition, copies of all notices regarding disputes, termination and default notices shall be delivered to the following persons:

_____

_____

Attn.: _____

Telephone: _____

FAX: _____

23.10.2 Receipt of Notices

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Pacific Time and all other notices received after 5:00 p.m. Pacific Time shall be deemed received on the first Working Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

23.10.3 Copies of Correspondence to Department

Design-Builder shall copy Department on all written correspondence pertaining to the Contract between Design-Builder and any Person other than Design-Builder's Subcontractors, consultants and attorneys.

23.11 Further Assurances

Design-Builder shall promptly execute and deliver to Department all such instruments and other documents and assurances as are reasonably requested by Department to further evidence the obligations

of Design-Builder hereunder, including assurances regarding assignments of Subcontractors contained herein.

23.12 Severability

If any clause, provision, section or part of the Contract is ruled invalid under Section 19 or otherwise by a court of competent jurisdiction, then the parties shall: (a) 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 Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) 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 the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.

23.13 Headings

The captions of the sections of the Contract Documents are for convenience only and shall not be deemed part of the Contract or considered in construing the Contract.

23.14 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State, without regard to conflict of law principles.

23.15 Limit of Liability

Notwithstanding anything to the contrary contained herein, the State's liability for payment extends only to the amount actually appropriated for the purpose of the Project.

23.16 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.

23.17 Counterparts

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.

IN WITNESS WHEREOF, the parties have executed the Contract as of the last date set forth next to signatures of the parties, below.

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

DIRECTOR: Date: _____, 201_ By: _____ Authorized Signature
APPROVED AS TO FORM AND EXECUTION: Date: _____, 201_ By: _____

DESIGN-BUILDER

By:	
By: _____ Name: _____ Title: _____ Date: _____, 20	By: _____ Name: _____ Title: _____ Date: _____, 20
By: .:	
By: _____ Name: _____ Title: _____ Date: _____, 201_	By: _____ Name: _____ Title: _____ Date: _____, 201_

Design-Builder's License No.: _____

EXHIBIT A – ACRONYMS AND DEFINITIONS

EXHIBIT A – ACRONYMS AND DEFINITIONS

As used in the Design-Build Contract to which this Exhibit is attached and in the other Contract Documents (unless otherwise specified therein), the following acronyms and terms shall have the meanings set forth below (unless the context requires otherwise).

A.1 Acronyms

A	Ampere
AADT	Annual average daily traffic
AAN	American Association of Nurserymen
AAP	AASHTO Accreditation Program
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
AC	Alternating Current
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM	Asbestos-containing Materials
ADA	Americans with Disabilities Act
ADT	Average daily traffic
AEIC	Association of Edison Illuminating Companies
AES	Audio Engineering Society
AGC	Associated General Contractors of America, Inc.
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
AREMA	American Railway Engineering & Maintenance Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASCII	American Standard Code of Information Interchange
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATMS	Advanced traffic management system

ATSSA	American Traffic Safety Services Association
ATR	Automatic Traffic Recorder
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
BLSF	Bordering Land Subject to Flooding
BMP	Best Management Practices
CADD	Computer-assisted drafting and design
CCTV	Closed Circuit Television
CEQA	California Environmental Quality Act, as set forth in § 21000 *et seq* of the California Public Resources Code.
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq*.
CFR	Code of Federal Regulations
CFS	Cubic Feet Per Second
CMS	Changeable Message Sign
CMP	Communications Plenum Cable or Corrugated Metal Pipe
COAX	Radio Frequency Transmission Cable (Coaxial Cable)
COE	(U.S.) Army Corps of Engineers
COM	Communications
CPM	Critical Path Method
CRSI	Concrete Reinforcing Steel Institute
CRT	Console Monitor (Cathode Ray Tube)
CSI	Construction Specifications Institute
CV	Compacted Volume
CWA	Clean Water Act
D-B	Design-build
dB	Decibels
DBE	Disadvantaged Business Enterprise
DCS	Document Control System
DGN	MicroStation Drawing
DRB	Dispute Review Board
DTM	Digital terrain model
DWG	AutoCAD Drawing
ECM	Environmental Compliance Manager
ECP	Emissions Control Plan
ECS	Erosion Control Specialist
EEO	Equal Employment Opportunity

EIP	Environmental Investigation Plan
EIS	Environmental Impact Statement
EMI	Environmental Monitoring Inspector
EMR	Environmental Monitoring Report
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents
EQPT	Equipment
ESA	Endangered Species Act
EV	Excavated Volume
EVP	Emergency Vehicle Pre-Emption
F	Fahrenheit
FAR	Federal Acquisition Regulation
FCC	Federal Communications Commission
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards, General Services Administration
GAAP	Generally Accepted Accounting Principles
GFI	Ground Fault Interrupter
HH	Handhole
HOV	High Occupancy Vehicle
ICEA	Insulated Cable Engineers Association
IDF	Intensity, duration, and frequency
IEEE	Institute of Electrical and Electronics Engineers
IEQM	independent environmental quality manager
IES	Illuminating Engineers Society
IIMS	Incident Information Management System
IMC	Intermediate Metal Conduit
IMP	Incident Management Plan
IPS	Iron Pipe Size
IRI	International Roughness Index
ISA	Initial Site Assessment
ISDN	Integrated services digital network
ISO	International Standards Organization
ISP	Information or Internet Service Providers
ITC	Information Transmission Capacity
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers

ITS	Intelligent Transportation Systems
JEDEC	Joint Electronic Device Engineering Council
JIC	Joint Industrial Council
JMF	Job Mix Formula used in the Bituminous Specifications
Kph	Kilometers per hour
KV	Kilovolt
KVA	Kilovolt Ampere
KW	Kilowatt
LAN	Local Area Network
LAPB	Link Access Protocol, Balanced
Lc	Length of Simple Curve
Ls	Length of Spiral Curve
LED	Light Emitting Diode
LGU	Local Government Unit
LLRU	Lowest Level Replaceable Unit
LS	Line Section
LV	Loose Volume for Measurements, or Leveling Course for Bituminous
MACM	Maximum Achievable Control Measures
Mb	Megabit
Mbps	megabits per Second
MBTA	Migratory Bird Treaty Act
MCBF	Mean Cycles Between Failures
MCCP	Maintenance Catenary Control Panel
MIS	Management Information System
MMIS	Maintenance Management Information System
MMP	Materials Management Plan
MMU	Malfunction Management Unit
MOT	maintenance of traffic
mph	miles per hour
MSE	Mechanically Stabilized Earth
MUA	Master Utility Agreement
MUTCD	Manual on Uniform Traffic Control Devices
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NBS	National Bureau of Standards
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report
NEC	National Electrical Code

NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act, 42 USC §4321 *et seq.*, as amended and as it may be amended from time to time.
NESC	National Electrical Safety Code
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NHS	National Highway System
NICET	National Institute for Certification in Engineering Technologies
NMC	Non-Metallic Conduit
No.	When reference is to wire, it is the AWG Gauge number
NPDES	National Pollutant Discharge Elimination System
NTP1	Notice to Proceed 1
NTP2	Notice to Proceed 2
NTS	Not to Scale
OEM	Original Equipment Manufacturer
OPX	Off-Premises Extension
OSHA	Occupational Safety & Health Administration
OSM	Office of Surface Mining
PCCP	Portland Cement Concrete Pavement
PCI	Prestressed Concrete Institute
PDA	pile-driving analyzer
PDF	portable document format
PE	Professional Engineer
PG	performance grade
PIV	Peak Invert Voltage
PLS	Pure Live Seed
PM	Project Manager
PQCI	process quality control inspection
PQCT	process quality control testing
PQI	Pavement Quality Index
PRI	Pavement Rutting Index
PSI	Pavement Serviceability Index
PSR	Pavement Serviceability Rating
Pvc	Point of Vertical Curvature
PVC	Polyvinyl Chloride
PVI	Point of Vertical Intersection
Pvt	Point of Vertical Tangency
PWR	Power
QA	Quality Assurance

QC	Quality Control
QCP	Quality Checkpoint
R	Radius
RACM	Reasonable Achievable Control Measures
RCRA	Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq*.
RCS	Ramp Control Signal
REA	Rural Electrification Association
RECs	Recognized Environmental Conditions
RF	Radio Frequency
RFP	Request for Proposals
RFQ	Request for Qualifications
RGS	Rigid Galvanized Steel Conduit
RHA	River and Harbor Act
RHW	Moisture and Heat Resistant or Cross Linked Synthetic Polymer
RID	Reference Information Documents
RMS	Root Mean Square
ROD	Record of Decision
R/W	Right of Way
RSC	Rigid Steel Conduit
RWIS	Roadway and Weather Information System
SAE	Society of Automotive Engineers
SAP	Sampling Analysis Plan
SBA	Small Business Administration
SHPO	State Historic Preservation Officer
SI	International System of Units (The Modernized Metric System)
SIC	Standard Industrial Code, U.S. Department of Labor
SI&A	Structural Inventory and Appraisal
SMP	Stormwater Management Plan
SMS	Stormwater Management Standards
SOQ	Statement of Qualifications
SP	State Project
SPCS	State Plane Coordinate System
SPDT	Single Pole Double Throw
SPST	Single Pole Single Throw
SSPC	Society for Protective Coatings
SV	Stockpiled Volume
SWPPP	Stormwater Pollution Prevention Plan
TCP	Traffic Control Plan

TDM	Transportation Demand Management
THHN	Heat Resistant Thermoplastic
THW	Moisture and Heat Resistant Thermoplastic
THWN	Moisture and Heat Resistant Thermoplastic
TMS	Traffic Management System
TMSRs	Traffic Management Strategy Reports
TSM	Traffic System Management
UBC	Uniform Building Code
UD&FCD	Urban Drainage and Flood Control District
UDBE	Underutilized Disadvantaged Business Enterprise
UDS	Utility Design Sheet
UIS	Utility Information Sheet
UL	Underwriters Laboratories, Inc.
UPS	Uninterruptible Power Supply
USASI	United States of America Standards Institute
U.S.C.	United States Code
USCG	United States Coast Guard
USCS	Unified Soil Classification System
USDOT	United States Department of Transportation
USGS	United States Geological Survey
USFWS	U.S. Fish and Wildlife Service
UV	Ultra Violet
VAC	Volt Alternating Current (60 Hz)
VC	Vertical Curve
VDC	Volt Direct Current
VE	Value Engineering
VECP	Value Engineering Change Proposal
WBS	Work Breakdown Structure
WCA	Wetland Conservation Act
XHHW	Moisture and Heat Resistant Cross Linked Synthetic Polymer

A.2 Definitions

Acceleration Costs	Those fully documented increased costs reasonably incurred by Design-Builder (i.e., costs over and above what 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.
Accept or Acceptance	Formal conditional determination in writing by Department that a particular matter or item appears to meet the requirements of the Contract Documents.
Affidavit of Final Completion	Sworn statement by the Design-Builder that all Work performed under Contract complies with the requirements of the Contract and that no lawful debts for labor or materials are outstanding.
Affiliate	(a) Any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any Major Participant; and (b) any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by, [i] Design-Builder, [ii] any Major Participant, or [iii] any Affiliate of Design-Builder under clause (a) of this definition. 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 relation, or otherwise.
Aggregate	Natural materials such as sand, gravel, crushed rock, or taconite tailings, and crushed concrete or salvaged bituminous mixtures, usually with a specified particle size, for use in base course construction, paving mixtures, and other specified applications.
Alley	An established passageway for vehicles and pedestrians affording a secondary means of access to properties abutting on a Street or Highway.
Alternative Technical Concept	A technical concept developed by a Proposer that deviates from the RFP requirements.
Applicable Standards	Standards, including but not limited to those identified in Book 3, that apply to design and construction of Project.
Application for Final Payment	Request by Design-Builder to Department for proposed total amount due Design-Builder.
Approve, Approved, or Approval	Formal conditional determination in writing by Department that a particular matter or item is good or satisfactory for the Project. Such determination may be based on requirements beyond those set forth in the Contract Documents without payment of additional compensation or a time extension and may reflect preferences of Department.
As-Built Documents	Documents including plans developed by the Design-Builder that depict the final completed Project.
Auxiliary Lane	The portion of the Roadway adjoining the Traveled Way for parking, speed-change, or other purposes supplementary to through traffic movement.

Baseline Schedule	The initial schedule showing the original work plan beginning on the date of Contract approval. This schedule shows no completed work to date and no negative float or negative lag to any activity.
Basic Configuration	The elements defining the Project as set forth in Book 2, Section 1, subject to any permitted modifications thereto contained in the Proposal.
Betterment	With respect to a particular Utility, the definition (if any) set forth in the applicable Utility Agreement(s). Where there is no such definition, the upgrading (e.g., increase in capacity) of a Utility being Relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Owner (not including a technological improvement which can be implemented at a cost equal to or less than the cost of a "like for like" replacement or relocation). The use of new materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.
Bicycle and Pedestrian Facilities Plan	The plan provided by Design-Builder and Accepted by Department as described in Book 2, Section 20.
Book 1	The Contract Document designated as the Design-Build Contract (Book 1) in the RFP.
Book 2	The Contract Document designated as the Project Requirements (Book 2) in the RFP.
Book 3	The Contract Document designated as the Applicable Standards (Book 3) in the RFP.
Bridge	Any structure, with a bridge number, which carries a utility facility, or railroad, highway, pedestrian or other traffic, over a water course or over or under or around any obstruction.
Brush	Shrubs, trees, and other plant life having a diameter of 100 mm (4 inches) or less at a point 600 mm (12 inches) above ground surface as well as fallen trees and branches.
Business Day	Day on which Department is officially open for business.
Calendar Day	Every day shown on the calendar, beginning and ending at midnight.
Caltrans	The California Department of Transportation.
Carbonate	Sedimentary rock composed primarily of carbonate minerals, including dolostone (dolomite, $CaMg(CO_3)_2$), limestone (calcite, $CaCO_3$) and mixtures of dolostone and limestone.
Certificate of Compliance	A certification provided by a manufacturer, producer, or supplier of a product that the product, as furnished to Design-Builder, complies with the pertinent specification or Contract requirements. The certification shall be signed by a person who is authorized to bind the company supplying the material covered by the certification.
Certified Test Report	A test report provided by a manufacturer, producer, or supplier of a product indicating actual results of tests or analyses, covering elements of the specification requirements for the product or workmanship, and including validated certification.
Change Notice	The meaning set forth in Book 1, Section 13.
Change Order	The meaning set forth in Book 1, Section 13.

City, Village, Town, Township, or Borough	A subdivision of the county used to designate or identify the location of the proposed work.
Claim	A separate demand by Design-Builder for (a) a time extension which is disputed by Department, or (b) payment of money or damages arising from work done by or on behalf of Design-Builder in connection with the Contract which is disputed by Department. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Contract amendment signed by all parties.
Completion Deadline	Each Intermediate Completion Deadline, Substantial Completion Deadline and/or Final Acceptance Deadline, depending on the context.
Construction Documents	All Working Drawings and samples necessary for construction of the Project in accordance with the Contract Documents.
Construction Easement	Non-permanent easements, other than those provided by Department in accordance with the R/W Work Map, that Design-Builder determines are desirable to perform the Work.
Construction Season	The period between and including April 15 and November 15.
Contaminated Groundwater	Extracted groundwater including contaminants above legally-permitted discharge levels so as to require treatment prior to re-use or disposal. Contaminated groundwater which may legally be re-used without treatment, including use for dust control, or which merely requires dilution prior to re-use or disposal, shall specifically be excluded from the definition.
Contract	Depending on the context, (a) the Design-Build Contract, or (b) collectively, the Contract Documents.
Contract Documents	The meaning set forth in Book 1, Section 1.2.
Contract Price	The meaning set forth in Book 1, Section 11.1.1.
Contract Schedule	The meaning set forth in Book 2, Section 2.3.
Contracting Authority	The political subdivision, governmental body, board, department, commission, or officer making the award and execution of Contract as the party of the first part.
County	The county in which the Work is to be done; a subdivision of the State, acting through its duly elected Board of Supervisors.
Critical Path	The precedence of activities with total Float less than or equal to zero on each applicable Contract Schedule.
Culvert	A Structure constructed entirely below the elevation of the Roadway surface and not a part of the Roadway surface, which provides an opening under the Roadway for the passage of water or traffic.
Day	The meaning set forth in Book 1, Section 1.7.
Department	The Department of Transportation of the State of California, as created by law.
Department-Caused Delays	Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others: (a) A suspension order pursuant to Book 1, Section 14.1, to the extent provided therein; (b) Department-Directed Changes; (c) Failure or inability of Department to provide Design-Builder with access to

	Right of Way identified on the R/W Work Map that has not been obtained prior to the Proposal Due Date on or before the deadline for such access, to the extent provided in Book 1, Section 6.1; (d) Material errors in the R/W Work Map; (e) Failure or inability of Department to provide responses to proposed schedules, design submittals and other submittals and matters for which response by Department is required, within the time periods indicated in the Contract Documents; (f) Uncovering, removing, and restoring Work, to the extent provided in Book 1, Section 5.5.3; (g) Any improper action by Department's designated representative with binding authority, as specified in Book 1, Section 23.5.1, or improper failure to act by Department within a reasonable time after delivery of notice by Design-Builder to Department requesting such action; and (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work, except if [i] such risk has been assumed by Design-Builder under Book 1, Section 6.3.2 or [ii] arising out of, related to, or caused by the negligent or improper act, failure to act or omission, willful misconduct, recklessness, or breach of contract or Governmental Rule by any Design-Builder-Related Entity.
Department-Directed Changes	Any changes in the Work which Department has directed Design-Builder to perform as described in Book 1, Section 13.
Department's Design-Build Contract Manager	The person designated by Department, on Department's behalf, to direct the Project and to receive delivery of notices to Department per Book 1, Section 23.10.1.
Design-Build Contract	That certain Design-Build Contract (Book 1), as executed by Department and Design-Builder (to which this Exhibit A is attached), and any and all amendments thereto.
Design-Build Demonstration Program	The State's design-build pilot program created under Senate Bill No. 4 (second extraordinary session), signed by Governor Schwarzenegger on February 20, 2009, and codified in California Public Contract Code §6800 *et seq*.
Design-Builder	The meaning set forth in the first page of Book 1.
Design-Builder-Related Entities	Design-Builder, Major Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Design-Builder may be legally or contractually responsible.
Design-Builder's Project Manager	The person designated by Design-Builder to supervise the Project and to receive delivery of notices to Design-Builder per Book 1, Section 23.10.1.
Design-Builder's Utility Tracking Report	The report regarding Utilities likely to be impacted by the Project which Design-Builder shall maintain on a current basis, and which Design-Builder shall periodically submit to Department, as more particularly described in Book 2, Section 6.
Design Manager	Design-Builder's principal engineer in charge of the Project. The Design Manager shall initially be the individual designated in the Proposal and is considered a Key Personnel for the Project.
Design Documents	All drawings, specifications, reports, calculations, records or submittals at any

	stage of development or revision relating to the Project.
Detour	A Road or system of Roads, usually existing, designated as a temporary route to divert through traffic from a section of Roadway being improved.
Differing Site Conditions	(a) subsurface or latent physical conditions that differ from those reasonably assumed by Design-Builder based on incorrect boring logs provided in Book 2 to the extent that correct boring logs would have resulted in accurate assumptions, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered at the Site and generally recognized as inherent in the Work provided for in the Contract, provided in all cases that Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date. The foregoing definition shall not apply to Utilities, or Force Majeure events, nor shall it include any differences in groundwater depth or subsurface moisture content from that identified in the RFP. Clause (a) of this definition shall specifically exclude situations in which accurately reported boring data does not represent prevailing conditions in the area.
Directive Letter	The letter described in Book 1, Section 13.1.1.2.
Director	The Director of the California Department of Transportation, or the chief executive of the department or agency constituted for administration of the Work within its jurisdiction.
Disadvantaged Business Enterprise	A for profit small business concern as defined in 49 CFR Part 26.
Dispute	The meaning set forth in Book 1, Section 19.
Divided Highway	A Highway with separated traveled ways for traffic in opposite directions.
Dormant Seeding	Seeding allowed in the late fall when the ground temperature is too low to cause seed germination so that the seed remains in a dormant condition until spring.
Dormant Sodding	Sodding allowed in the late fall when the ground temperature is too low so that normal rooting does not take place until spring.
Early Start of Construction	The meaning set forth in Book 2, Section 2.4.
Effective Date	The date of execution of the Contract by Department.
Engineer	See Design Manager. Design-Builder acknowledges and agrees that Department will be responsible for certain oversight and other matters with respect to the Project, and that as a result certain rights in favor of the Engineer may be exercised by and inure to the benefit of Department rather than the Design Manager.
Environmental Approvals	The Governmental Approvals listed in Book 2, Section 4, that are identified as being Department's responsibility to obtain (and are shown in bold type).
Environmental Laws	Any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or health and safety matters, and (b) any requirements and standards that pertain to the protection of the Environment, or to the management or Release of Hazardous Materials, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, set forth in any permits, licenses, approvals, plans, rules, regulations

or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as each of the foregoing have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

(a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation and transportation of Hazardous Materials;

(b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) Releases of Hazardous Materials;

(d) Protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, parks and recreation lands, cultural, historical, archeological, and paleontological resources and natural resources;

(e) The operation and closure of underground or aboveground storage tanks;

(f) Health and safety of employees and other persons with respect to Hazardous Materials; and

(g) Notification, documentation and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following (all as amended):

i. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq*.);

ii. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq*.);

iii. The Resource Conservation and Recovery Act, amending the Solid Waste Disposal Act (42 U.S.C. §§ 6901 *et seq*.);

iv. The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq*.);

v. The Clean Air Act (42 U.S.C. §§ 7401 *et seq*.);

vi. The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq*.);

vii. The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq*.);

viii. The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq*.);

ix. Section 404 of the Clean Water Act (33 U.S.C. § 1344);

x. The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq*.);

xi. The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq*.);

xii. The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq*.);

xiii. The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq*.);

xiv. The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq*.);

xv. The Endangered Species Act (16 U.S.C. §§ 1531 *et seq*.);

xvi. The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq*.);

xvii. The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq*.);

xviii. The Rivers and Harbors Act of 1899 (33 U.S.C. §§ 401 *et seq*.);

xix. The Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq*.);

xx. The Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq*.);

xxi. Section 4f of the Department of Transportation Act (49 U.S.C. § 303);

xxii. The National Historic Preservation Act (16 U.S.C. § 470);
xxiii. 33 C.F.R. §§ 114 and 125;
xxiv. The California Environmental Quality Act (§§ 21000 *et seq*. of the California Public Resources Code);
xxv. The California Clean Air Act of 1988 (§§ 39000 *et seq*. of the California Health and Safety Code);
xxvi. The California Occupational Safety and Health Act of 1973 (§§63000 *et seq*. of the California Labor Code);
xxvii. The Porter-Cologne Water Quality Act (§§ 13000 *et seq*. of the California Water Code);
xxviii. The California Coastal Act (§§ 30000 *et seq*. of the California Public Resource Code);
xxix. The Integrated Waste Management Act (§§ 40000 *et seq*. of the California Public Resources Code);
xxx. The Safe Drinking Water and Toxic Enforcement Act (§§ 25249.5 *et seq*. of the California Health and Safety Code);
xxxi. Chapter 6.5 of Division 20 of the California Health and Safety Code (§§ 25100 *et seq*.); and
xxxii. §§ 1600 *et seq.* of the California Fish and Game Code

Environmental Management Plan — The environmental management plan provided by Design-Builder and Approved by Department as described in Section 4 of Book 2.

Equipment — All machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the proper construction and/or completion of the Work.

Error — An error, omission, inconsistency, inaccuracy, deficiency or other defect.

Escrowed Proposal Documents — All documentary information used in preparation of the Proposal Price.

Event of Default — A default as described in Book 1, Section 16.1.1, following notice and opportunity to cure to the extent permitted by Book 1, Section 16.1.2 and issuance by Department of notice to Design-Builder and Surety that an Event of Default has occurred.

Federal Requirements — All Governmental Rules applicable to work financed with federal funds and the provisions required to be included in contracts therefor, including the provisions set forth in Book 1, Exhibits D, E and F.

Final Acceptance — Acceptance of the Project as described in Book 1, Section 20.3.

Final Acceptance Deadline — The meaning set forth in Book 1, Section 4.3.3.

Float — The meaning set forth in Book 2, Section 2.3.

Force Majeure — An event beyond the control of Design-Builder, not due to an act or omission of any Design-Builder-Related Entity, which materially and adversely affects Design-Builder's ability to meet its obligations under the Contract, to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder. Notwithstanding the foregoing, the term "Force Majeure" shall not include normal weather, Differing Site Conditions, Department-Directed Changes, Utility Delays or any other matter for which the Contract Documents specify how liability or risk is to be allocated between Department and Design-Builder,

	regardless of whether such matter is beyond Design-Builder's control.
Freeway	A high-speed multi-lane Highway with full access control.
Frontage Road (or Street)	A local Road or Street auxiliary to and located on the side of a Highway for service to abutting property and adjacent areas and for control of access.
Geotechnical Instrumentation Plan	The plan provided by Design-Builder as described in Book 2, Section 8.
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 (other than a Governmental Person in its capacity as a Utility Owner) in order to perform the Work.
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 and agencies and subdivisions thereof, other than Department.
Governmental Rule	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 "Governmental Rule" does not include Governmental Approvals.
Grade Separation	A Bridge with its approaches that provides for Highway or pedestrian traffic to pass without interruption over or under a railway, Highway, Road or Street.
Gravel	Naturally occurring rock or mineral particles produced by glacial and water action. Particle size ranges from 76 mm (3 inch) diameter to the size retained on a 2.0 mm diameter (No. 10 Sieve).
Guaranteed Analysis	A guarantee from a manufacturer, producer, or supplier of a product that the product complies with the ingredients or specifications indicated on the product label.
Guarantor	Each entity (if any) providing a Guaranty.
Guaranty	Each guaranty of Design-Builder's obligations under the Contract Documents (if any), provided on Proposal Form 21.
Hazardous Materials	(a) Any substance, product, waste or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law, (b) any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Governmental Rule, (c) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under clause (b) 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, (d) petroleum hydrocarbons excluding petroleum hydrocarbon products contained within regularly operated motor vehicles, (e) 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) and

	(f) lead or lead-containing materials in Structures and/or other improvements on or in the Site. The term "Contaminated Materials" includes Hazardous Waste.
Hazardous Waste	Waste as defined in 40 C.F.R. 261 et seq.
Highway, Street, or Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right of Way.
Holidays	Those days designated as State holidays in the Government Code.
In-Place/Out-of-Service	The work necessary to decommission a Utility (including appurtenances) which is not removed. The Utility must be taken out of use using proper Utility Owner and/or industry procedures (e.g., flushing, capping, filling with grout or sand, etc.) or other procedures Approved by Department.
Incidental Utility Work	All of the following Work that is necessary or determined by Contactor to be convenient for the construction and/or accommodation of the Project: (a) Protection of Existing Utilities, and (b) In-Place/Out-of-Service of Public Utilities.
Incremental Costs	Those costs, if any, which Design-Builder incurs as a result of a particular circumstance which Design-Builder would not have incurred but for the circumstance. In determining such costs, one would determine the total cost which Design-Builder would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred; the difference is the "increment." (For example, if Design-Builder originally has to relocate three water lines, and a fourth water line is discovered in the same general area which can be relocated by the same crew, then if Design-Builder is entitled (pursuant to Book 1, Section 6.2.1.1) to a Change Order increasing the Contract Price on account of such newly discovered water line, Department will be charged with only the costs of keeping the crew working the additional time to relocate the fourth water line, and will not be charged any portion of the expense of moving the crew to the site in the first place.)
Indemnified Parties	The meaning set forth in Book 1, Section 18.1.1.
Industry Standard	An acknowledged and acceptable measure of quantitative or qualitative value or an established procedure to be followed for a given operation within the given industry. This will generally be in the form of a written code, standard, or specification by a creditable association.
Inspection	The act of viewing or looking carefully at the Work to verify whether the practices, processes, and products comply with the quality requirements contained in the Contract Documents.
Inspector	Design-Builder's authorized representative assigned to make detailed inspection of Contract performance.
Instructions to Proposers	The RFP document identified as Instructions to Proposers.
Interchange	A grade-separated Intersection with one or more turning Roadways for travel between Intersection legs.
Intermediate Completion	Completion of each Segment, if any, as described in Book 1, Section 20.1.
Intermediate	The meaning set forth in Book 1, Section 4.3.1.

Completion Deadline	
Intersection	The general area where two or more Highways join or cross, within which are included the Roadway and roadside facilities for traffic movements in the area.
Key Contract	Any one, or an aggregate of more than one, of the following contracts for Work Design-Builder causes to be performed: (a) All Subcontracts for design, including the contract with the Lead Engineering Firm; (b) All Subcontracts for construction; (c) All Subcontracts for project or program management services; and (d) All other Subcontracts with a single Subcontractor or Subconsultant which individually or in the aggregate total in excess of $2,000,000.
Key Personnel	The persons listed on Book 1, Exhibit G, subject to revision in accordance with the Contract.
Late Finish Cost Schedule	The late start dates set forth on each applicable Contract Schedule, subject to revision in connection with any Change Orders which revise the Contract Schedules.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Limestone	See Carbonate.
Liquidated Damages	The damages described in Book 1, Section 17.1.
Loop	A one-way turning Roadway that curves about 270 degrees to the right, primarily to accommodate a left-turning movement, but which may also include provisions for another turning movement.
Major Participant	Any of the following entities: all general partners or joint venture members of Proposer; all individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 15 percent or greater interest in Proposer; any Subcontractor that will perform Work valued at 15 percent or more of the overall Contract amount; the lead engineering/design firm(s); and each engineering/design subconsultant that will perform 20 percent or more of the design Work.
Master Utility Agreement	An agreement made among Department, Design-Builder and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project.
Materials	Any substances required for use in the completion of the Project and its appurtenances.
Materials Design Recommendation	A summary of the Project geotechnical and pavement survey information, as well as the information used to develop the Project design, including design and construction recommendations developed for the Project.
Materials Laboratory	The Department Central Materials Laboratory and, for those tests so authorized,

	a Department District Materials Laboratory.
Maximum Density	The maximum density of a particular soil as determined by the method prescribed in the Department Grading and Base Manual.
Maximum Payment Schedule	The cap on the aggregate amounts of payments which may be made at any specified time under the Contract. The Maximum Payment Schedule is set forth in Book 1, Exhibit H.
Metric	The International System of Units (SI) (the Modernized Metric System) according to ASTM E 380. ASTM E 380 also provides conversion factors and commentary.
Metric Ton (t)	A mass of 1000 kg.
New Environmental Approval	Any of the following: (a) a new Governmental Approval of the same type as an Environmental Approval; and (b) a revision, modification or amendment to one or more of the Environmental Approvals.
Nominal	The intended, named, or stated value, as opposed to the actual value. The nominal value of something is the value that it is supposed or intended to have, or the value by which it is commonly known. The actual value may differ from these statements by a greater or lesser amount depending on the accuracy and precision of the process used to determine the actual value.
Nonconforming Work	Work performed that does not meet requirements of the Contract Documents.
Notice of Final Acceptance	The written notice issued by Department to Design-Builder under Book 1, Section 20.3.2.
Notice of Substantial Completion	The written notice issued by Department to Design-Builder under Book 1, Section 20.2.3.
Notice of (Partial) Termination	A written notice issued by Department to terminate the Contract and the performance of the Work by Design-Builder, either in whole or in part, pursuant to Book 1, Section 15.
Notice to Proceed 1	A first written notice issued by Department to Design-Builder to proceed with certain limited Work as specified therein on the date specified therein.
Notice to Proceed 2	A written notice issued by Department to Design-Builder to proceed with the remainder of the Work on the date specified therein.
Optimum Moisture	The moisture content of a particular soil at maximum dry density as determined by the method prescribed in the Department Grading and Base Manual.
Original Payment Breakdown	The meaning set forth in Book 2, Section 2.2.
Pavement Structure	The combination of subbase, base course, and surface course placed on a Subgrade to support the traffic load and distribute it to the Roadbed.
Payment Bond	The payment bond described in Book 1, Section 8.1.
Performance Bond	The performance bond described in Book 1, Section 8.1.
Permanent Erosion Control Measures	Erosion control measures such as curbing, Culvert aprons, riprap, flumes, planting, rolled erosion control products, hydromulching/seeding and other means to permanently minimize erosion on the completed Project.
Person	Any individual, corporation, company, voluntary association, partnership, trust,

	unincorporated organization or Governmental Person, including Department.
Plan	The plan, profiles, typical cross-sections, and supplemental drawings that show the locations, character, dimensions, and details of the Work to be done.
Private Utility	A Utility that is owned by a Private Utility Owner.
Private Utility Owner	Any owner or operator of a Utility which is not a Public Utility Owner.
Profile Grade	The trace of a vertical plane intersecting the top surface of the Roadbed or Pavement Structure, usually along the longitudinal centerline of the Traveled Way. Profile Grade means either elevation or gradient of such trace according to the context.
Project	The [*Instruction to Drafter: include Project name*], as more specifically described in Book 2, Section 1, and all other Work product to be provided by Design-Builder as a condition to Final Acceptance in accordance with the Contract Documents.
Proposal	Those documents constituting Proposer's response to the RFP, including any supplements to proposals as may have been requested by Department.
Proposal Due Date	The date the Proposal was due as specified in the Instructions to Proposers.
Proposal Price	The "Proposal Price" offered for the Work set forth in Form 14 (Proposal Price).
Proposer	An individual, firm, partnership, corporation, joint venture or combination thereof that was pre-qualified under Department's RFQ and that submits a proposal in response to the RFP.
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.
Public Information Plan	The public information plan provided by Design-Builder and Approved by Department as described in Book 2, Section 3.
Public Opening Date	The date the Price Proposal was opened as specified in the Instructions to Proposers.
Public Records Act	The California Public Records Act (California Government Code §§6250 *et seq*.)
Public Utility	A Utility that is owned by a Public Utility Owner.
Public Utility Owner	An owner or operator of a Utility which is a municipality, county, or other political subdivision of the State.
Punch List	The list of Work items with respect to the Project which remain to be completed after achievement of each Intermediate Completion or Substantial Completion, as applicable, generally limited to minor incidental items of Work which have no adverse effect on the safety or operability of the Project and which can be performed without shutting down a Traffic Lane or Shoulder.
Pure Live Seed (Percentage)	A percentage determined by the percent of seed germination times the percent of seed purity.

Quality Assurance	The total effort of developing, documenting, implementing policies and procedures and defining roles and responsibilities in order to achieve and verify quality in accordance with specified requirements.
Quality Control	The acts of examining, witnessing, inspecting, checking and testing, and when necessary, revising in-process or completed design work, including in progress plan sheets, studies, charting and reports to determine conformity with contract requirements.
Quality Manual	The quality manual provided by Design-Builder and Approved by Department as described in Book 2, Section 2.4.
Railroad	Depending on the context, either the right of way, tracks, and systems used for rail traffic in the vicinity of the Project, or the owners and/or operators of such rail systems.
Ramp	A connecting Roadway for travel between Intersection legs at or leading to an Interchange.
Recovery Schedule	The meaning set forth in Book 2, Section 2.3.
Reference Information Documents	The documents designated as Reference Information Documents in the RFP.
Released for Construction Documents	Design-Builder's design documents issued for the purpose of construction which have been reviewed and approved by the Department authorizing construction.
Relocation or Relocate	As related to Utilities, each removal, transfer of location, In-Place/Out-of-Service and/or Protection of Existing Utilities (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.
Remediation Work	Investigating, monitoring, characterizing, testing, sampling, stock-piling, storage, backfilling in place, recycling, treatment, and/or off-Site disposal of Contaminated Materials and materials containing Contaminated Materials, as Approved by Department and in accordance with the Environmental Management Plan and Section 4 of Book 2.
Request for Proposals	The Request for Proposals for the Project issued by Department, including all addenda and clarifications thereto.
Request for Change Proposal	A proposal issued by Department under Book 1, Section 13.2.1.
Request for Qualifications	The Request for Qualifications for the Project issued by Department, including all addenda thereto.
Revised Baseline Schedule	The meaning set forth in Book 2, Section 2.3.
Revised Payment Breakdown	The meaning set forth in Book 2, Section 2.2.
Right of Way	The real property (which term is inclusive of all estates and interests in real property, as well as licenses and permits authorizing occupancy) that is necessary for ownership and operation of the Project. The term specifically excludes any Construction Easements. The term "Right of Way" is sometimes used to indicate Right of Way and is sometimes used to indicate rights of way for other facilities.

Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right of Way.
Roadbed	The graded portion of a Highway within top and side slopes, prepared as a foundation for the Pavement Structure and Shoulders.
Roadway	The portion of a Highway within limits of construction.
R/W Work Map	The map included in Book 2, Section 7, Exhibit A identifying the R/W currently owned by Department and the R/W to be acquired by Department.
Safety Management Plan]	The plan defined in Book 2, Section 2.6.
Scale	A device used to measure the mass or the proportion of a liquid or solid. This definition includes metering devices.
Service Line	A Utility line, the function of which is to connect an individual service location (e.g., a single family residence or an industrial warehouse) to another Utility line which other Utility line connects more than one such individual line to a larger system. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.
Shoulder	The portion of the Roadway contiguous with the Traveled Way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.
Sidewalk	That portion of the Roadway primarily constructed for the use of pedestrians.
Sieve	A woven wire screen meeting the requirements of AASHTO M-92 for the size specified.
Site	The parcels of Right of Way identified on the R/W Work Map or on which the Project is to be constructed and installed as well as all other areas in the vicinity used by Design-Builder for construction Work.
Standard Plans	Plans issued by Department for general application and repetitive use in connection with Department projects; the Standard Plans will not apply to the Work except with regard to Work contractually required to follow the Standard Plans or in connection with any design furnished by Design-Builder which specifies the Standard Plans as being applicable.
Standard Specifications	Caltrans Standard Specifications for Construction 2006, as modified in the other Contract Documents.
State	The State of California acting through its elected officials and their authorized representative, or the State of California in the geographic sense, depending on the context.
Statement of Qualifications	Those documents constituting Design-Builder's response to the Request for Qualifications.
Street	A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right of Way.
Structures	Bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other man-made features.
Subcontract	Any subcontract to perform any part of the Work or provide any Materials,

	equipment or supplies for any part of the Work between Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor or Subconsultant	Any Person with whom 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.
Subgrade	The top surface of a Roadbed upon which the Pavement Structure and Shoulders are constructed. Also, a general term denoting the foundation upon which a base course, surface course, or other construction is to be placed, in which case reference to Subgrade operations may imply depth as well as top surface.
Substantial Completion	Completion of the Project as described in Book 1, Section 20.2.
Substantial Completion Deadline	The meaning set forth in Book 1, Section 4.3.2.
Substructure	All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wingwalls of bridges shall be considered as parts of the substructure.
Superintendent	Design-Builder's authorized representative in responsible charge of the construction Work.
Superstructure	All that part of the bridge except the bridge substructure..
Supplemental Specifications	Department approved additions and revisions to the Standard Specifications.
Supplier	Any Person other than employees of Design-Builder not performing Work at the Site that supplies machinery, equipment, Materials or systems to 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	Each properly licensed surety company approved by Department which has issued the Payment and Performance Bonds.
Temporary Easement	Any temporary easement identified in the R/W Work Map.
Temporary By-Pass	A section of Roadway, usually within existing Right of Way, provided to temporarily carry all traffic around a specific work site.
Temporary Erosion Control Measures	Erosion control measures such as checks dams, silt fences, sediment traps, wattles, and other means to temporarily protect the Project from erosion before and during the installation of permanent erosion control measures. Temporary erosion control measures may also be used to supplement the permanent measures.
Time and Materials Change Order	A Change Order issued under Book 1, Section 13.7.
Traffic Management Plan	The plan provided by Design-Builder and Approved by Department as described in Book 2, Section 18.
Traffic Lane	The portion of a Traveled Way for the movement of a single line of vehicles.
Traveled Way	The portion of the Roadway for the movement of vehicles, exclusive of Shoulders and Auxiliary Lanes.

Turn Lane	An Auxiliary Lane for left or right turning vehicles.
UDBE Certification	Design-Builder's commitment to meet or make good faith efforts to meet Project participation goals as set forth in Form 17.
Underutilized Disadvantaged Business Enterprise	Firms that meet the definition of DBE and are a member of one of the following groups: (1) Black Americans; (2) Native Americans; (3) Asian-Pacific Americans; or (4) Women.
Unilateral Change Order	Change Order as defined in Book 1, Section 13.2.2.
Utility	A privately, publicly or cooperatively owned line, facility and/or system for supplying power, light, gas, telecommunications, telegraph, telephone, water, pipeline or sewer service if such lines, facilities or systems are authorized by law to use public highways for the location of their facilities. 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" is sometimes also used to refer to a "Utility Owner." The term "Utility" shall specifically exclude existing storm water facilities connected with drainage of the roadway.
Utility Agreement	An agreement made between Department and a Utility Owner for addressing one or more Utility conflicts associated with the Project. Also includes MUA and/or a Work Order, as the context may require.
Utility Delay	Any failure by a Utility Owner to meet any time parameters for performance by such Utility Owner which are set forth in the applicable Utility Design Sheet or schedule agreed to pursuant to a Notice and Order, which failure by the Utility Owner delays the Critical Path so as to impair Design-Builder's ability to meet a Completion Deadline.
Utility Design Sheet	A form to be prepared by Design-Builder after NTP1 using the form supplied in Book 2, Section 6, Exhibit D, that will document the existing conditions of a Utility and the final Relocation recommendation to mitigate potential conflict. This form will be signed by Department, the Utility Owner, and Design-Builder.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.
Utility Information Sheet	A form, completed for each Utility impacted by the Project, which documents the existing conditions of such Utility and a preliminary Relocation recommendation to mitigate the potential conflict. The UISs are found in the RID. The information was obtained by Department in cooperation with the Utility Owner. The form was signed by Department and the Utility Owner.
Utility Owner	The owner or operator of any Utility.
Utility Permit	All appropriate approvals, exemptions, filings, licenses, permits and registrations and any other Governmental Approvals required by or with any Governmental Person or Utility Owner necessary for any Utility Relocation.
Utility Relocation Plans	The design plans for Relocation of a Utility impacted by the Project to be prepared by Design-Builder or the Utility Owner.
Utility Removal Work	Work necessary to remove any Utilities (whether or not in use as of the date of NTP1 or NTP2) for which leaving the Utilities in-place is not feasible or not

	permitted, or which 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.
Utility Tracking Report	A Department report summarizing Utility conflicts, as shown on the UISs, for all Utility Owners within the R/W, found in the RID.
Utility Work	(a) The work associated with Relocation of Utilities, including the design, construction, installation, manufacture, supply, testing and inspection, adjustments (including manholes and valves), and otherwise required by the Contract Documents, including all labor, Materials, equipment, supplies, utilities and subcontracted services provided or to be provided by Design-Builder and/or the Utility Owners, and (b) any Betterments added to the Work pursuant to Book 2, Section 6.4.6 and Book 1, Section 6.2.4. The term also includes any reimbursement of Utility Owners which is Design-Builder's responsibility pursuant to Book 1, Section 6.2. Any Utility Work furnished or performed by Design-Builder is part of the Work; any Utility Work furnished or performed by a Utility Owner is not part of the Work.
Utility Work Plan	The utility work plan provided by Design-Builder and Approved by Department as described in Book 2, Section 6.
Vibration Monitoring and Control Plan	The plan provided by Design-Builder as described in Book 2, Section 8.
Warranty	Any warranty made by Design-Builder in Book 1, Section 21 and Book 1, Exhibit C.
Work	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 all other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by Department or other Persons. In certain cases the term is also used to mean the products of the Work.
Work Breakdown Structure	A deliverable-oriented grouping of Project components that organizes and defines the total scope of the Project.
Work Order	An ordering agreement (as the same may be amended from time to time) among Department, a Utility Owner and Design-Builder, providing detailed information and terms relating to the Relocation of a particular Utility, and authorizing that Relocation, which is executed pursuant to a MUA.
Working Day	Any Calendar Day other than Saturday, Sunday, or a Holiday.
Working Drawings	Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which illustrate the construction of the Work.

EXHIBIT B – RESERVED

EXHIBIT C – RESERVED

EXHIBIT D – FEDERAL LAWS FOR FEDERAL-AID PROJECTS

EXHIBIT D – FEDERAL LAWS FOR FEDERAL-AID CONTRACTS

1 General

"Federal Laws for Federal-Aid Contracts," includes specifications required in a Federal-aid construction contract and applies to a Federal-aid contract.

Form FHWA-1273 is included in the contract in Section 2., "FHWA-1273." Some contract terms on the form are different than those used in other contract parts as shown in the following table:

FHWA-1273 Terms and Department Equivalencies

FHWA-1273 Term	Equivalent Term Used in Other Contract Parts
SHA	Department
SHA contracting officer	Department
SHA resident engineer	Department

2 FHWA-1273

FHWA-1273 Electronic version -- March 10, 1994
with revised Section VI

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Payment of Predetermined Minimum Wage
V. Statements and Payrolls
VI. Record of Materials, Supplies, and Labor
VII. Subletting or Assigning the Contract
VIII. Safety: Accident Prevention
IX. False Statements Concerning Highway Projects
X. Implementation of Clean Air Act and Federal Water Pollution Control Act
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
XII. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in

turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

   Section I, paragraph 2;
   Section IV, paragraphs 1, 2, 3, 4, and 7;
   Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

   a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
   b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq*.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

   a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
   b. The contractor will accept as his operating policy the following statement:

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

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

    a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
    b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
    c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
    d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
    e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

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

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

6. **Training and Promotion:**

   a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
   b. Consistent with the contractor’s work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions**: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

   a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
   b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
   c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
   d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these specifications, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

   a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
   b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and

to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

   a. The records kept by the contractor shall document the following:

      1. The number of minority and non-minority group members and women employed in each work classification on the project;
      2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
      3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
      4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

   b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are

segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**
   a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b) (2) of the Davis- Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
   b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.
   c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

   a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
   b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

      1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
      2. the additional classification is utilized in the area by the construction industry;
      3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
      4. with respect to helpers, when such a classification prevails in the area in which the work is performed.

   c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
   d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
   e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

   a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the

wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

a. Apprentices:

1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the

contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with

Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

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

7. **Overtime Requirements:**

   No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

   The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the contract Work Hours and Safety Standards Act, which is held by the same prime

contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

   The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

   a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
   b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
   c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029- 005-0014-1), U.S. Government Printing Office, Washington, D.C.

20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

   1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
   2. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
   3. that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

(As of May 22, 2007, Form FHWA-47 is no longer required.)

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the

amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety

and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

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

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq*., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq*., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date

of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. **Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or

voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

*** * * * ***

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

   a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
   b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement 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;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

*** * * * ***

2. **Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the

certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

*** * * * ***

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

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

*** * * * ***

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal

agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she 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.

3 Female and Minority Goals

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the Department is including in Section 3, "Female and Minority Goals," female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed $10,000.

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

Minority Utilization Goals

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehema	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey 7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo 7400 San Jose, CA CA Santa Clara, CA 7485 Santa Cruz, CA CA Santa Cruz 7500 Santa Rosa CA Sonoma 8720 Vallejo-Fairfield-Napa, CA CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	 28.9 25.6 19.6 14.9 9.1 17.1 23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	 16.1 14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus 8120 Stockton, CA CA San Joaquin Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Toulumne	 12.3 24.3 19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern 2840 Fresno, CA CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	 19.1 26.1 23.6
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA CA Orange 4480 Los Angeles-Long Beach, CA CA Los Angeles	 11.9 28.3

	6000 Oxnard-Simi Valley-Ventura, CA CA Ventura 6780 Riverside-San Bernardino-Ontario, CA CA Riverside; CA San Bernardino 7480 Santa Barbara-Santa Maria-Lompoc, CA CA Santa Barbara Non-SMSA Counties CA Inyo; CA Mono; CA San Luis Obispo	21.5 19.0 19.7 24.6
181	San Diego, CA: SMSA Counties 7320 San Diego, CA CA San Diego Non-SMSA Counties CA Imperial	 16.9 18.2

For each July during which work is performed under the contract, you and each non-material-supplier subcontractor with a subcontract of $10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

4 Training

Section 4, "Training," applies if a number of trainees or apprentices is specified in the special provisions.

As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the Department:

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

Obtain the Department's approval for this submitted information before you start work. The Department credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of Section 4, "Training," is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show

that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

Ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The Department and FHWA approves a program if one of the following is met:

1. It is calculated to:

    1.1. Meet the your equal employment opportunity responsibilities
    1.2. Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period

2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training and it is administered in a way consistent with the equal employment responsibilities of federal-aid highway construction contracts

Obtain the State's approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The Department reimburses you 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a federal-aid project and you do at least one of the following:

    2.1. Contribute to the cost of the training
    2.2. Provide the instruction to the apprentice or trainee
    2.3. Pay the apprentice's or trainee's wages during the off-site training period

3. If you comply with Section 4, "Training"

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training
2. Certification showing the type and length of training satisfactorily completed

Maintain records and submit reports documenting your performance under Section 4, "Training."

EXHIBIT E – DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

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ATTACHMENTS

Good Faith Efforts Documentation – Form E-12

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

A. POLICY STATEMENT

It is the policy of Department to encourage the participation of DBE, women-owned business enterprises and minority business enterprises in all facets of its business activities, consistent with applicable laws and regulations. Pursuant to the provisions of 49 CFR Part 26, Department has adopted rules to provide certified DBEs opportunities to participate in the business activities of Department as service providers, vendors, contractors, subcontractors, advisors, and consultants. Proposers are advised that, as required by federal law, Department is implementing new DBE requirements for Underutilized Disadvantaged Business Enterprises ("UDBE"). To ensure there is equal participation of the DBE groups specified in 49 CFR Section 26.5, Department specifies a goal for UDBEs, which are firms that meets the definition of DBE and are a member of one of the following groups:

1. Black Americans;
2. Native Americans;
3. Asian-Pacific Americans; or
4. Women

References to DBEs include UDBEs, but references to UDBEs do not include all DBEs. The UDBE goal applies to all of Department's contracts and purchases paid with funds received from the U.S. Department of Transportation through FHWA, the Federal Transit Administration, and the Federal Aviation Administration. Because Department has programmed federally-sourced funds for the Project, the UDBE goal will apply to the Project and Design-Builder is obligated to comply with applicable federal laws and regulations related to UDBEs and DBEs.

The Design-Builder and its Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers will take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform on this contract.

B. CONTRACT ASSURANCE

The Design-Builder, and its Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of federally funded contracts. Failure by the Design-Builder to carry out these requirements is a material breach of this contract, which may result in the termination of this Contract or such other remedy, as Department deems appropriate.

C. UDBE GOAL

The UDBE goal established for this contract is as shown on the UDBE Certification (Form 17).

The Design-Builder shall establish individual contract goals for each Contract, Subcontract, and each Consultant, Subconsultant and Supply and Service Provider Agreement in amounts to ensure the contract goal is met. Department will monitor the Design-Builder's activities to ensure they are conducted in a manner consistent with the requirements of 49 CFR Part 26.

Only UDBE participation will count towards the UDBE goal. DBE participation will count towards the Department's federally mandated statewide overall DBE goal.

Credit for materials or supplies purchased from UDBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a UDBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a UDBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a UDBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

Credit towards the goal will be received if employing a UDBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1)-(4), (6).

D. DBE/UDBE PERFORMANCE PLAN

Design-Builder shall prepare a Disadvantaged Business Enterprise/Underutilized Disadvantaged Business Enterprise Performance Plan ("DBE/UDBE Performance Plan") that complies with all applicable Laws and Governmental Approvals, is consistent with the Contract Documents, and includes the following elements:

1) A policy statement, signed by Design-Builder's Authorized Representative, which expresses Design-Builder's commitment to utilize DBE/UDBEs in all aspects of the Work, outlines the various levels of responsibility, and states the objectives of the DBE/UDBE Performance Plan. Design-Builder shall obtain the written commitment of all Design-Builder related entities to comply with and advance the intent of the policy statement;

2) Design-Builder's designation of a person responsible for the DBE/UDBE Performance Plan (the "Liaison Officer"), as well as support staff necessary and proper to administer the program and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the DBE/UDBE Performance Plan on a day-to-day basis, for providing technical assistance to DBE/UDBEs, and for disseminating information on available business opportunities so that DBE/UDBEs are provided an equitable opportunity to engage in Work as Subcontractors or Subconsultants. The Liaison Officer shall work in close coordination with the Department, and shall report quarterly on Design-Builder's success in attaining the established UDBE participation goals during the Design Work and the Construction Period; and

3) A description of proposed actions to facilitate DBE/UDBE engagement in Work as Subcontractors and Subconsultants, such as:

a) On-going quarterly strategic planning sessions with the Department to establish goals for specific bid item groups by reviewing the work, available firms, strategies, anticipated obstacles and means to overcome obstacles;

b) Conduct bid-item specific outreach meetings in coordination with the Department for DBE/UDBE firms to highlight current and upcoming appropriate subcontracting opportunities;

c) Solicit statements of qualification, proposals, and/or price quotations from qualified DBE/UDBE firms and arrange a time for the review of qualifications, plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of proposals and/or price quotations;

d) Provide assistance, in coordination with the Department, to DBE/UDBEs so that these may overcome barriers such as the inability to obtain bonding, insurance, financing, or technical assistance;

e) Develop and conduct information and communication programs or workshops, in coordination with the Department, on contracting procedures and specific contracting opportunities in a timely manner;

f) Encourage eligible DBE/UDBEs to apply for certification with the Department; and

g) Contact local/regional Disadvantaged, Underutilized, Trade-Specific Contractor Associations and appropriate city agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE/UDBE contractors to apply for certification with the Department.

E. SUBMITTAL OF DOCUMENTATION

With the submission of the initial Proposal and for all subcontracts subsequently awarded where goals are set, regardless of contract size, the Design-Builder, Subcontractor, Consultant, Subconsultant, Supplier and Service Provider will be required to: (a) propose the participation of specific UDBEs to meet the goal; or (b) demonstrate good faith efforts to meet the goal. A Design-Builder, Subcontractor, Consultant, Subconsultant, Supplier and Service Provider must provide justification if it rejects bids, quotes, or proposals from properly certified, qualified UDBE firms.

In order to fulfill a UDBE goal, the firms utilized as UDBE Subcontractors, Consultants, Subconsultants, Suppliers or Service Providers must be certified as DBEs by the California Unified Certification Program prior to the release of the RFP, and/or subsequent to the award of the Contract, the advertisement of bids or the selection of any new Subcontractors, Consultants, Subconsultants, Suppliers or Service Providers during the project. For a list of DBEs certified by the California Unified Certification Program, go to:

http://www.dot.ca.gov/hq/bep/find_certified.htm

The Design-Builder must submit the following documents to the Department. These documents must be submitted with the initial Proposal.

1. Design-Builder's Good Faith Efforts Documentation
2. Design-Build Bidders List
3. Supporting Documentation to Verify Good Faith Efforts - Including, but not limited to a copy of the signed agreements with each UDBE to be utilized by the Design-Builder, Contractor, Subcontractor, Consultant, Subconsultant, Supplier or Service Provider.
4. UDBE Goal Certification Form (Form 17).

The completed **Design-Build Bidders List** should include information on: (1) all DBE and non-DBE firms that submitted a bid/proposal for the project; (2) the proposed firms to be used on the project as

contractors/subcontractors/ consultants/Subconsultants/suppliers/service providers; (3) a description of the work; (4) bid dollar amount; (5) years the company has been in business; and (6) the firm's average annual gross receipts for the past three years. The Design-Builder must submit a Design-Build Bidder's List regardless of whether or not it has indicated sufficient UDBE participation to meet the UDBE goal.

The Design-Builder must also submit **additional information, which supports its Good Faith Efforts** such as those typical Good Faith Efforts listed in DBE Special Provisions for Design-Build Projects as well as summaries of the contractor's discussions and/or solicitation efforts of DBE firms (along with the firm names, addresses and contact persons). This information can include but is not limited to copies of solicitation letters and/or faxes to UDBE firms.

The Design Builder's Subcontractors, Consultants, Subconsultants, Suppliers and Services Providers, including DBE and non-DBE firms, that subcontract part of their work or purchase supplies from other firms are also required to demonstrate that they made Good Faith Efforts to provide opportunities for UDBE firms to participate on this Design-Build project.

F. GOOD FAITH EFFORTS DETERMINATION

Department will determine whether a Design-Builder made sufficient good faith efforts to meet the goal, in accordance with 49 C.F.R. §26.53 and Appendix A thereto. The Design-Builder must show that it took all necessary and reasonable steps to achieve the UDBE goal or other requirement of 49 C.F.R. Part 26, which, by its scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient UDBE participation, even if it were not fully successful. Mere pro forma efforts are not good faith efforts to meet the UDBE contract requirements. Compliance will be determined on a case-by-case, based on a review of documentation of the following types of activities:

(a) Soliciting, through all reasonable and available means (e.g., attendance at pre-proposal/pre-letting meetings, advertising and/or written notices), the interest of all certified UDBEs who have the capability to perform the work of the contract. The Design-Builder must solicit this interest within sufficient time to allow the UDBEs to respond to the solicitation. The Design-Builder must determine with certainty if the UDBEs are interested by taking appropriate steps to follow up on the initial solicitations;

(b) Selecting portions of the work to be performed by UDBEs in order to increase the likelihood that the UDBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate UDBE participation even when the Design-Builder might otherwise prefer to perform these work items with its own forces;

(c) Providing interested UDBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation;

(d) Negotiating in good faith with interested UDBEs. The Design-Builder has the responsibility to make a portion of the work available to UDBE Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers, to select those portions of the work or material needs consistent with the available UDBE Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers so as to facilitate UDBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of the UDBEs that were considered; a description of information

provided regarding the plans and specifications for the work selected for contracting; and evidence as to why additional agreements could not be reached for UDBEs to perform the work;

(e) A Design-Builder using good business judgment would consider a number of factors in negotiating with Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers including those who are UDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using UDBEs is not in itself sufficient reason for Design-Builder's failure to meet the contract UDBE goal, as long as such costs are reasonable. Also, the ability or desire of the Design-Builder to perform the work of a contract with its own organization does not relieve the Design-Builder of the responsibility to make good faith efforts. The Design-Builder is not, however, required to accept higher quotes from UDBEs if the price difference is excessive or unreasonable;

(f) Not rejecting UDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Design-Builder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of proposals/bids in the Design-Builder's efforts to meet the DBE Project goal;

(g) Making efforts to assist interested UDBEs in obtaining bonding, lines of credit, or insurance as required by Department or Design-Builder,

(h) Making efforts to assist interested UDBEs in obtaining necessary equipment, supplies, materials or related assistance or services; and

(i) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations, as allowed on a case-by-case basis, to provide assistance in the recruitment and placement of UDBEs.

G. COUNTING UDBE PARTICIPATION

In accordance with 49 C.F.R. §26.55, Department will utilize the following guidelines in determining the percentage of UDBE participation that will be counted toward the overall UDBE goal:

1. If a firm is not currently certified as a DBE, in accordance with the standards of Subpart D of the regulations (49 C.F.R. §26.55(f)), at the time of the due date for the Proposals, the firm's participation toward any UDBE goals will not be counted, except as provided for in 49 C.F.R. §26.87(i);

2. The dollar value of the work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal;

3. The participation of a UDBE Subcontractor/Consultant/Subconsultant/ Supplier/Service Provider toward the Design-Builder's UDBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the UDBE;

4. When a UDBE participates in the Contract, the value of the work actually performed will be counted as follows:

(a) The entire amount of the portion of a construction contract (or other contract not covered by paragraph 49 C.F.R. §26.55 that is performed by the UDBE's own forces). Include the cost of supplies and materials obtained by the UDBE for the work of the Contract, including supplies

purchased or equipment leased by the UDBE (except that supplies, and equipment the UDBE Contractor/Subcontractor purchases or leases from the Design-Builder or its affiliate(s) will not be counted);

(b) The entire amount of fees or commissions charged by a UDBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, count toward UDBE goals, provided that the Department determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services;

(c) When a UDBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward UDBE goals only if the UDBE's Subcontractor is itself a UDBE. Work that a UDBE subcontracts to a non-DBE firm will not count toward the UDBE goal;

(d) When a UDBE performs as a participant in an approved joint venture, Department will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the UDBE performs with its own forces toward UDBE goals; and

5. Department will count expenditures of a UDBE Subcontractor, Consultant, Subconsultant, Supplier or Service Provider toward UDBE goals only if the UDBE is performing a commercially useful function on that contract in accordance with 49 C.F.R. §26.55.

H. CONTINUING GOOD FAITH EFFORTS

During the term of the Contract, the Design-Builder will make good faith efforts to ensure that UDBEs have maximum opportunity to successfully perform on the Contract, and that the Design-Builder meets its UDBE goal. These efforts shall include but not be limited to the following:

(a) Negotiating in good faith to attempt to finalize a Subcontract/Consultant/Subconsultant /Supply/Service Provider agreement with UDBEs committed to prior to Contract award;

(b) Continuing to provide assistance to UDBE Subcontractors/Consultant/Subconsultant /Suppliers/Service Providers in obtaining bonding, lines of credit, etc., if required by the contract;

(c) Notifying a UDBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Department's statement of no objection to substitute the DBE;

(d) As with all Subcontractors/Consultants/Subconsultants/Suppliers/Service Providers, timely payment of all monies due and owing to UDBE Subcontractors/Consultants/Subconsultants/Suppliers/Service Providers;

(f) Timely submittal of "Good Faith Efforts" information and documentation to Department throughout the contract, as contracts are let and new vendors, subcontractors, Subconsultants, suppliers and service providers are selected;

(g) Informing Department in a timely manner of any problems anticipated in attaining the UDBE participation goal committed to in the Proposal; and

(h) If the Design-Builder or any of its Contractors/Subcontractors/Consultants/Subconsultants/ Suppliers/Service Providers requests a substitution of a UDBE firm, the Design-Builder or its Contractors/Subcontractors/Consultants/Subconsultants/Suppliers/ Service Providers must exert good faith efforts to replace the UDBE firm with another UDBE firm, subject to Department's statement of no objection.

I. APPLICABILITY TO UDBE BIDDERS/PROPOSERS

These good faith efforts requirements also apply to UDBE Bidders/Proposers for Contracts. The work proposed to be performed with its own work force as well as work committed to UDBE Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers will count toward the contract-specific goal.

J. DBE CONTRACTS

Whenever a DBE (including UDBEs) is selected as a Subcontractor/Consultant/Subconsultant/Supplier/Service Provider and it has not been previously reported, the Design-Builder or designated Liaison Officer shall promptly provide the Department with the following information regarding the subcontract:

(a) The name of the Subcontractor/Consultant/Subconsultant/Supplier/Service Provider;

(b) The total dollar amount of the contract, subcontract, consultant, Subconsultant or supply/service provider agreement;

(c) The specific work items covered by the subcontract or the consultant/Subconsultant supply/service provider agreement;

(d) Estimated quantities of each work item; and

(e) Individual unit prices (if applicable).

K. TERMINATION OF DBE CONTRACTS

Department requires that the Design-Builder, and its Contractors, Subcontractors, Suppliers and Service Providers not terminate for convenience a DBE (including UDBE) Subcontractor/Consultant/Sub-Consultant/Supplier/Service Provider listed on the List of Proposed DBEs (or an approved substitute DBE) and then perform the Work of the terminated Contract with its own forces or those of an affiliate, without prior written consent of the Department. The request for removal must be made in writing to the Department.

If a UDBE Subcontractor/Consultant/Sub-Consultant/Supplier/Service Provider is terminated or fails to complete its work on a contract for any reason, the Design-Builder must make good faith efforts to find another UDBE Subcontractor/Consultant/Sub-Consultant/Supplier/Service to substitute for the original UDBE. These good faith efforts must be directed at finding another UDBE to perform at least the same amount of work under the contract as the UDBE that was terminated, to the extent needed to meet the contract-specified goal.

L. BIDDER'S LIST

A Design-Builder Bidder's List must be submitted with the Proposal on the Price Proposal Due Date, and the successful Design-Builder must maintain a Bidder's List throughout the life of the Project. The Bidder's List must be created and maintained in accordance with 49 C.F.R §26.11(C), and identify all firms quoting or bidding on subcontracts and consultant/Subconsultant or supply/service provider agreements for this Design-Build Contract. For every firm quoting or bidding on subcontracts, and consultant/Subconsultant or supply/service provider agreements for this Design-Build Contract, the following must be obtained:

(a) The firm's name;

(b) The firm's address;

(c) The firm's status as a UDBE or non-UDBE;

(d) The age of the firm; and

(e) The annual gross receipts of the firm.

M. EFFECT OF SUPPLEMENTAL AGREEMENTS

The dollar amount of any Supplemental Agreement or any other contract modification that increases the dollar amounts of the contract or any subcontract or Subconsultant agreement will be subject to the UDBE goal established for this project, and the Contractor and its subcontractors and Subconsultants will be required to solicit UDBE participation for such increases. Revised total contract dollar values shall be reflected in the Contractor Payment and Subcontract Award Monthly Progress Reports submitted to Department.

N. PROMPT PAYMENT

The Design-Builder agrees to pay each Subcontractor, Consultant, Subconsultant, Supplier or Service Provider under this Design-Build Contract within ten (10) days of the Design-Builder's receipt of payment from the Department for undisputed services provided by the Subcontractor, Subconsultant, Supplier or Service Provider. The Design-Builder must pay interest of 1-1/2 percent per month or any part of a month to the Subcontractor, Consultant, Subconsultant, Supplier or Service Provider on any undisputed amount not paid on time to the Subcontractor, Consultant, Subconsultant, Supplier or Service Provider. This clause applies to both UDBE and non-UDBE firms working on this Contract.

O. CONSEQUENCES OF NON-COMPLIANCE

(1). BREACH OF CONTRACT - Failure to carry out the UDBE requirements specified in the Contract Documents constitutes a breach of contract. Department will notify the Design-Builder and the USDOT of such breach, including notification that the breach may result in termination of the Contract by Department or imposition of other appropriate sanctions. This notice is given pursuant to 49 C.F.R. Part 26. For purposes of this section, timely submittal means received by Department by the close of business on the tenth (10th) of the following month.

(2) NOTICE - If the Design-Builder or any Subcontractor, Consultant, Subconsultant, Supplier or Service Provider is deemed to be in non-compliance, the Design-Builder will be informed in writing, by certified mail by Department that sanctions will be imposed for failure to meet UDBE utilization goals and/or submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.

P. SANCTIONS

If it is determined that the Design-Builder's failure to meet all or part of the UDBE goal is due to the Design-Builder's inadequate good faith efforts throughout the life of the contract, including failure to submit required good faith efforts information and documentation, the Design-Builder may be subject to Contract termination.

Q. UDBE LIQUIDATED DAMAGES

As defined in 49 C.F.R. Part 26, if it is determined that the Design-Builder's failure to meet all or part of the UDBE goal is due to the Design-Builder's inadequate Good Faith Efforts, the Design-Builder may be required to pay UDBE Liquidated Damages equal to the amount of the unmet goal.

R. REPORTING

(a) DBE RECORDS - The Design-Builder shall maintain records and shall require its Subcontractors/Consultants/Subconsultants/Suppliers/Service Providers that are utilizing DBE (including UDBE) firms in such contracts to maintain records to verify DBE participation as set forth in the Proposal and as modified during the course of the Contract. Such records shall show name and business address of each DBE participating in the Contract, Subcontract and Consultant/Subconsultant or Supply/Service Provider Agreement and the total dollar amount actually paid to each DBE and the date of payment.

(b) REPORTING REQUIREMENTS AND DEPARTMENT REVIEW - The Design-Builder will submit ongoing progress reports to Department on its payments to all its Contractors/Subcontractors/Suppliers/Service Providers, regardless of their tier or UDBE status, within ten (10) days after receiving payment from Department until final payment is made. The Design-Builder shall submit these progress reports on its payments to Contractors/Subcontractors/Consultants/Subconsultants/Suppliers/Service Providers on the attached Contractor Payment Form. The Design-Builder shall submit a copy of each Contractor Payment Reports to the Department.

A Summary of Contracts, Subcontracts, Consultant/Subconsultant and Supply/Service Provider Agreements Awarded shall be submitted to Department on a monthly basis, which should include the firm name, address, phone number, contact person, amount of the contract, subcontract, consultant/Subconsultant or supply/service provider agreement, description of work and length of the contract, subcontract, consultant/ Subconsultant or supply/service provider agreement.

Department will review the Summary of Contracts, Subcontracts, Consultant/Subconsultant and Supply/Service Provider Agreements Awarded Monthly Progress Report to monitor and determine whether the utilization of UDBE firms is consistent with the commitment of the Design-Builder, as stated in its Proposal.

If it is determined that the Design-Builder's UDBE utilization during performance of the Contract is not consistent with the commitment thereto, the Design-Builder will be requested, in writing, to submit evidence of its good faith efforts to meet the goal. The Design-Builder shall be given ten (10) working days to submit this documentation. Failure to respond shall place the Design-Builder in Non-Compliance, subject to sanctions as provided in this contract herein.

(c) SUMMARY OF SUBCONTRACTS AWARDED AND PAID REPORT - As indicated above in the sections on "Reporting Requirements and Department Review" and "Prompt Payment," the Design-Builder is required to submit: (a) a Summary of Subcontracts Awarded on a monthly basis; by no later ten (10) days after receiving payment from Department.

Department reserves the right to withhold progress payment until the required reports have been furnished.

(d) QUARTERLY REVIEW/UDBE WORK AND PAYMENT SCHEDULE - A review of the Design-Builder's compliance with the UDBE participation goal will be conducted on a quarterly basis as follows:

Not later than thirty (30) days following the Notice to Proceed 1, the Design-Builder shall submit a "UDBE Work and Payment Schedule" to the Department, which shall indicate for the entire Contract period a listing on a per month basis, of the UDBE firms which the Design-Builder expects to utilize,

the amount of payments expected to be made to UDBEs, and the percentage of each UDBE firm's contract that will be completed on each month. The "UDBE Work and Payment Schedule" shall be updated every sixty (60) days consistent with the updates to the Baseline Schedule.

During the sixty (60) days following Design-Builder's submittal of the "UDBE Work and Payment Schedule", Department will review the Contractor Payment Reports to determine if the Design-Builder is meeting the "UDBE Work and Payment Schedule". If the Design-Builder has not met the "UDBE Work and Payment Schedule," Department will notify the Design-Builder of the need for correction of UDBE participation levels to meet the "UDBE Work and Payment Schedule" by the next quarter.

Sixty days (60) following such notice, Department will evaluate whether the Design-Builder has corrected UDBE participation deficiencies to meet the "UDBE Work and Payment Schedule". If such deficiencies are not corrected and the level of UDBE participation remains below that provided in the "UDBE Work and Payment Schedule", and the Design-Builder is unable to show it made good faith efforts to do so, Department may impose liquidated damages in accordance with the Contract herein.

(e) DBE FINAL REPORT - A DBE Final Report shall be submitted with the Request for Final Payment. The DBE Final Report shall consist of:

(1) A Report listing all Contractors, Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers and DBE (including UDBE) activity (work performed) on the Design-Build Contract; and

(2) A Summary of Good Faith Efforts, covering the entire Design-Build Contract period if the UDBE goal has not been met for the Contract.

The Department shall evaluate the Contractor's Final Report and make a determination as to whether the Contractor made Good Faith Efforts to meet the UDBE goal. The Department shall issue a Final Report with its determination on the Contractor's Good Faith Efforts no later than 60 days following the Contractor's submission of its Final Report.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

PAGE 1 OF 3

GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102.11 (NEW 2/2009)

A. List items of work the bidder made available to UDBE firms. Identify those items of work the bidder might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total contract. It is the bidder's responsibility to demonstrate that sufficient work to meet the goal was made available to UDBE firms.

Item of Work Offered	Bidder Normally Performs Item (Y/N)	Item Broken Down to Facilitate Participation (Y/N)	Amount ($)	Percentage of Contract
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No ☐ Yes ☐ No	☐ Yes ☐ No ☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No ☐ Yes ☐ No	☐ Yes ☐ No ☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		
	☐ Yes ☐ No	☐ Yes ☐ No		

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PAGE 2 OF 3

GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102.11 (NEW 2/2009)

B. List the names of certified UDBEs and the dates on which they were solicited to bid on this project. Include the items of work offered and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested. Attach copies of solicitations, telephone records, fax confirmations, etc.

Name of UDBEs Solicited	Date of Initial Solicitation	Item(s) of Work	Follow Up Methods and Dates

C. For each item of work made available, list the selected firm and its status as a UDBE, the UDBEs that provided quotes, the price quote for each firm, and the price difference for each UDBE if the selected firm is not a UDBE.

Item(s) of Work	Name of Selected Firm	UDBE or non-UDBE	Name of Rejected Firm	Quote ($)	Price Difference ($)

If the firm selected for the item is not a UDBE, provide the reasons for the selection on a separate sheet and attach names, addresses, and phone numbers for the firms listed above.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

PAGE 3 OF 3

GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102.11 (NEW 2/2009)

D. List the names and dates of each publication in which a request for UDBE participation for this project was placed by the bidder. Attach copies of published advertisements or proofs of publication:

Publications	Dates of Advertisement

E. List the names of agencies and the dates on which they were contacted to provide assistance in contacting, recruiting and using UDBE firms. If the agencies were contacted in writing, provide copies of supporting documents.

Name of Agency	Date of Contact	Method of Contact	Results

F. List efforts made to provide interested UDBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. Identify the UDBE assisted, the information provided, and the date of contact. Provide copies of supporting documents.

G. List efforts made to assist interested UDBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. Identify the UDBE assisted, the assistance offered, and the date. Provide copies of supporting documents.

H. Include additional data to support a demonstration of good faith efforts.

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

EXHIBIT F – FEDERAL AND STATE PREVAILING WAGE REQUIREMENTS

EXHIBIT F –FEDERAL AND STATE PREVAILING WAGE REQUIREMENTS

The federal minimum wage rates for this Contract as determined by the United States Secretary of Labor are available at http://www.dot.ca.gov/hq/esc/oe/federal-wages.

If the minimum wage rates as determined by the United States Secretary of Labor differs from the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors must not pay less than the higher wage rate. The Department does not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes helper, or other classifications based on hours of experience, or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors must not pay less than the Federal minimum wage rate that most closely approximates the duties of the employees in question.

The Department has made available Notices of Suspension and Proposed Debarment from the Federal Highway Administration. For a copy of the notices go to http://www.dot.ca.gov/hq/esc/oe/contractor_info . Additional information is listed in the Excluded Parties List System at https://www.epls.gov .

EXHIBIT G – KEY PERSONNEL

[Insert Form 2 prior to execution]

EXHIBIT H – RESERVED

EXHIBIT I – DESIGNATION OF INITIAL REPRESENTATIVES

[to be attached prior to execution]

EXHIBIT J – DISPUTE RESOLUTION BOARD AGREEMENT

EXHIBIT J – DISPUTE RESOLUTION BOARD AGREEMENT

DISPUTE RESOLUTION BOARD AGREEMENT

_____

(Contract Identification)

Contract No. _____

THIS DISPUTE RESOLUTION BOARD AGREEMENT, hereinafter called "AGREEMENT", made and entered into this _____ day of _____, _____, between the State of California, by the California Department of Transportation, hereinafter called the "DEPARTMENT," _____ hereinafter called the "DESIGN-BUILDER," and the Dispute Resolution Board, hereinafter called the "DRB" consisting of the following members:

_____ ,

(DRB Member)

_____ ,

(DRB Member)

and _____

(DRB Chairperson)

WITNESSETH, that

WHEREAS, the DEPARTMENT and the DESIGN-BUILDER, hereinafter called the "parties," are now engaged in the construction on the State Highway project referenced above; and

WHEREAS, the Amended Standard Specifications for the above referenced contract provides for the establishment and operation of the DRB to assist in resolving disputes; and

WHEREAS, the DRB is composed of three members: one selected by the DEPARTMENT and approved by the DESIGN-BUILDER, one selected by the DESIGN-BUILDER and approved by the DEPARTMENT, and the third selected by the first two members and approved by the parties; and

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties and the DRB members hereto agree as follows:

SECTION I DESCRIPTION OF WORK

In addition to Section 19.2 of the Contract, the parties and the DRB must comply with the provisions of this AGREEMENT and use the DRB as a mandatory part of the dispute resolution process.

The DRB must fairly and impartially consider disputes placed before it and provide recommendations to the parties for resolution of these disputes.

The DRB must perform the services necessary to participate in the DRB's actions as provided in Section 19.2 of the Contract and designated in Section II, Scope of Work, of this AGREEMENT.

SECTION II SCOPE OF WORK

The scope of work of the DRB includes, but is not limited to, the following:

A. GENERAL

DRB members must not begin work under the terms of this AGREEMENT, until authorized in writing by the DEPARTMENT.

If the contract is terminated in accordance with Section 15, "Termination for Convenience," of the Standard Specifications, the DRB will be dissolved.

The parties and the DRB must meet at the start of the project to establish and approve procedures that will govern the conduct of its business and reporting procedures. The DRB Chairperson must schedule future progress and dispute meetings and all other DRB activities.

During progress or dispute meetings, DRB members must not express opinions on the merits of statements on matters under dispute or potential dispute. Opinions of DRB members expressed in private sessions must be kept strictly confidential.

Individual DRB members must not meet with, or discuss contract issues with individual parties. Discussions regarding the project between the DRB members and the parties must be in the presence of all three members and both parties.

Individual DRB members must not undertake independent investigations of any kind pertaining to disputes or potential disputes unless both parties approve of it in advance and it is expressly directed by the DRB Chairperson.

The DEPARTMENT will provide the DRB with the contract documents and any other available documents requested by the DRB.

B. PROGRESS MEETINGS

The parties and the DRB must comply with the provisions of Section 19.2 of the Contract.

The DRB Chairperson must schedule the meeting at the start of the project and subsequent progress meetings at least once every 4 months thereafter. The frequency, exact time, and duration of progress meetings will be as recommended by the DRB and agreed by the parties consistent with the construction activities or matters under consideration and dispute.

Each progress meeting must consist of a round table discussion and a field inspection of the work being performed on the contract if requested by the DRB. The agenda will generally be as follows unless a different procedure is approved by the parties and the DRB:

1. Meeting opened by the DRB Chairperson.
2. Remarks by the DEPARTMENT's representative.
3. A description by the DESIGN-BUILDER's representative of work accomplished since the last meeting; the current schedule status of the work; and a forecast for the coming period.
4. An outline by the DEPARTMENT's representative of the status of the work from the DEPARTMENT's point of view.
5. An outline by the DESIGN-BUILDER's representative of potential problems and a description of proposed solutions.
6. A brief description by the DESIGN-BUILDER's and the DEPARTMENT's representative of potential claims and disputes that have surfaced since the last meeting.
7. A summary by the DEPARTMENT's representative, the DESIGN-BUILDER's representative, or the DRB of the status of past potential claims and disputes.

The DEPARTMENT's representative will prepare minutes of all progress meetings and circulate them for revision and approval by all concerned within 10 days of the meeting.

C. DISPUTE MEETINGS

1. GENERAL

At a dispute meeting, the claimant discusses the dispute followed by the other party. Each party must then be allowed one or more rebuttals at the meeting until all aspects of the dispute are thoroughly covered. The DRB may ask questions, seek clarification, and request further clarification of data presented by either party as may be necessary to assist in making a fully informed recommendation. Each party will be given ample time to fully present its position, make rebuttals, provide relevant documents, and respond to DRB questions and requests.

With approval from the parties, the DRB may obtain outside technical services to help the DRB make its recommendation.

The DRB will only accept documents and verbal statements that comply with Section 19.2 of the Contract and the procedures established and approved at the DRB meeting held at the start of the project.

2. TRADITIONAL DISPUTE MEETING

In addition to the provisions of Section 19.2 of the Contract, comply with the following:

a. Upon receipt by the DRB Chairperson of a written referral of a dispute, the DRB must convene to review and consider the dispute. The DRB Chairperson must schedule the dispute meeting within 60 days after receipt of the written referral unless otherwise agreed to by the parties. The DRB must determine the time and location of the dispute meeting with due consideration for the needs and preferences of the parties, while recognizing the importance of a speedy resolution to the dispute. Dispute meetings must be conducted at a convenient location that would provide appropriate accommodations and facilities with access to necessary documentation.

b. The parties must each be afforded an opportunity to be present and to be heard by the DRB, and to fully present their position.

c. After a dispute meeting is concluded, the DRB must meet in private to deliberate and reach a conclusion supported by two or more members based on the facts provided, the contract documents, and applicable laws and regulations. Private sessions of the DRB may be held at a location other than the job site or by electronic conferencing as deemed appropriate, in order to expedite the process. The DRB must make every effort to reach a unanimous decision.

d. The DRB must furnish a written recommendation report to the parties within 30 days of the DRB dispute meeting. A time extension may be granted at the request of the DRB Chairperson with concurrence of both parties. The report must include the minority opinion, if any, and summarize the facts considered, the contract language, law or regulation viewed by the DRB as pertinent to the dispute, and the DRB's interpretation and reasoning in arriving at its conclusions and recommendations. If appropriate, the DRB recommends guidelines for determining compensation. The DRB's recommendation report must stand on its own, without attachments or appendices. The DRB Chairperson must furnish a copy of the written recommendation report to the Alternative Dispute Resolution Engineer, Division of Construction, MS 44, P.O. Box 942874, Sacramento, CA 94274.

e. The DRB must provide a written response to requests for clarification within 10 days of receipt of such requests.

f. The DRB may reconsider its recommendation if a party has new evidence and requests reconsideration within the 30-day time limit specified for response to the DRB's recommendation report.

3. INFORMAL DISPUTE MEETING

In addition to the provisions of Section 19.2 of the Contract, comply with the following:

a. Upon concluding the dispute meeting, the DRB members must deliberate in private and then verbally deliver a recommendation with findings to the parties within the same day of the dispute meeting. Additional time may be allowed for deliberation if both parties agree.

b. The DRB must provide the parities a short written confirmation of the verbal recommendation within 7 days of its delivery.

c. The DRB must respond to requests for clarification within 5 days of receiving the request.

d. If the DRB is unable to formulate a recommendation, the DRB may provide the parties with advice on strengths and weaknesses of their respective positions to help the parties reach resolution.

SECTION III PAYMENT

A. GENERAL

The parties and the DRB must comply with the payment provisions of Section 19.2 of the Contract.

B. PAYMENT PROCESSING

DRB members must submit invoices to the DESIGN-BUILDER no more than once per month for full or partial payment for work performed and for services rendered while participating in authorized meetings and approved off site work. The invoices must be in a format approved by the parties and accompanied by a general description of activities performed during that billing period. Payment for hourly fees, at the agreed rate, must not be paid to a DRB member until the amount and extent of those fees are approved by the parties.

C. INSPECTION OF COSTS RECORDS

For a period of 3 years after final payment, the DRB members and the DESIGN-BUILDER must keep available for inspection by representatives of the DEPARTMENT and the United States federal government the cost records and accounts pertaining to this AGREEMENT. If any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the 3-year period, the cost records and accounts must be retained until such litigation, claim, or audit involving the records is completed.

SECTION IV ASSIGNMENT OF TASKS OF WORK

DRB members must not assign the work of this AGREEMENT.

SECTION V DRB MEMBER REPLACEMENT

Comply with Section 19.2 of the Contract.

SECTION VI LEGAL RELATIONS

The parties mutually understand and agree that each DRB member, in the performance of their duties, is acting in the capacity of an independent agent and not as an employee of either party.

No party to this AGREEMENT must bear a greater responsibility for damages or personal injury than is normally provided by Federal or State of California Law.

DRB members must have no claim against either or both of the parties from claimed harm arising out of the parties' evaluations of the DRB's opinions.

SECTION VII VENUE, APPLICABLE LAW, AND PERSONAL JURISDICTION

In the event that any party to this AGREEMENT, including the DRB members, deems it necessary to institute arbitration proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that such action must be initiated in the Office of Administrative Hearings of the State of California. The parties hereto agree that all questions must be resolved by arbitration by application of California law and that the parties to such arbitration must have the right of appeal from such decisions to the

Superior Court in conformance with the laws of the State of California. Venue for the arbitration must be Sacramento or any other location as agreed to by the parties.

SECTION VIII CONFIDENTIALITY

The parties mutually understand and agree that all documents and records provided to the DRB and marked "Confidential - for use by the DRB only," must be kept in confidence and used only for the purpose of resolution of subject disputes, and for assisting in development of DRB findings and recommendations; that such documents and records will not be utilized or revealed to others, except to officials of the parties who are authorized to act on the subject disputes, for any purposes, during the life of this AGREEMENT.

Upon termination of this AGREEMENT, said confidential documents and records, and all copies thereof, must be returned to the parties who furnished them to the DRB. However, the parties understand that such documents may be subsequently discoverable and admissible in court or arbitration proceedings unless a protective order has been obtained by the party seeking further confidentiality.

SECTION IX FEDERAL REVIEW AND REQUIREMENTS

On Federal-Aid contracts, the Federal Highway Administration has the right to review the work of the DRB in progress, except for private meetings or deliberations of the DRB that do not become part of the project records.

Other Federal requirements in this AGREEMENT must only apply to Federal-Aid contracts.

SECTION X CERTIFICATION OF THE DRB, DESIGN-BUILDER, AND DEPARTMENT

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

DRB MEMBER

By: _____

Title: _____

DRB MEMBER

By: _____

Title :_____

DRB CHAIRPERSON

By :_____

Title :_____

DESIGN-BUILDER

By: _____

Title: _____

CALIFORNIA DEPARTMENT
OF TRANSPORTATION

By: _____

Title: _____

EXHIBIT K – FORM OF PERFORMANCE BOND

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

PERFORMANCE BOND FOR DESIGN-BUILD

Contract No._____

(To Accompany a Design-Build Contract)

[Public Contract Code § 6806]

Bond No. _____

(REV. 2/2010)

KNOW ALL MEN BY THESE PRESENTS,

THAT WHEREAS, The State of California (State), acting by and through the Department of Transportation, has awarded to _____ (Principal), a design-build contract (Contract) for the design and construction work described as follows:

_____

_____

AND WHEREAS, The Principal is required by Section 6806 of the Public Contract Code to furnish a bond in connection with said Contract guaranteeing the faithful performance of its obligations under the Contract thereof:

NOW THEREFORE, We the undersigned Principal and _____ (Surety) are held and firmly bound unto the State, in the sum of_____ Dollars ($_____), to be paid to the said State or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing Contract , including any and all amendments, supplements, and alterations thereto made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the State, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.
2. This Bond shall cover the cost to complete the said design and construction work, but shall not cover any damages of the type specified to be covered by the Principal's errors and omissions insurance for the design elements of the work required pursuant to the Contract and Section 6806(b) of the Public Contract Code or by any professional liability insurance, whether or not such insurance is provided in an amount sufficient to cover such damages.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any

recession or attempted recession of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications. The Surety agrees that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

WITNESS WHEREOF, We have hereunto set our hands and seals on this _____day of _____, 20____.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:

_____
_____
_____
_____

_____
_____
_____

(Principal's name, title, and signature)

_____
_____
_____

Surety

By _____

Attorney-in-Fact

NOTE: Signatures of those executing for the Surety must be property acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of _____

County of _____ On this _____day of_____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____(SEAL)_____

Signature of Notary Public

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EXHIBIT L – FORM OF PAYMENT BOND

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

PAYMENT BOND FOR DESIGN-BUILD CONTRACTS

Contract No_____

(To Accompany a Design-Build Contract)

[Public Contract Code § 6806]

Bond No._____

(REV. 2/2010)

KNOW ALL MEN BY THESE PRESENTS,

THAT WHEREAS, The State of California (State), acting by and through the Department of Transportation, has awarded to_____ (Principal), a Design-Build Contract (Contract), which contract is specifically incorporated by reference herein, as a contract for the design and construction described as follows: _____

_____

AND WHEREAS, The Principal is required by Section 6806 of the Public Contract Code to furnish a payment bond (Bond) in connection with said Contract to secure the payment of claims of laborers, mechanics, material men, and other persons as provided by law;

NOW THEREFORE, We the undersigned _____ (Principal) and_____ _____ (Surety) are held and firmly bound unto the State, in the sum of _____ Dollars ($_____), to be paid to the said State or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if said Principal, or its heirs, executors, administrators successors or assigns or subcontractors, shall fail to pay any of the persons named in California Civil Code Section 3181, or anyone required to be paid by law, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and his subcontractors pursuant to Revenue and Taxation Code Section 18662 *et seq*. with respect to such work and labor, that the Surety herein will pay for the same in an amount not exceeding the sum specified in this Bond, otherwise the above obligation shall be null and void. In case suit is brought upon this Bond, the Surety will pay reasonable attorney's fee to be fixed by the court.
2. This Bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 or anyone required to be paid by law under said contract so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any recession or attempted recession of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall

in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. When this Bond had been furnished to comply with a statutory or other legal requirement in the location where the construction is to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not a common law bond.
5. This Bond shall cover all payment obligations for the said design-build work, including warranty payment obligations unless a separate warranty bond is provided by the Principal, but shall not cover any payment obligations covered by the Principal's errors and omissions insurance for the design elements of the work required pursuant to the contract or by Section 6806(b) of the Public Contract Code or by any professional liability insurance whether or not such insurance is provided in an amount sufficient to cover such damages.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____day of _____.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:

_____
_____
_____
_____

_____
_____
_____

(Principal's name, title, and signature)

_____
_____
_____

Surety

By _____

Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be property acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of _____

County of _____ On this _____day of_____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____(SEAL)_____

Signature of Notary Public

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EXHIBIT M – FORM OF WARRANTY BOND

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

WARRANTY BOND FOR DESIGN-BUILD

Contract No._____

(To Accompany a Design-Build Contract)

[Public Contract Code § 6800]

Bond No. _____

(REV. 2/2010)

KNOW ALL MEN BY THESE PRESENTS,

THAT WHEREAS, The State of California (State), acting by and through the Department of Transportation, has awarded to _____ (Principal), a design-build contract (Contract) for the design and construction work described as follows:

_____

_____

NOW THEREFORE, We the undersigned Principal and _____ (Surety) are held and firmly bound unto the State, in the sum of_____ Dollars ($_____), an amount equal to four percent of the Contract Price during the first two years following Substantial Completion and shall be in the sum of _____ Dollars ($_____), an amount equal to two percent of the Contract Price during the third year following Substantial Completion to be paid to the said State or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH:

1. That if the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall faithfully carry out an perform the said guarantee, and shall, on due notice, repair and make good at its own expense, or shall pay over, make good and reimburse to the said State all loss and damage which said State may sustain by reason of failure or default of the above bound Principal so to do, and shall indemnify and save harmless the State, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.

WITNESS WHEREOF, We have hereunto set our hands and seals on this _____day of _____, 20____.

NOTE: Signatures of those executing for the Surety must be property acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of _____

County of _____ On this _____day of_____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s)

whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____day of _____.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:

_____
_____
_____
_____

_____
_____
_____

(Principal's name, title, and signature)

_____
_____
_____

Surety

By _____

Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be property acknowledged, and a Power of Attorney attached.

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CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of _____

County of _____ On this _____day of_____ in the year of _____ before me, a notary public in and for the county and state aforesaid, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

_____(SEAL)_____

Signature of Notary Public

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