



**FINAL REQUEST FOR PROPOSALS  
for The New I-64 Design-Build Project**

**BOOK 1 — DESIGN-BUILD  
CONTRACT**

Project Number J6I0978  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017





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## **EXHIBITS**

- A Acronyms and Definitions
- B Completion Deadlines
- C Federal Requirements
- D Disadvantaged Business Enterprise (DBE) Program
- E Key Personnel
- F Performance Bond
- G Payment Bond
- H Settlement of Claims (Form C-242)
- I Letter of Vested Interest
- J Equal or Better Change Proposal Form
- K VECP Sample Calculation
- L Cost Analysis for Request for Change Order
- M Dispute Resolution Board Agreement



This Design-Build Contract is entered into as of \_\_\_\_\_, 2006, by and between the Missouri Highways and Transportation Commission (hereinafter, "Commission") and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter, "Contractor"), with reference to the definitions contained in Exhibit A hereto and the following facts:

## **RECITALS**

- A. Interstate 64 (I-64) is an east-west highway centrally located in the St. Louis metropolitan area. I-64 extends 945 miles (1520 kilometers) from the Daniel Boone Bridge over the Missouri River between St. Charles County and St. Louis County to Portsmouth, Virginia, at I-264, passing through the cities of St. Louis, MO; Louisville, KY; Lexington, KY; Huntington, WV; Charleston, WV; Richmond, VA; and Norfolk, VA. Interstate connections in the St. Louis region are provided at I-270, I-170, I-70, I-55, I-44 and I-255. The New I-64 Project will reconstruct I-64 from west of Spode Road in St. Louis County to west of Sarah Street in the city of St. Louis and I-170 from south of Brentwood Boulevard to Eager Road in accordance with the commitments in the Record of Decision and Final Environmental Impact Statement/Section 4(f) Evaluation.
- B. The reconstruction includes actions to replace or rehabilitate deteriorated pavement; replace or rehabilitate structurally deficient and functionally obsolete bridges; improve traffic operations, geometrics, and safety; and to add mainline capacity between Spode Road and I-170. Major improvements will be made to interchanges along I-64 and its connections to I-170. The primary purpose of this project is to replace the aging infrastructure and relieve traffic congestion of I-64.
- C. A Final Environmental Impact Statement/Section 4(f) Evaluation (FEIS) was issued by FHWA on March 29, 2005, and a Record of Decision (ROD) was issued by FHWA on July 18, 2005. The final RFP encompasses environmental commitments and mitigation measures set forth in the FEIS.
- D. The parties intend for the Contract to be a lump-sum design/build contract obligating the Contractor 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 the Commission to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting the Contractor's ability to make claims for an increase to the Contract Price or an extension of the Completion Deadlines. The Contractor 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.
- E. If the Contractor fails to complete the Project within the time limitations set forth in the Contract Documents, then the Commission will suffer substantial losses and damages. The Contract Documents therefore provide that the Contractor shall pay the Commission substantial Liquidated Damages if such completion is delayed.
- F. The Commission has provided Informational Documents to the Contractor. The



Contractor has no right to rely on the Informational Documents. The Commission and the Contractor both intend for the Contractor to assume full responsibility and liability with respect to the design of the Project, and the Commission and the Contractor both intend for the Contractor to indemnify and hold harmless the Commission and others with respect to any defects in the Project.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor by the Commission, 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 shall be as set forth below:

1. Book 1, as executed by the Commission and the Contractor, including all exhibits (Design-Build Contract).
2. Book 2, including all Appendices and Exhibits (Performance Requirements).
3. Book 3 Applicable Standards, including Additional Applicable Standards proposed by the Contractor and accepted by the Commission. The Applicable Standards, including Additional Applicable Standards are the final Applicable Standards included as Book 3 after final Contract negotiations.
4. Book 4 Contract Drawings, Data, and Reports.
5. The Proposal Documents, to the extent that they meet or exceed the requirements of the other Contract Documents. In other words, if the Proposal Documents include 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 contain terms which are more advantageous to the



Commission than the requirements of the other Contract Documents, the Contractor'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 within a Book or a reference contained within a Book of the Contract Documents, the Commission shall have the right to determine, in its sole discretion, which requirement(s) apply. The Contractor shall request the Commission's determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

## **1.4 Informational Documents (Book 5)**

The documents included in Book 5 – Informational Documents are for information only and are not Contract Documents to be relied upon by the Contractor. Cross-references in the Contract Documents to the Informational Documents do not incorporate the Informational Documents or portions of the Informational Documents as Contract Documents or requirements.

## **1.5 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 as of the date of execution of the Contract;
- 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. The Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the Contract Documents and to bring to the Commission's attention any conflicts or ambiguities contained therein. The Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the



Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person that prepared them, and instead other rules of interpretation shall be used. The Commission'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.

## **1.6 Referenced Standards, Codes, or Criteria**

Except as otherwise specified in the Contract Documents, or otherwise directed by the Commission, references to standards, codes, or criteria, or to the latest version of standards, codes, or criteria, shall mean the latest version in effect on the Proposal Due Date, except that the applicable version date of the Additional Applicable Standards shall be the date found acceptable by the Commission.

## **1.7 Omission of Details; Clarification by the Commission**

The Contractor 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, the Contractor shall apply to the Commission in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the Commission of all Errors that it may discover in the Contract Documents, and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby.

## **1.8 Computation of Periods**

References to “days” or “Days” contained in the Contract Documents shall mean Calendar Days unless specified otherwise. If the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding day that is a Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 5.3 and any other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

## **1.9 Standard for Approvals**

In all cases where Approvals, acceptances or consents are required to be provided by the Commission or approvals, acceptances or consents are required to be provided by the Contractor hereunder, such Approvals, acceptances, approvals 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 hereunder.

## **1.10 Federal Requirements**

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.

## **1.11 Completion Deadlines**

The Instructions to Proposers (ITP) permits the Contractor to propose Lane Closure Duration Deadlines, Segment Completion Deadlines, Nighttime Lane Closure Deadlines and the Project Completion Deadline as described therein on Exhibit B. All references in the Contract Documents to Completion Deadlines and Project Completion Deadline shall be deemed to mean all Lane Closure Duration Deadlines, Segment Completion Deadlines, Nighttime Lane Closure Deadlines and Project Completion Deadline included in the Proposal Documents.

# **2 OBLIGATIONS OF CONTRACTOR**

## **2.1 Performance Requirements**

### **2.1.1 Performance of Work**

All materials, services and efforts necessary to achieve Final Acceptance on or before the Final Acceptance Deadline as shown on Exhibit B shall be the Contractor'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**

The Contractor shall furnish the design of the Project in accordance with all professional engineering principles and generally accepted standards of the industry (but at least meeting the terms, conditions and requirements of the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents; and shall construct the Project as designed, in a good and workmanlike manner, free from defects.

### **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, the Contractor shall perform as directed by the Commission in a diligent manner and without delay, shall abide by



the Commission'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 Contractor**

The Contractor, in addition to performing all other requirements of the Contract Documents, shall:

1. 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, including the Contract Schedule, all Legal Requirements, all Governmental Approvals, the Quality Manual, the Maintenance of Traffic Plan, the Public Information Plan, Applicable Standards (including Additional Applicable Standards), and all other applicable safety, environmental, licensing and other requirements, taking into account the Right of Way (ROW) Drawings and other constraints affecting the Project, so as to achieve Segment Completions and Project Completion by the applicable Completion Deadlines; and (ii) otherwise to do everything required by and in accordance with the Contract Documents.
2. At all times provide a Contractor Project Manager, Approved by the Commission, who: (i) will have full responsibility for the prosecution of the Work; (ii) will act as agent and be a single point of contact in all matters on behalf of the Contractor; (iii) will be present (or his Approved designee will be present) at the Site at all times that Work is performed; and (iv) will have authority to bind the Contractor on all matters relating to the Project.
3. Obtain all Governmental Approvals (other than the Environmental Approvals and certain New Environmental Approvals caused by actions of the Commission as provided in Section 6.3.2).
4. 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.
5. Provide such assistance as is reasonably requested by the Commission in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require the Contractor to provide legal services. If the amount of time required to provide assistance becomes unreasonable, the Commission may request such assistance at its cost.



6. Comply with all requirements of all applicable Legal Requirements, including:  
(i) the Environmental Laws, including all environmental mitigation and monitoring measures required for the Project, including those set forth in Book 2, Section 5, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Substances;  
(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.
7. Comply with all Applicable Standards, including Additional Applicable Standards accepted by the Commission, as revised to ensure their enforceability.
8. Cooperate with the Commission and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work.
9. Payments to Third Parties required by the Contract Documents, if any, including but not limited to, payments to Utility Owners.
10. Supervise and be responsible to the Commission for acts and omissions of all Contractor-Related Entities, as though the Contractor directly employed all such Persons.
11. Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating or redeploying the Contractor's forces to other work, as appropriate.
12. 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**

The Contractor represents, warrants, and covenants for the benefit of the Commission as follows:

### **2.3.1 Maintenance of Professional Qualifications**

The Contractor 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**

The Contractor has evaluated the constraints affecting delivery of the Project, including the ROW Drawings and 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**

The Contractor 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 Segment Completion(s) and Project Completion by the applicable Completion Deadlines, for the Contract Price) is feasible and practicable.

### **2.3.4 Review of Site Information**

The Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed the boring logs provided by the Commission in Book 4, inspected and examined the Site and surrounding locations, and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project, to the extent the Contractor deemed necessary or advisable for submittal of a Proposal. As a result of such review, inspection, examination and other activities, the Contractor is familiar with and accepts the physical requirements of the Work. The Contractor acknowledges and agrees that changes in conditions at the Site may occur after the Proposal Due Date, and that the Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under Sections 12 and 13. Before commencing any Work on a particular aspect of the Project, the Contractor shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work, which may have an impact on such Work. The Contractor 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**

The Contractor has no reason to believe that any Governmental Approval required to be obtained by the Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. If any Governmental Approvals required to be obtained by the Contractor must formally be issued in the name of the Commission, the Contractor shall undertake all efforts to obtain such approvals, subject to the Commission's reasonable cooperation with the Contractor, including execution and delivery of appropriate applications and other documentation in a form approved by the Commission. The Contractor shall assist the Commission in obtaining any Governmental Approvals, which the Commission may be obligated to obtain, including providing information requested by the Commission and participating in meetings regarding such approvals.

### **2.3.6 Progression of Work**

The Contractor shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Segment Completions, Project Completions and Final Acceptance by the applicable Completion Deadlines and in accordance with



the Contract Schedules, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts, overtime operations, Sundays and Holidays) as may be necessary to achieve such goals, all at the Contractor's own expense, except as otherwise specifically provided in Sections 12 and 13.

### **2.3.7 Employee Performance Requirements**

All employees shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If the Commission determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, then, at the written request of the Commission, the Contractor or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written Approval of the Commission. If the Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the Commission may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

### **2.3.8 Design and Engineering Personnel**

All design and engineering Work furnished by the Contractor 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.

### **2.3.9 Organization**

The Contractor, \_\_\_\_\_, is a \_\_\_\_\_, duly organized and validly existing under the laws of the State, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Contractor and its \_\_\_\_\_ members are duly qualified to do business, and are 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.

### **2.3.10 Authorization**

The execution, delivery, and performance of the Contract have been duly authorized by all necessary actions of the Contractor, and, if applicable, the Contractor's members, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other



material agreement or instrument to which any such Person is a party or by which its properties and assets may be bound or affected.

### **2.3.11 Legal, Valid, and Binding Obligation**

The Contract constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor.

### **2.3.12 False or Fraudulent Statements and Claims**

The Contractor 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, the Contractor 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, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

## **3 INFORMATION SUPPLIED TO CONTRACTOR; RESPONSIBILITY FOR DESIGN; DISCLAIMER**

### **3.1 Information Supplied**

The Commission has made available to the Contractor information, which is described in the Contract Documents and certain Informational Documents regarding the Project, and has allowed the Contractor access to the Site for purposes of inspection and testing.

### **3.2 Responsibility for Design**

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

1. The Contractor is not entitled to rely on and has not relied on: (i) the Informational Documents; or (ii) any other documents or information provided by the Commission, unless specifically permitted in the Contract Documents.
2. The Contractor's Warranties and indemnities hereunder cover any Errors in the Project even though they may be related to Errors in the Informational Documents.



### **3.3 Disclaimer**

#### **3.3.1 No Liability Regarding Informational Documents**

The Contractor understands and agrees that the Commission shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Contractor-Related Entity by reason of any use of any information contained in the Informational Documents or any action or forbearance in reliance thereon. The Contractor further acknowledges and agrees that: (i) if and to the extent the Contractor or anyone on the Contractor's behalf uses any of said information in any way, such use is made on the basis that the Contractor, not the Commission, has approved and is responsible for said information; and (ii) the Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to change, recreate, verify or supplement said information, and that any use of said information is entirely at the Contractor's own risk and at its own discretion.

#### **3.3.2 No Representation or Warranty Regarding Informational Documents**

THE COMMISSION DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE INFORMATIONAL DOCUMENTS IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION CONFORMS TO THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

### **3.4 Professional Licensing Laws**

The Commission does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by execution of the Contract, the Contractor acknowledges that the Commission has no such intent. It is the intent of the parties that the Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to the Contractor's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Contractor 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.

## **4 TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; SCHEDULING**

### **4.1 Time of Essence**

Time is of the essence of the Contract.



## **4.2 Notices to Proceed**

### **4.2.1 Issuance of Notice-to-Proceed 1**

The Contractor shall begin performance of certain limited Work as directed and described in Notice-to-Proceed 1 (NTP1) issued by the Commission. NTP1 Work that may be performed includes all Work that does not impact a travel lane or shoulder. The amount to be paid to the Contractor for Work performed pursuant to NTP1 shall not exceed the NTP1 Payment Cap, except that the Contractor shall also be entitled to receive reimbursement of insurance premiums and bond premiums in accordance with Section 9, and the first mobilization payment in accordance with Section 11.4. If the Commission issues NTP1 more than 40 days after Contract execution through no fault, negligence, act or failure to act of Contractor, Contractor shall be entitled to an extension of the Completion Deadlines to the extent of the delay between 40 days after Contract execution and the date the Commission issues NTP1.

### **4.2.2 Issuance of Notice-to-Proceed 2**

The Contractor shall begin performance of the remainder of the Work as directed and described in Notice-to-Proceed 2 (NTP2) issued by the Commission. The Commission shall issue NTP2 upon Approval of the Original Baseline Schedule in accordance with Book 2, Section 2, and Approval of the Quality Manual in accordance with Book 2, Section 3.

## **4.3 Completion Deadlines**

### **4.3.1 Lane Closure Duration Deadlines**

The Contractor shall achieve each Lane Closure Duration Deadline within the duration set forth on Exhibit B. Said durations for Lane Closure Duration Deadlines, as they may be extended hereunder, are referred to respectively as the “Lane Closure Duration Deadlines.”

### **4.3.2 Segment Completion Deadlines**

The Contractor shall achieve each Segment Completion Deadline within the deadline set forth on Exhibit B. Said deadlines for Segment Completion, as they may be extended hereunder, are referred to as the “Segment Completion Deadlines.”

### **4.3.3 Project Completion Deadline**

The Contractor shall achieve Project Completion within the deadline set forth on Exhibit B. Said deadline for Project Completion, as it may be extended hereunder, is referred to as the “Project Completion Deadline.”

### **4.3.4 Final Acceptance Deadline**

The Contractor shall achieve Final Acceptance within 90 days after Project Completion Deadline. Said deadline for Final Acceptance, as it may be extended



hereunder, is referred to as the “Final Acceptance Deadline.”

#### **4.3.5 Nighttime Lane Closure Deadlines**

The Contractor shall achieve the Nighttime Lane Closure Deadlines, including the closure and opening time frames associated with the lane closures set forth in Exhibit B, unless the Contractor has obtained a written variance from the Commission prior to the Nighttime Lane Closure. Said Deadlines are referred to as the “Nighttime Lane Closure Deadlines.”

#### **4.3.6 No Time Extensions**

Except as otherwise specifically provided in Section 13, the Commission shall have no obligation to extend any Completion Deadline and the Contractor shall not be relieved of its obligation to comply with the Contract Schedule and the applicable Completion Deadlines for any reason.

#### **4.4 Contract Schedules**

The Contractor shall deliver the Work in accordance with the Contract Schedules, as described in Book 2, Section 2.1. Such schedules shall also be the basis for determining the amount of monthly progress payments to be made to the Contractor.

#### **4.5 Recovery Schedule**

The Contractor shall submit a Recovery Schedule in accordance with Book 2, Section 2.1.5. All costs incurred by Contractor in preparing and achieving the Recovery Schedule shall be borne by Contractor and shall not result in a change to the Contract Price, except to the extent that a change in the Contract Price is permitted in accordance with Section 12 and 13.

If a Recovery Schedule would be required in order to meet a Completion Deadline due to an event which entitles the Contractor to a Change Order as described in Section 12, the Commission shall have the right in its sole discretion to decide whether to allow a time extension (with no extended overhead or other delay or disruption damages payable except as provided in Section 13.7.2 or to require implementation of the Recovery Schedule without such time extension. In such event Contractor shall submit to the Commission at least two alternative Change Order forms, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other of which shall provide for an extension of the Completion Deadline without any increase in the Contract Price except as provided in Section 12. If the Commission elects to implement the Recovery Schedule in lieu of a time extension, the Commission shall issue a Change Order increasing the Contract Price to account for additional Acceleration Costs, if any. If it is not feasible to recover to the original Completion Deadline or if Contractor believes that the costs associated with such a recovery are prohibitive, then the Contractor shall recommend a date to be shown in the alternative Change Order form.



In the event that the Contractor fails to provide an Approved Recovery Schedule within 30 days from the Contractor's receipt of a notice to do so, the Contractor shall have no right to receive progress payments until such time as Contractor has prepared and the Commission has Approved such Recovery Schedule.

## **4.6 Prerequisites for Start of Construction**

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

1. The Commission has issued NTP1 and NTP2.
2. All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed.
3. All insurance policies and bonds required to be delivered to the Commission hereunder have been submitted to the Commission as applicable and remain in full force and effect.
4. All necessary rights of access for such portion of the Project have been obtained.
5. Any additional conditions for construction set forth in the Contract Documents.

## **5 CONTROL OF WORK**

### **5.1 Control and Coordination of Work**

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

### **5.2 Safety**

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



## **5.3 Process to be Followed for Discovery of Certain Site Conditions**

### **5.3.1 Notification to the Commission**

If the Contractor becomes aware of: (i) any on-Site material that the Contractor believes may contain Hazardous Substances that is required to be removed or treated (ii) any human remains, artifacts, and/or other items of historical, archaeological or geological significance within the Right of Way; or (iii) any Differing Site Conditions, as a condition precedent to the Contractor's right to a Change Order, the Contractor shall immediately notify the Commission thereof by telephone or in person, to be followed by written notification as soon as practicable. The Contractor shall immediately stop Work and secure the area. Operations within 50 feet (15 m) of the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the Commission. In such event, the Commission will view the location within two Business Days of receipt of notification, and will advise the Contractor at that time whether to resume Work or whether further investigation is required. Any delay resulting from the Commission viewing the location up to two Business Days shall not be considered a Commission-caused delay.

### **5.3.2 Further Investigation**

The Contractor shall promptly conduct such further investigations, as the Commission deems appropriate. Within five Business Days after its initial notice to the Commission, the Contractor shall advise the Commission of any action recommended to be taken regarding the situation. If Hazardous Substances are involved, the notice shall describe the type of Remediation Work, if any, which the Contractor proposes to undertake with respect thereto. If human remains, artifacts or paleontological, historical, geological, cultural, or biological resources are present, the notice shall advise the Commission what course of action the Contractor intends to take with respect thereto and whether the location must be fenced off or whether Work can resume. The Commission then will either Approve, or require modification of, the Contractor's proposed actions.

### **5.3.3 Recommence Work**

The Commission shall have the right to require the Contractor to recommence Work in the area at any time, even though an investigation may still be ongoing (so long as such Work is not in violation of any Legal Requirements or Governmental Approvals). The Contractor shall promptly recommence Work in the area upon receipt of notification from the Commission to do so. On recommencing Work, the Contractor shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such Work, consistent with the Commission's determination or preliminary determination regarding the nature of the material, resources, species or condition.



## **5.4 Obligation to Minimize Impacts**

The Contractor shall ensure that all of its Activities and the Activities of all Contractor-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

### **5.4.1 Environmental Protection**

In addition to the requirements set forth in Book 2, Section 5, the Contractor shall comply with all federal, state and local laws and regulations controlling pollution of the environment. Pollution of streams, lakes, ponds and reservoirs with fuels, oils, bitumens, chemicals or other harmful material and pollution of the atmosphere from particulate and gaseous matter shall be avoided.

Fording of streams and fill for temporary Work will not be permitted unless a plan for such operation is authorized by the Corps of Engineers, and complies with the Project NPDES permit obtained by the Contractor and results in minimum siltation to the stream. Temporary stream crossings shall not be constructed unless specifically designated as a condition of the Corps of Engineers Section 404 permit or a permit is obtained by the Contractor, and the temporary stream crossing is in accordance with Book 2, Section 5 and in compliance with the Contract Documents requirements including the Project NPDES permit obtained by the Contractor.

When Work areas or pits are located in or adjacent to streams, the areas shall be separated from the main stream by a dike or barrier to keep sediment from entering the stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

Disposal of Portland cement concrete residue and wash water, water from aggregate washing or other operations resulting in sediment shall be treated by filtration, settling basins or other means sufficient to reduce the sediment concentration to applicable limits established by the Missouri Department of Natural Resources (MoDNR).

## **5.5 Quality Management**

### **5.5.1 Contractor Quality Management**

The Contractor shall perform the quality management necessary for the Contractor to comply with its obligations under the Contract Documents.

### **5.5.2 Oversight, Audit, Inspection, and Testing by the Commission and Others**

All materials and each part or detail of the Work shall also be subject to oversight, audit and testing by the Commission and other Persons designated by the Commission. When any third party, including a Utility Owner, railroad company, unit of government, or political subdivision, is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, audit, inspect and



test the Work. Such oversight, audit, inspection and/or testing does not make such Person a party to the Contract nor will it change the rights of the parties hereto. The Contractor hereby consents to such oversight, inspection and testing by the Commission and other Persons. Upon request from the Commission, the Contractor 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, the Contractor shall remove or uncover such portions of the finished construction Work as directed by the Commission. After examination by the Commission, the Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then the cost of uncovering, removing and restoring the Work or making good the parts removed and recovery of any delay to the Critical Path occasioned thereby shall be at the Contractor's expense. 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 the Commission's responsibility. Refer to Section 5.7 for provisions regarding payments owing by the Contractor to the Commission, if the Commission agrees (in its sole discretion) to accept certain Nonconforming Work.

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

### **5.6.1 Oversight and Acceptance**

The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, acceptances, Approvals, or approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, audits, reviews, tests, inspections, acceptances, Approvals, and approvals by any Person do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. The Commission may reject or require the Contractor 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, approvals or Approvals were conducted by any Person.

### **5.6.2 No Estoppel**

The Commission shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that the work or materials do



not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, the Commission shall not be precluded or estopped from recovering from the Contractor and its Surety(ies) such damages as the Commission may sustain by reason of the Contractor'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 the Commission's right, in its sole discretion, to accept or reject Nonconforming Work, the Contractor shall remove and replace rejected Nonconforming Work so as to conform with the requirements of the Contract Documents, at the Contractor's expense and without any time extension; and the Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that the Commission may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If the Contractor fails to correct any Nonconforming Work within five days of receipt of notice from the Commission requesting correction (or, for Nonconforming Work which cannot be corrected within five days, if the Contractor fails to provide to the Commission a schedule for correcting any such Nonconforming Work Approved by the Commission 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 the Commission 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 the Contractor and/or obtain reimbursement from the Contractor for such cost.

### **5.7.2 Nonconforming Work Pay Adjustment**

The Commission 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 such event, the Commission shall be entitled to reimbursement of a portion of the Contract Price in an amount determined by the Commission. In certain events, however, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, but not limited to, the Contractor's failure to perform required items to be paid in equal monthly amounts indicated in the Work Breakdown Structure (WBS) in Book 4 during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at the Commission's election: (i) the amount allocated to such Work in the Revised Baseline Schedule; (ii) the Contractor's cost savings associated with its failure to perform the Work in accordance with the Contract requirements; or (iii) the amount deemed appropriate by the Commission to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work. In certain events, the Commission shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents. Such reimbursement shall be deducted from future payments or, if future payments are



insufficient to cover the amount owing, shall be payable to the Commission within 30 days after Contractor's receipt of an invoice therefore.

## **6 ACCESS TO SITE, UTILITY RELOCATIONS, AND ENVIRONMENTAL COMPLIANCE**

### **6.1 Access to Right of Way Identified on Right of Way Drawings**

#### **6.1.1 Obligation to Provide Access to Right of Way**

The Commission has identified certain ROW to be used for permanent improvements included in the Project (the "ROW Drawings"), which are depicted in Book 4. The Commission will provide access to the ROW identified on the ROW Drawings in accordance with the ROW Schedule in Book 4.

#### **6.1.2 Right of Way Access Requirements**

Concurrently with review of the Original Baseline Schedule, the Contractor and the Commission shall discuss the access requirements for the ROW identified on the ROW Drawings associated with the scheduled Activities. The Contractor and the Commission may agree to revise the ROW Schedule set forth in Book 4 in writing without a Change Order. The Contractor shall be provided access to those parcels identified on the ROW Drawings in accordance with the ROW Schedule or as modified by the parties.

#### **6.1.3 Delay in Providing Access**

If the Commission at any time determines it will be unable to provide access to a particular parcel in accordance with the ROW Schedule, the Commission shall notify the Contractor regarding the revised projected date for delivery of access. The Contractor 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 6.1.4, to the extent that a delay to the Critical Path cannot be avoided due to not providing access to a parcel(s) in accordance with the ROW Schedule, the Contractor shall be entitled to additional compensation and/or time in accordance with Section 12.1

#### **6.1.4 Obligation to Provide Written Notice**

In addition to the requirements of Section 6.1.3, and as a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline related to the Commission's delivery of access to the parcels identified on the ROW Drawings, the Contractor shall provide the Commission written notice within three Business Days after receipt of a revised projected date if the lack of availability will result in an impact to the cost or schedule.



### **6.1.5 Access to Right of Way Not Identified on Right of Way Drawings**

The cost of obtaining any ROW not identified on the ROW Drawings associated with a Value Engineering Change Proposal (VECP) will be included in determining the Contract Price adjustment under Section 13.

The Contractor shall prepare all documents described in Book 2, Section 8 and shall deliver them to the Commission in sufficient time to allow review and Approval prior to the date the transfer is scheduled to occur.

The Contractor shall reimburse the Commission for any costs (including attorneys', accountants' and expert witness fees and costs) of acquiring any real property which is not the Commission's responsibility which the Contractor determines is necessary or advisable in order to complete the Project, including obtaining any Temporary Easements. The Commission may deduct such amounts from payments otherwise owing hereunder, or may invoice the Contractor. The Contractor shall reimburse the Commission for any such amounts paid by the Commission within a month after receipt of an invoice from the Commission therefore.

### **6.1.6 Failure to Have Necessary Rights of Access**

If the Contractor enters any property in connection with the Project without having all necessary rights of access, the Commission may, in its sole discretion, obtain consent from the landowner for the Contractor's access. The Contractor shall be responsible for all costs incurred by the Commission as a result thereof.

## **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 the Commission and the Contractor through the Change Order process, and supplements the requirements in Book 2, Section 7.. The Contractor shall be entitled to receive a Change Order associated with the Utility Work only as permitted by this Section 6.2 and Sections 12 and 13. At the Commission's election any Work Order will also function as a Change Order when a Work Order pursuant to a Master Utility Agreement (MUA) is completed and/or modified by the Commission to reflect such dual function. In that event the term "Change Order" shall include any such Work Order.

### **6.2.1 Changes in Utility Work**

Increase in Work: The Commission shall be responsible for additional costs, excluding Delay and Disruption Damages, of Relocations of underground Utilities located within the ROW to be Relocated by the Contractor which are not indicated with reasonable accuracy as described in Book 2, Section 7. The amount of any such Change Order shall be determined in accordance with Section 13.

No extension of any Completion Deadline will be allowed on account of such lacking or inaccurate information. Notwithstanding the foregoing, the Contractor shall be



responsible for the cost of Relocations of underground Utilities located within the ROW whether or not they are identified by the Commission with reasonable accuracy if any one or more of the following applies:

1. A surface inspection of the area would have shown the existence or the likelihood of existence of such Utility (or portion thereof) in the correct location and/or size, as applicable, by reason of above-ground facilities such as buildings, meters or junction boxes or identifying markers; or
2. Such Utility is a Service Line (or the portions of a Utility that are Service Lines); or
3. Any costs or delays associated with the performance of Incidental Utility Work by the Contractor.

Partial Inaccuracies: If only a portion of an existing underground Utility located within the ROW shown on the ROW Plans to be Relocated by the Contractor is not indicated at all in the information included in Book 4 or is not indicated with “reasonable accuracy” therein, then a Change Order shall be allowed only for the resulting increased costs of that portion of the Utility Work to be furnished or performed by the Contractor.

## 6.2.2 Change in Allocation of Responsibility Decreasing the Work

Any Utility Work initially included in the Contractor’s Work may be deleted from the Work pursuant to:

1. A Work Order providing for the Utility Owner to perform Utility Work otherwise assigned to the Contractor; or
2. Upon Approval or direction by the Commission, Utility Work may be removed from the Work by Change Order without or prior to execution of a Work Order.

The Commission shall be entitled to a reduction in the Contract Price to reflect any reduction in the Work pursuant to this Section 6.2.2. Any reduction in the scope of the Work pursuant to this Section 6.2.2 shall not be considered a Commission-Directed Change.

## 6.2.3 Betterments

Utility Betterments may be added to the Work pursuant to this Section and Book 2, Section 7.

Any Utility Owners may request the Commission to permit the Contractor to perform work relating to Betterments as a part of the Work, at the Utility Owner’s expense. If the Commission approves any such request, the Contractor will have the obligation to perform such work, with the right to receive additional compensation and, if applicable, an extension of any affected Completion Deadline as provided in Section 6.2.4. 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.

If a Utility Owner requests that the Contractor design and/or construct a Betterment, the Contractor shall use its best efforts to negotiate a lump sum price for such work with the Utility Owner, in good faith. If the Contractor and the Utility Owner are unable to agree on a lump sum price, then the Commission shall direct the Contractor to perform such work on a Force Account basis pursuant to Section 13.5, provided that the conditions set forth in this Section are satisfied.

The amount of any Change Order issued for a Betterment shall be a direct pass-through of the lump sum price negotiated by the Contractor and the Utility Owner as set forth in the applicable Work Order (with no additional mark-ups) or, if no such price has been negotiated, an amount determined in accordance with Section 13. The Contractor shall not request or accept any payment directly from the Utility Owner for any Betterment added to the Work.

The Commission will Approve the addition of a Betterment to the scope of the Work only if: (i) the Utility Owner has agreed to the addition of such Betterment to the Work; (ii) such Betterment is compatible with the Project; (iii) the Utility Owner has agreed to reimburse the Commission for all the costs thereof; (iv) the Utility Owner has agreed as to the method (negotiated lump sum amount, or Force Account cost basis) of pricing such Work; and (v) it is feasible to separate the cost/pricing of the Betterment work from that for any related Utility Work being furnished or performed by the Contractor. The Contractor shall provide the Commission with such information, analyses and certificates as may be requested by the Commission in connection with its Approval.

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 the Contractor's Work with regard to such Betterment is materially reduced, then the Commission 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.

Any change in the scope of the Work pursuant to this Section 6.2.3 shall not be considered a Commission-Directed Change.

#### **6.2.4 Utility Delays**

The Contractor shall bear 100 percent of the risk of Utility Delays, up to an aggregate amount of 15 days of Utility Delays per Utility Owner (regardless of how many Utilities of such Utility Owner are causing delay). Subject to this Section and the requirements of Section 13 if aggregate Utility Delays caused by a particular Utility Owner exceed 15 days, then any Completion Deadline(s) affected thereby shall be extended by one day for every day of Utility Delay caused by such Utility Owner in excess of the initial aggregate 15 days of Utility Delay caused by such Utility Owner. The Contractor shall not be entitled to any extension of any Completion Deadline on account of any Utility Delay except as provided in this Section.



The extension of a Completion Deadline(s) and the 15-day cap on the Contractor's risk shall not apply unless all of the following conditions are satisfied:

1. The Contractor has provided evidence reasonably satisfactory to the Commission that: (i) the Contractor has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays; and (ii) the Contractor has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.
2. If the Contractor is responsible for the Relocation, the Contractor has provided a reasonable Relocation plan to the Utility Owner and the Contractor 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 Relocations.
3. No circumstances exist which have delayed or are delaying the affected Relocation other than those that fit within the definition of a Utility Delay.

To the extent one or more Utility Delays is or are concurrent with another type of delay to the Critical Path, then such Utility Delay(s) shall not be considered in calculating any 15-day cap on the Contractor's risk.

If 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 15-day cap on the Contractor's risk. 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 15-day cap on the Contractor's risk for such Utility Owner.

The Contractor shall be entitled to delay and/or disruption damages for Utility Delays only in the circumstances described in, and to the extent provided, in Section 13.

### **6.2.5 Certain Obligations of Contractor; Utility-Related Right of Way Costs**

Multiple Relocations of the Same Utility: The Contractor shall endeavor to avoid multiple relocations of the same Utility, whether by the Utility Owner or by the Contractor. After a Utility has been relocated once in order to accommodate the Project based on the Contractor's design, the Contractor shall be responsible for all costs incurred by either the Contractor or the Utility Owner in order to subsequently relocate such Utility to accommodate the Project if the subsequent relocation is not caused by a Commission-Directed Change or by the Utility Owner. If the Utility Owner performs such subsequent Relocation at the Commission's expense, then the Contractor shall reimburse the Commission for all amounts paid by the Commission to such Utility Owner in reimbursement for such subsequent relocation if the subsequent relocation is not caused by a Commission-Directed Change or by the



Utility Owner. If the Contractor performs such subsequent Relocation, then the Contractor shall not receive any extension of any Completion Deadline or increase in the Contract Price on account of the performance of such subsequent Relocation if the subsequent relocation is not caused by a Commission-Directed Change or by the Utility Owner.

Minimizing Costs: In designing and constructing the Project, the Contractor shall take all reasonable steps to minimize costs to the Utility Owners and the Commission to the extent practicable.

Utility-Related Right of Way Costs: With respect to Utility Easements for which the Utility Owners are entitled to replacement or other compensation pursuant to the applicable Utility Agreement(s) and which are located within the ROW depicted on the ROW Drawings included in Book 4, whether or not such Utility Easements are themselves shown on such ROW Drawings originally included in Book 4, the Commission will be responsible for: (i) the cost of acquiring any necessary replacements therefore; and (ii) any other compensation which the Commission may be obligated to pay to the Utility Owners in compensation for relinquishing such Utility Easements. With respect to all other Utility Easements, the Contractor shall be responsible for, and shall reimburse the Commission within ten days after receiving an invoice therefore: (i) all costs incurred by the Commission of acquiring any necessary replacements therefore; and (ii) any other compensation which the Commission may be obligated to pay to the Utility Owners in compensation for relinquishing such Utility Easements, except if the costs acquired were caused by actions of the Commission.

## **6.2.6 Additional Restrictions on Change Orders**

For Relocations, the Contractor shall bear the burden of proving that the Relocation cannot reasonably be avoided.

The Contractor shall not be entitled to an increase in the Contract Price for any costs of coordinating with Utility Owners or for assisting the Commission in coordinating with Utility Owners.

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

## **6.2.7 Special Provisions Regarding Change Orders**

At the Commission's election in its sole discretion, the Work Order pertaining to the Relocation of any Utility may also function as a Change Order.

If the Commission elects to have a Work Order also function as a Change Order, the Commission shall complete and/or modify the Work Order form attached to the applicable MUA to reflect such dual function, including:



1. A statement to the effect that the Work Order will also function as a Change Order.
2. The addition of a specific Change Order number.
3. Such other provisions, if any, that the Commission determines, in its sole discretion, are necessary.

If there is a conflict between the terms of any Work Order and the requirements in Section 13 or Section 7, Book 2, the requirements of Section 13 or Section 7, Book 2, whichever is applicable, shall prevail as between the Commission and the Contractor.

If the Commission elects to have a Work Order also function as a Change Order, such Work Order shall be subject to all requirements set forth in this Section 6.2 and in Section 13 that would be applicable to a separate Change Order addressing the same subject matter with the following exceptions:

1. The schedules and deadlines for the Contractor's submittal of Work Orders and the Commission's responses to same which are set forth in Book 2, Section 7 shall apply to such Work Orders, instead of the schedules and deadlines set forth in Section 13.
2. Application of the Section 13 requirements shall not require the Contractor to duplicate work otherwise required to be performed in preparing a Work Order pursuant to Book 2, Section 7.

## **6.3 Environmental Compliance**

In performance of the Work, the Contractor shall comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued thereunder, whether obtained by the Commission or the Contractor. The Contractor 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**

The Contractor 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 mitigation requirements for the Final Environmental Impact Statement and the Record of Decision are set forth in Book 2, Section 5. The Contract Price includes compensation for the Contractor's performance of all such mitigation measures, for performance of all mitigation measures arising from New Environmental Approvals which Section 6.3.3 designates as the Contractor's responsibility, for mitigation measures required by any Governmental Approvals, and for all other Activities to be performed by the Contractor as described in Book 2, Section 5.



### **6.3.2 New Environmental Approvals to be Obtained by the Commission**

The Commission will be responsible for obtaining any New Environmental Approvals necessitated by a time and money change order described in Section 12.1.. The Contractor shall provide support services to the Commission with respect to obtaining any such New Environmental Approval.

### **6.3.3 New Environmental Approvals to be Obtained by Contractor**

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 6.3.2, the Contractor shall be fully responsible for obtaining the New Environmental Approval and any other environmental approvals that may be necessary, and for all resulting requirements, as well as for any litigation arising in connection therewith. The Commission will reasonably assist the Contractor in obtaining any New Environmental Approvals. If the New Environmental Approval is associated with a VECP or other Contractor requested change order, the costs of obtaining and complying with the terms of the New Environmental Approval shall be considered in determining the Contract Price adjustment under Section 13.

## **7 EQUAL EMPLOYMENT OPPORTUNITY; SUB-CONTRACTS; LABOR**

### **7.1 Equal Employment Opportunity**

#### **7.1.1 Equal Employment Opportunity Policy**

The Contractor confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or disability; and that it maintains no employee facilities segregated on the basis of race, color, religion or national origin. The Contractor shall comply with the Commission's Equal Employment Opportunity Policy and the requirements set forth in the Materials and Labor Used, Form FHWA-47 Special Provision, On-the Job Training Special Provision, and FHWA Form 1273, all in Exhibit C, Federal Requirements.

#### **7.1.2 Non-Discrimination**

The Contractor shall comply with all applicable Legal Requirements that enumerate unlawful employment practices including discrimination because of race, religion, color, gender, age, disability, or national origin, and that define actions required for affirmative action and minority/disadvantaged business programs. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age or disability. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, national origin, religion, gender, age or disability. Such action shall include the following: employment,



upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

### **7.1.3 Inclusion in Subcontracts**

The Contractor shall include Sections 7.1.1 and 7.1.2 in all contracts and Subcontracts over \$10,000 (including purchase orders) on the Project, so that such provisions will be binding upon each Subcontractor working on the Project.

### **7.1.4 Federal Workforce Requirements**

The Federal standards of 14.7% minorities and 6.9% women shall be the Contract goal for this Project as determined by the U. S. Department of Labor.

### **7.1.5 Socially-Economically Disadvantaged Workforce Utilization**

A Commission-set goal of 20% of the workers for this Project shall be completed by the Contractor using Approved On-the Job Training (OJT) individuals who are minorities, women and economically disadvantaged individuals.

An incentive of \$10 per hour will be added for up to an additional 5% (over and above the 20% goal) for use of OJT individuals who are minorities, women and economically disadvantaged individuals, over and above the 20% in terms of representation and utilization of workers from pre-apprentice and approved apprentice programs. An additional incentive of \$10 per hour will be added for up to an additional 5% (over and above the 20% goal) to contractors for professional services individuals who are minorities, women and economically disadvantaged individuals. The maximum amount available for the additional trainees is \$1.25 million.

The Contractor shall submit its Final Workforce Development Plan to the Commission within 60 days after NTP2 for Approval.

The following chart outlines the potential opportunity for minorities, females and economically disadvantaged individuals to be collectively trained, hired, and obtain journey-level status in their respective trade areas. If the number turns out to be greater than 500, the same percentages will apply as the standard for workforce development on this Project:



Type of Incentive	Percent of Workers	Incentive applies to _____ Number of Workers		Incentive per Hour
		If total workers = 300	If total workers = 500	
OJT	20%	60	100	\$3.50
Additional OJT	5%	15	25	\$10.00
Professional Services	5%	15	25	\$10.00
<b>TOTALS:</b>		<b>90</b>	<b>150</b>	

## 7.2 Disadvantaged Business Enterprises (DBE)

### 7.2.1 Disadvantaged Business Enterprises Policy

The Contractor shall comply with the Commission's Disadvantaged Business Enterprises (DBE) Policy ensuring that DBEs shall have a full and equal opportunity to compete fairly in the performance of contracts financed in whole or in part with Federal funds. The Contractor shall comply with the requirements set forth in Exhibit C and the Approved DBE Performance Plan required pursuant to Exhibit D. The Contractor shall either meet the DBE goals established for the Project, which is 16%, or shall make a good faith effort to meet the DBE goal.

### 7.2.2 Inclusion in Subcontracts

The Contractor shall include Section 7.2.1 and Exhibit D in every contract and Subcontract (including purchase orders), so that such provisions will be binding upon each Subcontractor.

## 7.3 Limitation on Subcontracted Work

The Contractor shall sublet no more than 60 percent of the construction Work, and the Major Participant responsible for design shall sublet no more than 60 percent of the design Work. The percentage of construction Work sublet shall be determined by dividing the total dollar value of the Subcontracts for construction Work, excluding any Subcontracts with Major Participants but including any Subcontracts under and through Major Participants, by the portion of the Contract Price allocable to construction Work (as determined by the Commission). The percentage of design Work sublet shall be determined by dividing the total dollar value of the design Subcontracts (except Subcontract(s) between the Contractor and the Major Participant(s) responsible for design) by the total dollar value of the prime design Subcontract(s); (i.e. the Subcontract(s) between the Contractor and the Major Participant(s) responsible for design).



## **7.4 Subcontracting Requirements**

The Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts (including Exhibits C and D), and shall ensure that all Subcontractors performing Work on the Project comply with all applicable requirements of the Contract Documents relating to subcontracting (including Exhibits C and D). The Contractor shall not add, delete, or change the role of, any Major Participant without the prior written Approval of the Commission.

## **7.5 Assignment of Subcontract Rights**

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to the Commission: (i) the Commission is a third party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and (ii) all guarantees and warranties, express and implied, shall inure to the benefit of the Commission as well as the Contractor. Any acceptance of assignment of a Subcontract from the Commission, its successor(s), or assign(s) shall not operate to make the assignee(s) responsible or liable for any breach of the Subcontract by the Contractor or for any amounts due and owing under the Subcontract included in an invoice paid by the Commission.

## **7.6 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, 7.2, 7.4, 9.2.1, 9.2.7, 13.4, 13.5, 14, 15, 19, 21, 22, 23, 24, and Exhibits C and D, 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(5), 2.2(6), 2.2(9), 10.4, 21.2 (as appropriate), 21.3, 21.4, and 23.

## **7.7 Subcontract Data**

The Contractor shall notify the Commission, in writing, of the name and address of, and licenses held by, each Subcontractor (excluding Suppliers), as soon as the potential Subcontractor has been identified by Contractor, but in no event less than 14 days prior to the scheduled initiation of Work by such proposed Subcontractor. The Contractor shall provide the Commission with a list of its Subcontractors (including Suppliers) from time to time upon request by the Commission; shall allow the Commission access to all Subcontracts and records regarding Subcontracts; and shall deliver to the Commission, within ten days after execution, copies of all



Subcontracts with Major Participants and, within ten days after receipt of a request from the Commission, copies of all other Subcontracts.

## **7.8 Responsibility for Work by Subcontractors**

Notwithstanding any Subcontract or agreement with any Subcontractor, the Contractor shall be fully responsible for all of the Work. The Commission shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the Commission.

## **7.9 Key Personnel**

### **7.9.1 Key Personnel**

Exhibit E hereto identifies certain key positions for the Project. The Commission may, with the Contractor's approval, add key positions at no cost to the Commission. The Commission 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. The Contractor shall notify the Commission in writing of any proposed changes in any Key Personnel, and shall include a resume of proposed Key Personnel. The Contractor shall not change any Key Personnel without the prior written Approval of the Commission.

### **7.9.2 Representations, Warranties, and Covenants**

The Contractor acknowledges and agrees that the award of the Contract by the Commission to the Contractor was based, in large part, on the qualifications and experience of the personnel listed in the Statement of Qualifications and the Proposal, and the Contractor's commitment that such individuals would be available to undertake and perform the Work. The Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Statement of Qualifications and the Proposal in connection with the Work. Unless otherwise agreed to by the Commission 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 the Contractor shall document such commitment to the Commission's satisfaction upon the Commission's request.

## **7.10 Character of Workers**

All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If the Commission determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, or who is intemperate or disorderly, then, at the written request of the Commission, the Contractor or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior Approval of the Commission



in its sole discretion. If the Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the Commission may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

## **8 SURETY BONDS**

The Contractor shall provide to the Commission 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 the Commission 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 be listed in the current United States Department of the Treasury, Fiscal Service, Department Circular 570, *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies*. The Contract bonds may not be in excess of the cumulative underwriting limitation listed in the circular of the underwriting capacities of the Contractor's surety companies.

### **8.1 Performance Bond**

The Contractor has provided the Performance Bond in the form of Exhibit F in the amount of \$410,000,000.00.

### **8.2 Payment Bond**

The Contractor has provided the Payment Bond in the form of Exhibit G in the amount of \$410,000,000.00. The Payment Bond shall be released one year after the later to occur of Final Acceptance, upon the Commission's receipt of the Contractor's Affidavit Regarding Settlement of Claims (Form C-242), attached hereto as Exhibit H.

### **8.3 Utility Work**

The Utility Work furnished or performed by the Contractor hereunder will automatically be covered by the Payment and Performance Bonds and any replacement performance bond or other Security to be provided by the Contractor pursuant to Section 20. Utility Owners whose Utilities are being Relocated by the Contractor and which Work is included in the Contract Price shall be added as additional obligees to the Payment and Performance Bonds (up to a maximum cost of the Utility Owner's Relocation(s)) , as well as to such replacement performance bond or other security, through the use of a standard Additional Obligee rider to be Approved by the Commission. The Contractor 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 the Contractor shall include the cost of bond premiums.

## **8.4 Replacement of Performance Bond**

Provided that all conditions to Final Acceptance have occurred, the Contractor shall have the right to replace the Performance Bond with a replacement performance bond in an amount and in a form satisfactory to the Commission in its sole discretion (provided that it shall not be required to exceed 5 percent of the Contract Price) or with such other security as is Approved by the Commission in its sole discretion, guaranteeing due and punctual performance of all obligations of the Contractor under the Contract Documents which survive Final Acceptance.

## **8.5 No Relief of Liability**

Notwithstanding any other requirements of the Contract Documents, performance by a Surety of any of the obligations of the Contractor shall not relieve the Contractor of any of its obligations hereunder.

# **9 INSURANCE**

## **9.1 General Insurance Requirements**

### **9.1.1 Evidence of Insurance**

The Contractor shall provide evidence of insurance as proof of compliance for all insurance requirements contained in this Section 9. These insurance requirements are applicable to the Contractor only. When the Contractor requires a Subcontractor to obtain insurance coverage, the types and minimum limits of coverage may be different than those required in this Section 9. The Contractor's insurance shall cover all of the Work under this Contract, whether the Work is performed by the Contractor or its Subcontractors. The Contractor's insurance shall cover the entire Project within the Project limits as negotiated by the Commission and the Contractor, regardless of whether the Contractor is performing Work on a structure within the Project limits. The evidence of insurance shall provide for ten Days written notice of cancellation for nonpayment of premiums, or 45 days written notice of cancellation for any other reason, including non-renewal. The Contractor shall delete the phrase "will endeavor to" preceding all references to provisions of notice by the insurance company in the evidence of insurance. A Certificate of Insurance indicating certain specified amendments and attachments shall be acceptable, but the Commission reserves the right to request a complete certified copy of the policy, at the Commission's sole discretion. No Work will start until proof of insurance has been submitted to the Commission. If the insurance required by this Section 9 become no longer commercially available, as determined in the sole discretion of the Commission, the Commission will work with the Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to the Commission.



### **9.1.2 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.

### **9.1.3 Full Force and Effect**

The commercial general liability, excess (umbrella) liability, contractor's pollution liability and professional liability insurance coverage requirements will remain in full force and effect until Project Acceptance at which time the Contractors shall maintain completed operations insurance throughout the term of all warranties or as otherwise required by the Contract Documents, whichever is greater.

### **9.1.4 No Recourse**

There shall be no recourse against the State for payment of premiums or other amounts with respect to the insurance provided by the Contractor, or for deductibles under these policies. This provision does not affect any rights the Contractor is entitled to pursuant to Section 13.

### **9.1.5 Indemnification**

The insurance coverage provided hereunder shall support, but is not intended to limit, the Contractor's indemnification obligations under Section 18.

## **9.2 Contractor Provided Insurance**

The Contractor shall procure, at its own expense, insurance acceptable to the Commission, 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 the Commission at its sole discretion.

### **9.2.1 Workers' Compensation and Employer's Liability Coverage**

The Contractor shall furnish evidence to the Commission that, with respect to the Work, the Contractor carries workers' compensation insurance, or is qualified to by the Missouri Division of Workers' Compensation as self-insured, and carries insurance for employer's liability sufficient to comply with all obligations under state laws relating to workers' compensation and employer's liability. The Contractor shall require each Subcontractor on the Project to make the same evidence available to the Commission at the Commission's request. This evidence shall be furnished to and Approved by the Commission prior to the time the Contractor commences Work on the Project Site or furnished and Approved by the Commission at the time it is requested for a Subcontractor.

### **9.2.2 Commercial General Liability Insurance**

The Contractor shall provide commercial general liability broad form coverage for bodily injury, property damage, personal injury and advertising liability written on an occurrence form that shall be no less comprehensive or more restrictive than the



coverage provided by Insurance Services Office (ISO) for CG 00 01 10 01.

1. Limits of liability. General liability:
  - A. \$1 million - each occurrence.
  - B. \$2 million - general aggregate (annually). The general aggregate limit shall apply separately to the Project.
  - C. \$1 million - personal injury/advertising liability.
  - D. \$2 million - products/completed operations liability.
2. Such insurance shall include, by its terms or appropriate endorsements, bodily injury, property damage, legal liability, personal injury, blanket contractual, independent contractors, premises, operations and products and completed operations. Such insurance shall also include blanket coverage for explosion, collapse, and underground (XCU) hazards.
3. Products and completed operations coverage shall be continued for a minimum of five years from Final Acceptance.
4. The Commission shall be an additional insured with respect to liability arising out of acts or omissions of the Contractor or its Subcontractors, whether on or off the Site.

### **9.2.3 Automobile Liability Insurance**

The Contractor shall provide occurrence-based commercial automobile liability insurance covering all owned/leased, 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:

1. \$1 million combined single limit for bodily injury and property damage liability.
2. Coverage shall be provided on ISO form number CA 00 01 10 01 or equivalent.
3. The policy shall be endorsed to include Motor Carrier Act endorsement – Hazardous Materials Cleanup (MCS-90), if applicable.

### **9.2.4 Excess (Umbrella) Liability Insurance**

The Contractor shall provide umbrella or excess liability insurance with limits of not less than \$25 million per occurrence and \$25 million annual aggregate which will provide bodily injury, personal injury and property damage liability at least as broad as the primary coverages set forth above, including employer's liability, commercial general liability and commercial automobile liability, as set forth in Sections 9.2.1, 9.2.2, and 9.2.3.

### **9.2.5 Contractor's Pollution Legal Liability Coverage**

The Contractor shall provide pollution legal liability coverage for the Project. The following limits and conditions shall apply:



1. The limit of liability per occurrence shall be \$5 million and the total Project aggregate shall be \$10 million.
2. The Commission shall be named as an additional insured (to the extent commercially available as determined by the Commission).
3. The policy form shall be written on a claims made form. The extended reporting period must be at least 24 months following completion of the Work.

## **9.2.6 Additional Insureds**

Each policy of commercial general liability insurance, commercial auto liability and excess liability (umbrella) insurance shall name the State of Missouri for the benefit of the State of Missouri's Legal Expense Fund, the Commission and the Commission's members, agents and employees as additional insureds. Each of such policies shall also contain a separation of insureds condition. The insurance afforded by the Contractor shall be primary insurance.

## **9.2.7 Navigable Waters Insurance Protection**

Any Work that is performed on or adjacent to the Missouri and/or Mississippi rivers, and any other waters classified as "navigable waters of the United States" by the USACE must be covered by Jones Act Insurance, Longshore and Harbor Workers' Compensation Act Insurance, and maritime law liability insurance as described below. Employees of Contractor or Subcontractors that perform marine construction Work on or near a waterway that is a navigable water of the United States may be subject to maritime law liability for injuries to employees working from vessels in waterways or working from nearby facilities in relation to construction on or over such waterways.

**9.2.7.1** Insurance shall be purchased by Contractor or any Subcontractor performing Work on or near the Missouri and/or Mississippi rivers, and any other navigable waters of the United States, for exposures under the Jones Act, 46 USC, with a minimum limit of \$2,000,000 per occurrence and in the aggregate, or as specified by law, whichever amount is higher. Insurance under this Subsection covers any employee deemed by the courts as masters or members of crews or vessels who are entitled to seek recovery as "seamen" for injury or death under the Jones Act, or general maritime law. Such coverage may be provided through appropriate endorsements to the Contractor's or Subcontractor's workers' compensation policy.

**9.2.7.2** Insurance shall be purchased by the Contractor or any Subcontractor performing Work on or near the Missouri and/or Mississippi rivers, and any other navigable waters of the United States, for exposures under the US Longshore and Harbor Workers' Compensation Act, USC, Title 33, with a minimum limit of \$2,000,000 per occurrence, and in the aggregate, or as may be specified by law, whichever amount is higher. Insurance under this Subsection covers any employees who do not qualify as masters or members of a crew of a vessel, but perform Work in loading or unloading vessels or Work from docks, barges or other platforms, and who may be deemed by the courts as entitled to seek compensation for injury or death under the US Longshore and Harbor Workers' Compensation Act. Such coverage may be



provided through appropriate endorsements to the Contractor's or Subcontractor's workers' compensation policy.

### **9.2.8 Professional Liability Insurance**

The Contractor's design professionals shall provide Project professional liability coverage for the protection of all design professionals associated with the Project as follows:

1. Limits of Liability will be \$10 million per claim and an aggregate of \$10 million.
2. The policy will have a five-year extended reporting period from Final Acceptance with respect to all events that occurred, but were not reported, during the term of the policy.
3. The policy shall protect against any negligent act, error or omission arising out of design or engineering Activities with respect to the Project.
4. The policy shall have a retroactive date of no later than NTP1.

### **9.2.9 Railroad Protective Insurance**

The Contractor shall provide Railroad Protective Liability Insurance for any Work that is performed within any railroad ROW as required by the draft agreement with Bi-State Development Agency (Metro) in Book 2, Section 6.

### **9.2.10 Builder's Risk**

The Contractor shall purchase and maintain builder's risk Insurance. The Contractor shall be responsible for all builder's risk claims.

## **10 RISK OF LOSS**

### **10.1 Site Security**

The Contractor 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 the Contractor, the Commission, or any other Person. The Contractor 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 Contractor**

The Contractor shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Released for Construction Documents, As-Built 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 the Commission has title thereto under the Contract Documents) that is injured or damaged prior to the date of acceptance of maintenance liability by the Commission or third parties as specified in Section 10.2.2. All such Work shall be at no additional cost to the Commission except to the extent that the Commission is responsible for such costs as provided in Section 13. The Contractor shall also have full responsibility during such period for rebuilding, repairing and restoring all other property at the Site, whether owned by the Contractor, the Commission or any other Person. Additional requirements regarding maintenance of highways during construction are set forth in Section 18, Book 2.

### **10.2.2 Relief from Liability for Maintenance**

Effective as of the date of Partial Acceptance by the Commission of a Segment of the Project, the Commission is responsible for maintenance for all elements of the Project which have been Accepted. All remaining elements of the Project shall be considered Accepted for maintenance purposes as of the date on which Final Acceptance occurs. Nothing in the Contract Documents, however, shall be construed to relieve the Contractor of full responsibility for making good any non-latent defect in Work or material found on any section of Work prior to Final Acceptance of the entire Project, to alter in any manner the method of payment prescribed in the Contract Documents, or to constitute a waiver of any claim the Commission may have against the Contractor on the entire Project. Notwithstanding the foregoing, all elements of the Work, which will be owned by Persons other than the Commission (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**

The Contractor shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. The Contractor shall restore damaged, injured or lost property caused by an act or omission of any Contractor-Related Entity to a condition similar or equal to that existing before the damage, injury or loss occurred.

### **10.4 Third Party Agreements and Commission-Obtained Permits**

The Contractor shall comply with all provisions in the third party agreements and Commission-obtained permits in Book 4.

### **10.5 Title**

The Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the Commission for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies



which shall have been delivered to the Site shall pass to the Commission, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the Commission to the Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, and subject to Section 10.1, the Contractor 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 the Contractor 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 the Contractor under the Contract Documents, the Commission shall pay to the Contractor the Fixed Price of \$410,000,000. (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 may be increased or decreased only by a Change Order issued in accordance with Sections 12 and 13 or by a Contract amendment.

#### **11.1.2 Items Included in Contract Price**

The Contractor acknowledges and agrees that, subject only to the Contractor’s rights under Sections 12 and 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 the Contractor’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 the Commission, as specifically provided elsewhere in the Contract Documents).
- D. All costs of compliance with and maintenance of the Governmental Approvals and compliance with Legal Requirements.
- 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.
- F. All Contractor’s Utility Work as described in Book 2, Section 7.



### **11.1.3 Delay in Issuance of Notice-to-Proceed 1**

The Commission anticipates that it will issue NTP1 shortly after execution and delivery of the Contract. If the Commission has not issued NTP1 within 180 days after execution of the Contract by the Commission, the Contractor may seek to negotiate a Change Order including an extension in the time allowed to the Commission for issuance of NTP1 and an increase in the Contract Price mutually acceptable to the Contractor and the Commission. If the Contractor does not wish to seek a Change Order as provided above or the Commission fails to issue a Change Order acceptable to the Contractor, then the Contractor's sole remedy shall be to terminate the Contract by delivery of notice of termination to the Commission, with the right to receive payment as specified in Section 15. The Contractor is not obligated to perform any work that would result in payments exceeding the NTP1 payment cap.

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.

## **11.2 Invoices and Payment**

Requirements relating to invoicing are set forth in Section 2.2 of Book 2. Within thirty days after Approval by the Commission of each final invoice, the Commission shall pay the Contractor the amount of the invoice Approved for payment less any amounts that the Commission is entitled to withhold.

## **11.3 Limitations on Payment**

In no event shall the Commission have any obligation to pay the Contractor any amount which would result in: (i) payment for any Activity in excess of the value of the Activity times the completion percentage of such Activity; or (ii) 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. The Commission does not have the obligation to pay the Contractor for any Nonconforming Work.

### **11.3.1 Requirement to Provide Corrected Monthly Update**

After Approval of the Original Baseline Schedule, no payment will be processed or owing to the Contractor for Work performed during any period not covered by the accepted current Monthly Progress Schedule.

### **11.3.2 Notice-to-Proceed 1 Payment Cap**

The amount of funds available to pay the Contractor prior to issuance of NTP2 is limited to the amount of the NTP1 Payment Cap, insurance and bond premiums, and the first Mobilization payment of \$3,250,000. The Commission has no obligation to make any payment to the Contractor in excess of this amount until such time (if any) as NTP2 is issued. If the Contractor performs any Work in excess of the NTP1 Payment Cap, other than payment of insurance and bond premiums, it does so at its



own risk. The NTP1 Payment Cap does not apply to termination costs under Section 15.5.1.

### **11.3.4 Unincorporated Materials**

The Commission will not pay for materials associated with a progressed WBS Level V Activity prior to their incorporation into the Project, except under the circumstances described in this Section 11.3.4.

The payment of structural steel will not exceed 80 percent of the receipted value of structural carbon steel or structural low alloy steel, or both, which is to form a part of the completed Work and which has been produced and delivered by the steel mill to the fabricator. The required receipted mill invoice, billing, title or assignment documents or other documents furnished by the Contractor shall include certified mill test reports containing complete material description, identification, weights (masses), dimensions, heat and unit numbers, and cost data. The structural steel shall be stored separately and used only for the fabricated structural steel in the Project. The Commission may also pay an amount not to exceed 90 percent of the invoice value of any inspected and accepted fabricated structural steel items, fabricated structural aluminum sign trusses, structural precast items and permanent highway signs providing the total invoice value of these items is not less than \$25,000.00 for each storage location. All material furnished for the Work pursuant to this Section shall be subject to shop inspection by the Commission prior to payment.

Non-perishable materials shall be delivered to the Site, or delivered to the Contractor and promptly stored by the Contractor in storage Approved by the Commission. 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 the Commission.

As a condition to inclusion of such materials in any invoice, the Contractor shall submit certified invoices, and proof of payment for such materials with its invoice. Payment will not be made when the invoice value of such materials, as determined by the Commission, amounts to less than \$10,000 or if materials are to be stored less than 30 days.

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



Contractor, shall contain complete material description and identification data.

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 the Contractor's expense). In case any Supplier claims against the Contractor remain (for materials so paid for) unsatisfied for more than 30 days following issuance of payment to the Contractor, the applicable payment may be canceled on the next invoice.

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

#### **11.4 Mobilization and Initial Payments**

The actual amount of premiums paid by the Contractor for the Payment and Performance Bonds, for insurance required to be provided by the Contractor under Section 8, the NTP1 Payment Cap and the first mobilization payment of \$3,250,000 may be invoiced at any time after issuance of NTP1. In addition, the Contractor shall be entitled to three additional mobilization payments totaling \$9,750,000 (that is, the maximum amount payable for mobilization under this Section 11.4 shall be \$13,000,000). The second mobilization payment shall be in the amount of \$3,250,000, and may be invoiced at any time after issuance of NTP2. The third payment shall be in the amount of \$3,250,000, and may be invoiced at any time after 30 days after issuance of NTP2. The fourth payment shall be in the amount of \$3,250,000, and may be invoiced at any time after 60 days after issuance of NTP2.

#### **11.5 Deductions**

The Commission may deduct from any amounts otherwise owing to Contractor, including each monthly progress payment and the final payment, the following:

1. Any accrued losses, liability, Liquidated Damages or other damages for which Contractor is responsible hereunder.
2. The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of contract by Contractor.
3. The amount of any outstanding claim relating to the Work.
4. The amount for Work that the Contractor is obligated to perform under the Contract, which the Contractor has failed to perform.
5. Any other sums which the Commission is entitled to recover from the Contractor under the terms of the Contract.

The Commission's failure to deduct from a progress payment any amount, which the Commission is entitled to recover from the Contractor under the Contract, shall not constitute a waiver of the Commission'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, the Contractor shall prepare and submit a proposed Application for Final Payment to the Commission showing the proposed total amount due the Contractor. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include: (a) an affidavit, on the form prescribed by the Commission, to the effect that all payments have been made and all claims have been released for all material, labor and other items covered by the Contract bond; or (b) a list of any outstanding or pending Potential Change Order (PCO) 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; (c) the written consent by the surety to such payment; and (d) such other documentation as the Commission may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. PCO 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 the Commission, the Contractor may furnish a bond satisfactory to the Commission to indemnify the Commission against such Lien. If such Lien remains unsatisfied after payments are made, and is not bonded over as provided in the previous sentence, Contractor shall promptly pay to the Commission all money that the Commission may be compelled to pay in discharging such Lien, including all costs and attorneys' fees.

The Commission will review the Contractor's proposed Application for Final Payment, and changes or corrections will be forwarded to the Contractor for correction. If no changes or corrections are required, the Commission will Approve the Application for Final Payment.

### **11.6.2 Payment**

As a condition to its obligation to make payment to the Contractor based on the Application for Final Payment, the Commission shall have received a completed Form C-242 (Exhibit H) from the Contractor, releasing and waiving any claims against the Indemnified Parties and those matters identified in any PCO Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to the Commission.

Exhibit H shall be accompanied by an affidavit from the Contractor certifying:

1. That it has resolved any claims made by Subcontractors, Utility Owners, and others against the Contractor or the Project.



2. That it has no reason to believe that any Person has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the Commission as of the date of the certificate.
3. That all guarantees and warranties are in full force and effect.

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

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

Contractor's acceptance of final payment shall constitute a waiver of affirmative Claims by Contractor except those previously made in writing and identified as unsettled at the time of final payment.

## **11.7 Prompt Payment to Subcontractors**

The Contractor is responsible to ensure that all Subcontractors and suppliers at every tier are promptly paid in accordance with the Missouri Prompt Pay Act, 34.057 RSMo. The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to the Subcontractors and suppliers must be included in all subcontracts at every tier. If the Contractor fails to comply with this requirement, the Commission may withhold the amount due from any monthly progress payment until the required payment(s) have been made.

## **11.8 Disputes**

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

# **12 CHANGE ORDER RISK ALLOCATION**

## **12.1 Time and Money Changes**

The Contractor may request a Change order to increase the Contract Price, subject to the limitations set forth in Section 13.8.2, and for time extensions, subject to the limitations set forth in Section 13.8.3, only for increased costs or additional time for



Completion Deadlines, as follows:

- (a) Additional costs or time directly attributable to additional Work resulting from Commission-Directed Changes.
- (b) Additional costs or time directly attributable to unavoidable delays, arising from a suspension order pursuant to Section 14.1.
- (c) Failure or inability of the Commission to provide the Contractor with access to ROW identified on the ROW Drawings on or before the deadline for such access set forth in the ROW Schedule.
- (d) Delay in issuance of NTP2 or provision of reasons why it was unable to do so to the extent provided in Section 4.2.2.
- (e) Additional costs or time directly attributable to Differing Site Conditions, to the extent provided in Section 13.9.
- (f) Certain additional costs or time relating to Remediation Work as described in Section 13.9, to the extent provided therein.
- (g) Certain additional costs or time relating to Utility Work, as described in Section 6.2, to the extent provided therein.
- (h) Certain additional costs or time relating to material errors in the ROW Drawings, as described in Section 13.10, to the extent provided therein.
- (i) Additional costs or time directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section 5.5.3.
- (j) Additional costs or time directly attributable to the discovery at, near, or on the Site of human remains, artifacts and other items of historical, archaeological or geological significance, or cultural resources or any biological resources (which term shall be deemed to mean any threatened or endangered species, raptors or eagles), discovered within the Right of Way, provided that the existence of such resources was not disclosed in the RFP
- (k) Additional costs or time directly attributable to the suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval or New Environmental Approval required to be obtained by the Commission, except as otherwise provided in Section 6.3.
- (l) Any change in a Legal Requirement, change in the judicial interpretation of a legal Requirement, or adoption of any new Legal Requirement, excluding changes in tax laws, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change or new Legal Requirement which was passed or adopted as of the Proposal Due Date but has a defined future effective date), and which: (i) requires a material modification in the Project Work; (ii) requires the Contractor to obtain a major State or federal environmental approval not previously required for the Project; or (iii) specifically targets the Project or the Contractor.
- (m) Any lawsuit seeking to restrain, enjoin, challenge, or delay construction of the Project, except to the extent that the risk of such lawsuit has been assumed by Contractor under Section 6.3; or the lawsuit otherwise arises out of any



act, omission or breach of obligation of Contractor, a Subcontractor or any person for whom Contractor is contractually or legally liable.

- (n) Failure to issue NTP1 within 180 days after Contract execution.

## 12.2 Time Only Changes

The Contractor may Request a Change Order for time extensions, subject to the limitations set forth in Section 13.8.3, only for additional time for Completion Deadlines, as follows:

- (a) Fire, floods, earthquakes, epidemics, quarantine restrictions, or unusually severe weather.
- (b) Freight embargos.
- (c) Acts of the public enemy.
- (d) Strikes
- (e) Failure or inability of the Commission to provide responses to proposed schedules, design submittals or other submittals and matters for which response by the Commission is required within the time periods indicated in the Contract Documents.
- (f) Force majeure events under a MUA
- (g) Failure to issue NTP1 within 40 days after Contract execution.
- (h) Utility Delays.

## 13 CHANGES IN THE WORK

This Section 13 sets forth the requirements for obtaining all Change Orders under the Contract. The Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section 13, and that the Commission is subject to constraints which limit its ability to increase the Contract Price or extend the Completion Deadlines. Contractor 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.

### 13.1 Circumstances Under Which Change Orders may be Issued

#### 13.1.1 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. A Change Order shall not be effective for any purpose unless executed by the



Commission. Execution of a Change Order by the Commission shall mean that the Change Order has been fully executed by the Commission and any other necessary parties of the State. The term “Change Order” shall also include any Work Order that has been completed by the Commission to also function as a Change Order, as described in Section 6. Except for Work Orders functioning as Change Orders, Change Orders may be requested by the Contractor only pursuant to Section 13.3. Change Orders may be issued for the following purposes (or combination thereof):

1. To modify the Work.
2. To revise a Completion Deadline.
3. To revise the Contract Price.
4. To revise other terms and conditions of the Contract Documents.

Upon the Commission’s Approval of the Change Order form, the Commission will execute the Change Order form indicating Approval thereof.

### **13.1.2 Issuance of Directive Letter**

The Commission may at any time issue a Directive Letter to the Contractor in the event of any Dispute regarding the Work or for any desired change in the Work. The Directive Letter will state that it is issued under this Section 13, will describe the Work in question and will state the basis for determining compensation, if any. The Contractor 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, the Contractor shall proceed with the Work as directed but shall have the right pursuant to Section 13 to request that the Commission issue a Change Order with respect thereto).

Receipt of a Directive Letter from the Commission is a condition precedent to the Contractor’s right to claim that a Commission-Directed Change has occurred, provided that no Directive Letter shall be required for alleged Commission-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortuous conduct by the Commission. The fact that a Directive Letter was issued by the Commission shall not be considered evidence that in fact a Commission-Directed Change occurred. The determination whether a Commission-Directed Change in fact occurred shall be based on an analysis of the original Contract document 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 the Contractor to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13 (such as for Relocation of previously misidentified underground Utilities, if a Change Order is allowed therefore pursuant to Section 6.2).

### **13.1.3 Performance of Changed or Extra Work**

As a condition precedent to the Contractor’s right to receive additional payment or an



extension of a Completion Deadline for changed or extra work, the Contractor shall have received either a Directive Letter from the Commission stating that it is issued pursuant to Section 13 or a Change Order for such work executed by the Commission. To the extent that the Contractor undertakes any such work without receiving a Directive Letter or Change Order executed by the Commission, the Contractor shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Contractor may be required to remove or otherwise undo any such work, at its sole cost.

## **13.2 Equal or Better Change Orders**

The Contractor may request the Commission Approval of a Change Order that is equal or better than the Contract Document requirements. The Commission may Approve, in its sole discretion, in whole or in part, a Change Order that is equal or better than the Contract Document requirements in the form attached hereto as Exhibit J. If Approved as provided in this Section 13.2, equal or better changes may be implemented without any sharing of the Contractor's cost savings (and without any additional cost to the Commission).

An Equal or Better Change Order is an Approved proposal developed and documented by the Contractor, which would modify or require a change in any of the Contract Document requirements in order to be implemented that is "equal to or better than" the underlying requirement. Equal or Better Change Orders cannot change a Completion Deadline.

### **13.2.1 Required Information**

At a minimum the following information shall be submitted by the Contractor with each Equal or Better Change Order proposal in the form set forth in Exhibit j:

1. Redline of the changes proposed to the Contract requirements, which are involved in the proposed change.
2. Description of why the proposed change is equal or better than the existing Contract requirements.
3. A description of any previous use or tests of the proposal and the conditions and results if requested by the Commission.

The Contractor shall provide any additional information requested by the Commission in a timely manner.

### **13.2.2 Commission Review and Approval or Rejection**

Upon receipt of an Equal or Better Change Order proposal, the Commission will process it, but shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section 13.2. The Contractor may withdraw all or part of any Equal or Better Change Order proposal at any time prior to Approval by the Commission. The Commission may Approve, in its sole discretion, in whole or in part, any Equal or Better Change Order proposal submitted. Until an Equal or Better Change Order proposal is Approved by the Commission, the Contractor shall remain obligated to



perform in accordance with the Contract Documents. The decision of the Commission as to rejection or Approval of any Equal or Better Change Order proposal shall be at the sole discretion of the Commission, and shall be final and not subject to partnering, dispute resolution or appeal. Equal or Better Change Order proposals that require excessive time or costs for review, evaluation or investigations, or that are not consistent with the Commission's design policies and basic design criteria may be rejected. The Contractor shall have no claim for any additional costs or delays resulting from the rejection of an Equal or Better Change Order proposal, including development costs, loss of anticipated profits, or increased material or labor costs. The Commission will consider only proven features that have been employed under similar conditions or projects acceptable to the Commission.

### **13.3 Value Engineering Change Proposals**

The parties desire for the Contractor to have significant flexibility in determining how best to deliver the Project within the parameters established by the Contract Documents. The Contractor is encouraged to submit Value Engineering Change Proposals (VECPs) whenever it identifies potential savings. Notwithstanding the foregoing, the Commission's Approval is required with respect to any proposed changes in the requirements of the Contract Documents. This Section 13.3 sets forth the requirements applicable to VECPs.

#### **13.3.1 Definition of Value Engineering Change Proposal**

A VECP is a proposal developed and documented by the Contractor that is not, in the discretion of the Commission, equal or better than the requirements of the Contract Documents, including the Contractor's proposal. A VECP would reduce the cost of the Project without impairing essential functions or characteristics of the Project (including service life, economy of operations, ease of maintenance, desirability and safety) as determined by the Commission in its sole discretion, and provided that it is not based solely upon a change in quantities, performance or reliability.

#### **13.3.2 Required Information**

At a minimum, the following information shall be submitted by the Contractor with each VECP:

1. A statement that the submission is a VECP, a narrative description of the proposed change, the advantages and disadvantages of the proposed change and the justification for changes in function or characteristics and the effect the proposed change has on performance.
2. Identification of all contract requirements (with reference to specific Sections), which must be changed if the VECP is Approved.
3. A description of any previous use or tests of the proposal and the conditions and results.
4. Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Contract



Schedule.

5. A complete cost analysis including current pricing for the existing Contract requirements compared to the Contractor's cost estimate of the proposed changes.

The Contractor shall provide any additional information requested by the Commission in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

### **13.3.3 Commission Review and Approval or Rejection**

Upon receipt of a VECP, the Commission will process it, but will not be liable for any delay in acting upon any proposal submitted pursuant to this Section 13.3. The Contractor may withdraw all or part of any VECP at any time prior to Approval by the Commission.

The Commission may Approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Until a Change Order is issued on a VECP, the Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of the Commission as to rejection or Approval of any VECP shall be at the sole discretion of the Commission and shall be final and not subject to partnering, dispute resolution or appeal. The Contractor shall have not claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profits, or increased material or labor costs.

### **13.3.4 Contract Price Adjustment**

If the Commission Approves a VECP submitted by the Contractor pursuant to this Section 13.3, the Contract Price shall be adjusted in accordance with the following:

- A. The term "estimated net savings", as used in this Section 13.3., shall mean:
  - (i) the difference between the cost of performing the Work according to the Contract Documents using current estimates and the actual cost to perform it according to the proposed change; less
  - (ii) the costs of studying and preparing the VECP as proven by the Contractor and Approved by the Commission in accordance with the Change Order procedures set forth herein; less
  - (iii) any additional costs incurred by the Commission (including costs relating to any Relocations and ROW and implementation costs) resulting from the VECP. The Contractor's profit shall not be considered part of the cost.
- B. Except as specified in Section D, below, the Contractor is not entitled to share in either collateral or future contract savings. The term "collateral savings" means those measurable net reductions in the Commission's costs resulting from the VECP, including costs of maintenance by the Commission, logistics, and the Commission-furnished property. The term "future contract savings" shall mean reductions in the cost of performance of future construction contracts resulting from a VECP submitted by the Contractor.



- C. Subject to Section D below, the Contract Price shall be reduced by an amount equal to the sum of (i) 100 percent of any additional costs incurred by the Commission resulting from the VECP; plus (ii) 50 percent of the estimated net savings.
- D. In a case where a VECP involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the VECP shall compare:
- i. The incremental reduction in costs (such as for not designing and building a wall); and
  - ii. The costs involved in adjusting the ROW Drawings and Environmental Approvals (which shall be based on the Contractor's additional costs, such as for providing real property acquisition support services, including profit, plus the Commission's additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of the Commission personnel involved in the acquisition);  
or as (appropriate) shall compare:
  - iii. The incremental reduction in costs (if any) for not acquiring the unnecessary real property; and
  - iv. The additional construction costs to be incurred.

The estimated net savings shall be shared 50-50 between the Commission and the Contractor. The Contractor shall include in its VECP an analysis of any impacts on Utility Owners for consideration by the Commission.

Refer to Exhibit K for a sample calculation.

### **13.3.5 Use of Value Engineering Changes by the Commission**

All Approved or disapproved VECPs and Negotiated changes will become the property of the Commission, and shall contain no restrictions imposed by the Contractor on their use or disclosure. The Commission retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the proposal on any other or subsequent projects without any obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

### **13.4 Lump Sum Change Orders**

The preferred approach by both parties is that Change Orders will be reimbursed on a lump sum payment basis, if the parties can agree on a lump sum amount. If the parties cannot agree on a lump sum amount for change orders, the Change orders will be paid as Force Account Change Orders described in section 13.5 below.



## **13.4.1 Procedure for Commission Initiated Lump Sum Change Orders**

This Section 13.4.1 concerns Change Orders requested by the Commission.

### **13.4.1.1 Issuance of Request for Change Proposal**

If the Commission desires to evaluate whether to initiate such a change, the Commission may, at its discretion, issue a Request for Change Proposal (RCP).

Within seven days after the Contractor's receipt of a RCP, the Commission and the Contractor shall consult to define the proposed scope of the change. Within seven days after the initial consultation, the Commission and the Contractor shall consult concerning an estimated rough order of magnitude (ROM) cost and time impacts, if any. The Contractor shall prepare the ROM at its cost. The Contractor shall provide data regarding such matters as requested by the Commission.

Within seven days after the ROM consultation meeting and provision of any data requested by the Commission, the Commission shall notify the Contractor whether the Commission:

1. Wishes to request the Contractor to prepare a Change Order form as discussed at the meeting.
2. No longer wishes to issue a Change Order.

The Commission may at any time, in its sole discretion, require the Contractor to provide two alternative change Order forms, one of which shall provide for a time extension if applicable and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

If requested by the Commission, the Contractor shall, within 21 days after receipt of the notification, prepare and submit to the Commission for Approval a Change Order form for the requested change, complying with all applicable requirements of Section 13.4, and incorporating all requests made by the Commission. The Contractor shall bear the cost of developing the Change Order form, including any modifications thereto requested by the Commission, except that costs of design and engineering Work required for preparation of plans or exhibits necessary to the Change Order form and pre-authorized by the Commission shall be included in the Change Order as reimbursable items. If the Change Order is Approved, the design and engineering costs will be included within the Change Order. If the Change Order is not Approved, the Contractor shall be separately reimbursed for the design and engineering costs through a separate Change Order.

If the Commission and the Contractor 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, the Commission may, in its sole discretion, order the Contractor to proceed with the performance of the Work in



question notwithstanding such disagreement. Such order may, at the Commission's option, be in the form of a:

1. Force Account Change Order or
2. Directive Letter

### **13.4.2 Procedures for Contractor-Initiated Lump Sum Change Orders**

The Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13.

### **13.4.3 Conditions Precedent**

The requirements set forth in this Section 13.4.3 constitute conditions precedent to the Contractor's entitlement to request and receive a Change Order in all circumstances. The Contractor agrees that the filing of a PCO Notice and subsequent filing of a Request for Change Order (RCO) with the Commission pursuant to this Section are necessary in order to begin the administrative process for Contractor-requested Change Orders. The Contractor understands that it shall be forever barred from recovering against the Commission under this Section 13 if it fails to give notice of any act, or failure to act, by the Commission or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this Section.

The Contractor shall deliver to the Commission a PCO Notice stating that an event or situation has occurred and shall state whether it is entitled to additional time or money. The first notice shall be labeled "PCO No. 1" and subsequent notices shall be numbered sequentially.

Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, the Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice, and shall be deemed to have waived the right to see 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 PCO Notice concerns any condition or material described in Section 5.3, the Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the Commission is not afforded the opportunity to inspect such material or condition before it is disturbed. The Contractor's failure to provide a PCO Notice within 30 days after the contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Contractor from any relief, unless the Contractor can show, based on a preponderance of the evidence that: (i) the Commission was not materially prejudiced by the lack of notice; or (ii) the Commission's designated representative specified in accordance with Section 24.4.1



had actual knowledge, prior to the expiration of the 30-Day period, of the event or situation and that the Contractor believed it was entitled to a Change Order with respect thereto. A PCO Notice shall be deemed delivered only if it fully conforms to the requirements of Section 13.

The PCO Notice shall (i) state in detail the facts underlying the potential Change Order, the reasons why the Contractor believes additional compensation or time will or may be due and the date of occurrence; (ii) state in detail the basis that the work is not required by the Contract, if applicable; (iii) identify particular elements of Contract performance for which additional compensation may be sought under this Section 13; (vi) identify any potential Critical Path affecting a Completion Deadline; and (v) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

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

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

The Contractor shall deliver all RCO under this Section 13 to the Commission within 30 days after delivery of the PCO Notice. The Commission may require design and construction costs to be covered by separate Change Order requests. If the Contractor requests a time extension, then the Commission, in its sole discretion, may require the Contractor to provide two alternative change Order requests, 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.

The Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to the Commission. The Commission is relying on the Contractor 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 the Contractor 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, the Commission 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 the Commission's funding and time restraints.

The following matters (among others) shall be considered in determining whether the Commission has been prejudiced by the Contractor's failure to provide timely notice;

1. The effect of the delay on alternatives available to the Commission (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been



given within ten days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence).

2. The impact of the delay on the Commission's ability to obtain and review objective information contemporaneously with the event.

Prior to submission by the Contractor of any PCO Notice or a RCO to the Commission which is based in whole or in part on a request by a Subcontractor to the Contractor for a price increase or time extension under its Subcontract, the Contractor shall have reviewed all claims by the Subcontractor which constitute the basis for the RCO and determined in good faith that each such claim is justified hereunder and that the Contractor is justified in requesting an increase in the Contract Price and/or change in Completion Deadlines in the amounts specified in the RCO. Each RCO involving Subcontractor Work shall include a sworn certification in form acceptable to the Commission signed by the Contractor's Project Manager stating that the Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any RCO involving Subcontractor Work shall be considered incomplete if it is not accompanied by such certification.

If the Commission refuses to issue a Change Order based on the Contractor's request, the Contractor 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. The Contractor shall maintain and deliver to the Commission, upon request, contemporaneous records, meeting the requirements of Section 13.7, for all work performed which the Contractor believes constitutes extra work, until all Disputes regarding entitlement or cost of such work are resolved.

### **13.5 Force Account Change Orders**

The Commission may at its discretion issue a Force Account Change Order whenever the parties cannot agree to a Lump Sum Change Order or the Commission determines that a Force Account Change Order is advisable. The Force Account Change Order shall instruct the Contractor 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, the Commission shall issue a modified Change Order setting forth the final adjustment to the Contract Price. The costs and mark-ups in Section 13.8 (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 Section 13.6.

The Commission and the Contractor may agree to negotiate unit prices for a Force Account Change Order. Measurement of any unit-priced quantities will be as



specified in the Change Order. Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Upon final determination of the quantities, the Commission will issue a modified Change Order setting forth the final adjustment to the Contract Price.

### **13.5.1 Force Account Records**

The Contractor shall maintain its records in such a manner as to provide a clear distinction between: (i) 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 (ii) the costs of other operations. The Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (i) all data necessary to determine the costs described in this Section 13.5 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 (except for Lump Sum Work Orders that are also Change Orders as described in Section 13.4); and (ii) all data necessary to show the actual impact (if any) of the change on the Critical Path affecting a Completion Deadline with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Critical Path affecting a Completion Deadline is in dispute. Such data shall be provided pursuant to Section 19, on forms Approved by the Commission. The cost of furnishing such reports is included in the Contractor's predetermined overhead and profit mark-ups.

The Contractor shall furnish daily, on forms Approved by the Commission, reports of Force Account Change Order Work. The cost of furnishing such reports shall be included in the Contractor's overhead and profit percentages. The reports shall include:

1. Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices and extensions.
4. Transportation costs of materials, machinery, and equipment.
5. Invoices for materials used and for transportation charges.

The reports shall also state the total costs to date for the Force Account Change Order Work.

If materials used on the Force Account Change Order Work are not specifically purchased for the Work but are taken from the Contractor's stock, the Contractor shall furnish an affidavit certifying that such materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the Contractor.



All Force Account Change Order reports shall be signed by the Contractor's Project Manager. The Commission will compare its records with the Contractor's reports, make the necessary adjustments and compile the costs of Force Account 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. The Contractor's (and each Subcontractor's) cost records pertaining to Work paid for on a Force Account basis shall be open, during all regular business hours, to inspection or audit by representatives of the Commission during the life of the Contract and for a period of not less than seven years after Final acceptance, and the Contractor (and each Subcontractor) shall retain such records for that period. If an audit is to be commenced more than 60 days after Final acceptance, the Contractor will be given a 20-day notice of the time when such audit is to begin.

### **13.6 Contents of Change Orders (excluding Equal or Better Change Orders)**

Each lump sum, force account and value engineering Change Order form and RCO shall meet all applicable requirements of this Section 13 and shall include a Cost Analysis to be prepared in the form attached as Exhibit L. The completed and/or modified Work Order Form described in Section 6.2.7 shall be considered an appropriate form, where applicable.

The Contractor shall prepare a scope of work, cost estimate, impacted delay analysis, if any and other information as required by this Section for each Change Order form and RCO.

Scope of Work: The scope of work shall describe in detail satisfactory to the Commission all Activities associated with the Change Order, including a description of additions, deletions and modifications to the existing Contract requirements.

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 the Commission agrees otherwise. The estimate shall include costs allowable under this Section 13, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, the Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for the Contractor's estimate. No mark-up shall be allowed in excess of the amount allowed under Section 13.

Impacted Delay Analysis: If the Contractor claims that such event, situation or change affects the Critical Path affecting a Completion Deadline, 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 the Commission, which compares the proposed new schedule to the Original Baseline Schedule or Revised Baseline Schedule, as appropriate. Except as otherwise



provided in this Section, the impacted delay analysis shall only modify the Activities, which have been impacted by the event which justifies the extension. The Contractor may reschedule Activities not otherwise affected by the event, in order to take advantage of additional Float available as a result of the requested time extension. Any such rescheduling shall be reflected in the impacted delay analysis.

Other Supporting Documentation: The Contractor shall provide such other supporting documentation as may be required by the Commission.

### **13.6.1 Justification**

All requests for Change Orders shall include a narrative justification therefore, detailing all causes of the proposed change, making specific reference to the applicable provisions of this Section 13 which permit a Change Order to be issued, and describing the data and documents which establish the necessity of such proposed change.

### **13.6.2 Contractor Representation**

Each Change Order shall contain a sworn certification in form acceptable to the Commission by the Contractor (or Subcontractor, if applicable) 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 the Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

### **13.6.3 Incomplete Change Orders**

Each RCO provided under Section 13 shall meet all requirements set forth in this Section 13.6; provided that if any such requirements cannot be met due to the nature of the occurrence, the Contractor shall provide an incomplete RCO, which shall:

1. Comply with all requirements capable of being met.
2. Include a list of requirements, which are not fulfilled together with an explanation reasonably satisfactory to the Commission stating why such requirements cannot be met.
3. Provide such information regarding projected impact on the Critical Path affecting a Completion Deadline as is requested by the Commission.
4. In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Contractor shall furnish, when requested by the Commission, such further information and details as may be required to determine the facts or contentions involved. The Contractor agrees that it shall give the Commission access to any and all of the Contractor's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the Commission can



investigate the basis for such proposed Change Order. The Contractor shall provide the Commission 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 the Commission, time expenditures to date and time anticipated for completion of the Activities for which the time extension is claimed. The Commission may reject the Contractor's claim at any point in the process. Once a complete RCO is provided, the Commission's failure to respond thereto within 14 days of delivery of the request shall be deemed a rejection of such request. Although the Commission intends to review incomplete Change Orders for the purposes of timely delivery described in Section 13.7.3, the Commission shall have no obligation to review the back up associated with any RCO until a complete RCO is provided.

#### **13.6.4 Phased Change Orders**

The Commission and Contractor may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated design cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and definition of the estimated construction cost.

### **13.7 Certain Limitations for all Change Orders (excluding Equal or Better Changes)**

#### **13.7.1 Limitation on Contract Price Increases**

Any increase in the Contract Price allowed hereunder shall exclude:

1. Costs caused by the breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity.
2. Costs, which could reasonably have been avoided by the Contractor, 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).
3. Costs for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work.

#### **13.7.2 Limitation on Acceleration Costs; Delay and Disruption Damages**

Acceleration Costs; Delay and Disruption Damages: Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by the Commission as an alternative to allowing an extension of a Completion Deadline as contemplated by Section 12. Delay and disruption damages shall be compensable hereunder only in the case of a delay which pursuant to Section 12 to the extent that it entitles the Contractor to an extension of a Completion Deadline. Costs of rearranging the Contractor's work plan not associated with an extension of a



Completion Deadline shall not be compensable hereunder.

Other Limitations: Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in this Section and mark-ups thereon in accordance with Section 13.8 and any additional field office and jobsite overhead costs incurred by the Contractor directly attributable to such delays. In addition, before the Contractor may obtain any increase in the Contract Price to compensate for any delay and disruption damages or Acceleration Costs, the Contractor shall have demonstrated to the Commission's satisfaction that:

1. Its schedule, which defines the affected Critical Path in fact sets forth a reasonable method for completion of the Work.
2. 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 affecting a Completion Deadline.
3. The delay or disruption damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by the Contractor, 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).
4. The delay for which compensation is sought is not concurrent with any other delay excluding a Commission caused delay.
5. The Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the Commission.

### **13.7.3 Limitation on Time Extensions**

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

1. Did not impact the Critical Path affecting a Completion Deadline.
2. Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity.
3. Could reasonably have been avoided by the Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a Commission caused delay, the Commission shall have agreed, if requested to do so, to reimburse the Contractor for its costs incurred, if any, in resequencing, reallocating, or redeploying its forces).

The Contractor shall be required to demonstrate to the Commission's satisfaction that the change in the Work or other event or situation which is the subject of the



RCO seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path Activity affecting a Completion Deadline.

### **13.8 Pricing of Change Orders (excluding Equal or Better Changes)**

The Commission and the Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. Subject to the foregoing exceptions, in general the price of a Change Order shall be negotiated in accordance with this Section 13.8 or shall be based on Force Account records pursuant to Section 13.5.

#### **13.8.1 Mark-ups and Scope Development Risk**

For all Change Orders (excluding equal or better changes), mark-ups for profit and overhead shall be as provided in Section 13. Risk associated with the Work described in the Change Order, defined as scope development risk, may be included in a Change Order through an additional amount agreed to by the Commission and the Contractor.

#### **13.8.2 Labor Costs**

The cost of labor shall be separated into construction-related Work and non-construction-related Work as described below. The use of a labor classification that would increase the extra work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. The cost of labor shall be calculated based on straight time for all hours worked, unless the Contractor obtains the Commission's prior Approval for overtime.

Construction Labor: The cost of labor for workers used in the actual and direct performance of construction-related Work, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) actual unburdened wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) the actual labor surcharge of actual unburdened wages, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance, fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for overhead. Contractor will be paid mark-ups for construction labor of 15% of labor costs.

Non-Construction Labor: The cost of labor for non-construction-related Work, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) Actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) audited Federal Acquisition Regulations (FAR) field rates not to exceed 145 percent. Contractor will be paid mark-ups for non-construction labor of 15% of labor costs.



### 13.8.3 Material Costs

Material costs shall be the cost of all materials to be used in the performance of construction Work including normal wastage allowance as per industry standards, subject to the requirements set forth in this Section 13. The material prices shall be supported by valid quotes and invoices from the Suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts (exclusive of machinery rentals). The Commission reserves the right to Approve materials and sources of supply of materials to be furnished by the Contractor or Subcontractors, and shall have the right to furnish such materials as it deems advisable. The price allowed for materials shall be adjusted as follows:

If the materials are obtained from a supply or source owned in whole or in part by the Contractor or a Subcontractor, the cost of such materials shall not exceed the lesser of the lowest price charged by the Contractor or such Subcontractor (as applicable) for similar materials furnished to other jobs or the current wholesale price for such materials delivered to the Site.

If the cost of such materials is, in the opinion of the Commission, excessive, then the cost of such materials shall be deemed to be the lowest current wholesale price at which such materials were available, in the quantities needed and delivered to the Site.

If the Contractor 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, the Commission 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.

Contractor will be paid mark-ups for material costs of 15%.

### 13.8.4 Equipment

Contractor will be paid for the use of equipment owned or rented by Contractor or any Subcontractor for actual use in construction of the Project at an hourly rate derived from the most recently published *Rental Rate Blue Book for Construction Equipment* by Dataquest, Inc., San Jose, California which is in effect at the time of commencement of the changed Work (the "Blue Book").

The total hourly rates derived from the above publication are computed from equipment costs currently in effect. The rates derived do not include costs for operating personnel. The rates require adjustment by a Regional Factor and a Depreciation Factor found in the front of each chapter in the Blue Book.

Equipment use rates fall in the following two categories:

- (a) Operating Rate: This rate applies to those hours the equipment is actually in use, includes ownership and operating costs, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor of 1.06 plus the estimated hourly operating costs from the



Blue Book.

- (b) Standby Rate: This rate applies to equipment required to be at the Site but not operating, includes ownership costs only, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor of 1.06 times 0.5. The duration of allowable standby time is to be Approved in writing by the Commission with a maximum of eight hours per day or 40 hours in a normal week.

When the "manufacturer's rated capacity" falls between those shown in the Blue Book, the closest rated capacity will be used, without interpolation. All rates shall be agreed upon in writing before work is begun. Payment will not be made for pickup trucks used solely for transportation.

In cases where the equipment to be used is specialized in nature and is not available in Contractor's inventory and is rented or leased from an outside agency a 10 percent allowance will be added on the first \$5,000 plus 5 percent of the balance in excess of \$5,000 for overhead for all rented or leased equipment paid for by invoices. Where the rate charged by the agency exceeds the rate determined by the Blue Book, the rental or lease agreement shall be submitted to the Commission for Approval. The equipment operating costs from the Blue Book will be paid for rented or leased equipment for each hour the equipment was actually used.

In those cases where the required equipment is in Contractor's or Subcontractor's available inventory but not on the Site, the equipment may be rented from a local source. The Commission may Approve rental rates for equipment obtained from local sources when such rates are within 10 percent of rates in the Blue Book. When the equipment use is of short duration (less than a week) "move-in" and "move-out" costs for equipment owned by Contractor or Subcontractors may be considered when comparing rental costs of equipment obtained from local sources. This option will only be allowed when the cost of locally rented equipment would be less than using owned equipment, including "move-in" and "move-out" charges. Such rentals must be supported by a cost analysis indicating the method used was the least expensive. Should equipment be rented even though it is of a type that is in Contractor's or Subcontractor's inventory and the rental costs exceed that allowed by this paragraph, Contractor will be reimbursed for such equipment based on the rates in the Blue Book.

The rates paid as above provided shall be deemed to include compensation for the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance and all incidentals. Individual pieces of equipment or tools not listed in the Blue Book and having an individual replacement value of \$1,000 or less, whether or not consumed by use, shall be considered to be small tools. Equipment rental rates not provided by the Blue Book must be Approved by the Commission before the start of any Change Order Work.

Contractors will be paid mark-ups for equipment use costs of 10%.

Equipment operators will be paid for as stipulated in Section 13.



All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment, which has no direct power unit, shall be powered by a unit of at least the minimum rating recommended by the manufacturer of that equipment.

The time to be paid for use of equipment on the Site shall be the time the equipment is in operation on the Force Account Change Order Work being performed. The time shall include the reasonable time required to move the equipment to the location of the Force Account Change Order Work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Site other than for Force Account Change Order Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is also used at the Site other than for Force Account Change Order Work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

### **13.8.5 Permit Fees**

The Contractor will be reimbursed for the cost of any additional permit fees payable as the result of a change in the Work requiring additional permit fees. Back-up documentation supporting each cost item for this category shall be provided by the Contractor and Approved by the Commission prior to any payment authorization being granted. Contractor will be paid mark-ups for permit fees of 5%.

### **13.8.6 Subcontracted Work**

The Commission will pay the Contractor one, and only one, mark-up on Subcontracted Work equal to five percent of the cost of the subcontracted Work, notwithstanding the actual number of intervening Subcontractors, provided that the Contractor may allocate all or any part of such mark-up among intervening Subcontractors. This mark-up shall fully compensate the Contractor (and all Subcontractors) for administration, general superintendence, overhead, profit and expenses not otherwise recoverable with respect to subcontracted Work. This mark-up shall not apply to: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

### **13.8.7 Mark-Ups**

Items included in Mark-Ups: Unless otherwise indicated in this Section 13, the mark-ups and labor surcharges under this Section 13 are full and complete compensation for all overhead and other indirect costs of the added or changed Work, as well as for profit thereon. The Contractor's mark-up percentages and labor surcharges under this Section 13 shall be considered to include, among other costs, salary and expenses of executive officers, supervising officers or supervising employees, clerical employees, charges for minor equipment, such as small tools, consumables



(items which are consumed in the performance of the Work which are not a part of the finished product), and other miscellaneous supplies and services, all bond and insurance premiums, incidental job burdens, bonuses not otherwise covered, field, jobsite and general home office expenses of all types (including timekeepers, bookkeepers, and other general office help), supervisory expenses of all types (excluding only direct supervision of force account work) and all other overhead, general condition and indirect costs and expenses. With respect to non-construction related labor costs, overhead is included as part of the labor surcharge calculated in accordance with Section 13 and includes accessories such as Computer-Assisted Drafting and Design (CADD) systems, computers, facsimile transmission machines, scanners, plotters, etc.

Payment of Mark-Ups: The foregoing mark-ups and labor surcharges will be paid to the Contractor only for Work it performs; in the case of Work that is subcontracted, the mark-up for Subcontract administration will be allowed to the Contractor as described in Section 13 and all other mark-ups and labor surcharges will be allowed to the Subcontractor who actually performs the Work.

Materials and Equipment: No mark-up will be paid to the Contractor for any materials or equipment furnished by the Commission.

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

### **13.8.8 Compliance with Federal Acquisition Regulation**

Reimbursable expenses shall be limited to and comply with the FARs. Expenses excluded by the FARs shall not be reimbursed. If FHWA asserts that any claimed reimbursable expenses are not reimbursable under FARs, the Commission will allow the Contractor the opportunity to respond to the Commission and defend the allowability of the expenses.

## **13.9 Differing Site Conditions**

### **13.9.1 Responsibilities of the Commission**

Upon the Contractor's fulfillment of all applicable requirements of Sections 5.3 and 13, and subject to the limitations contained therein, the Commission shall be responsible for, and agrees to issue Change Orders to: (i) compensate the Contractor for additional costs directly attributable to changes in the Work arising from Differing Site Conditions; and (ii) extend the Completion Deadlines as the result of any delay in the Critical Path affecting a Completion Deadline caused by any such conditions.

### **13.9.2 Burden of Proof**

The Contractor 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 the Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions are eligible for a Change Order under the terms of this Book 1, and stating the efforts undertaken by the Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

### **13.10 Hazardous Substances Management**

Except as expressly provided in this Section 13.10, the Contract Price includes the cost of all Activities to be performed by the Contractor as described in Section 5 Book 2, except as provided in Section 18. (Accordingly, compensation for certain Activities required under Section 5 of Book 2, including investigating, monitoring, and characterizing are included in the Contract Price and the Contractor shall not be entitled to additional payment under Section 13.10 therefore.)

#### **13.10.1 Limitations on Change Orders**

All Change Orders authorized by this Section 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 Substances subject to Remediation Work compensable under Section 13.10 are present (deducting any avoided costs such as re-use and/or disposal of Non-Hazardous Substances) after identification that Hazardous Substances are present. The Contractor shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under Section 13.10 will not be allowed unless the Contractor demonstrates to the Commission's satisfaction that: (i) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques; and (ii) the Contractor's plan for the Remediation Work represents the approach which is most beneficial to the Project and the public. The Contractor shall provide the Commission with such information, analyses and certificates as may be requested by the Commission in order to enable a determination regarding eligibility for payment.

### **13.11 Material Errors in Right of Way Drawings**

Upon the Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the limitations contained therein, the Commission shall be responsible for, and agrees to issue Change Orders: (i) to compensate the Contractor for additional costs directly attributable to material errors in the Right of Way limits indicated in the ROW Drawings; and (ii) to extend the Completion Deadlines as the result of any delay in the Critical Path affecting a Completion Deadline caused by any such errors. The Contractor shall provide written notice to the Commission immediately upon discovery of any such material error. The Commission, in the Commission's sole discretion, shall have the right to cure any such error such as by acquiring additional property.



### **13.12 Incentives**

As an enticement for Contractor to exceed the commitments identified in the final Contract Documents, such as schedule improvements, additional scope, further minimizing traffic impacts, the Commission has established an incentive program which may in result in up to an aggregate of \$4 million increase to the Contract Price during the term of the Contract, as set forth herein. Either party may propose such a change by submitting a proposal in writing to the other party. The Commission may Approve, reject or negotiate any such proposal in its sole discretion. If the parties successfully negotiate a proposal, the Commission shall issue a Change Order reflecting such proposal.

### **13.13 Waiver**

THE CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH THE CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY CHANGE RCO, AND AGREES THAT THE CONTRACTOR SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

### **13.14 Disputes**

If the Commission and the Contractor agree that a request to increase the Contract Price and/or extend any Completion Deadline by the Contractor has merit, but are unable to agree as to the amount of such price increase and/or time extension, the Commission agrees to mark up the Change Order request or Change Order form, as applicable, provided by the Contractor to reduce the amount of the price increase and/or time extension as deemed appropriate by the Commission. In such event, the Commission will execute and deliver the marked-up Change Order to the Contractor within a reasonable period, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of the Commission and the Contractor to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Force Account Change Order and the disputed amount of the increase in the 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 the Contractor of any nature arising from or relating to the Work covered by the Change Order. The Contractor's Claim and any award by the resolver of the dispute shall be limited to the incremental costs incurred by the Contractor with respect to the disputed matter



(crediting the Commission for any corresponding reduction in the Contractor's other costs) and shall in no event exceed the amounts allowed by this Section 13 with respect thereto.

## **13.15 No Release or Waiver**

### **13.15.1 Extension of Time for Performance**

No extension of time granted hereunder shall release the Contractor's Surety from its obligations. The Commission 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 the Contractor after such date.

### **13.15.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person**

No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Commission has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, the Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. The Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, the Commission may require the Contractor to remove or otherwise undo any such work, at the Contractor's sole cost.

## **14 SUSPENSION OF WORK**

### **14.1 Suspension for Convenience**

The Commission may, at any time and for any reason, by written notice, order the Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that the Commission deems appropriate for the convenience of the Commission. The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written notice from the Commission directing the Contractor to resume Work. Suspensions related to seasonal or climatic conditions, or compensable events shall not be considered a Commission caused delay.



## **14.2 Suspension for Cause**

The Commission has the authority by written order to suspend the Work without liability to the Commission wholly or in part for the Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or general public.
2. Comply with any Governmental Approval, Legal Requirement, or otherwise carry out the requirements of the Contract.
3. Carry out orders of the Commission.
4. Comply with environmental requirements or requirements for developing and implementing the Quality Manual.

The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written notice from the Commission directing the Contractor to resume Work.

## **14.3 Contractor Responsibilities during Suspension**

During periods that Work is suspended, the Contractor 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 Contractor-provided insurance and bonds and erect necessary temporary structures, signs or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by the Commission, the Contractor shall continue to be responsible for maintenance of traffic in accordance with Maintenance of Traffic Plan and Section 16 of Book 2 and for maintenance during construction in accordance with Section 18 of Book 2. If the suspension is for the Commission's convenience, the additional work performed by the Contractor during the suspension period shall be considered a Commission-Directed Change.

## **15 TERMINATION FOR CONVENIENCE**

### **15.1 Notice of Termination**

The Commission may terminate the Contract and the performance of the Work by the Contractor in whole or, from time to time, in part, if the Commission determines, in its sole discretion that a termination is in the best public, State or national interest to do so. The Commission shall notify the Contractor of its decision to terminate by delivering to the Contractor 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 of its obligation for any claims arising out of the Work performed.



## 15.2 Contractor Responsibilities Upon Termination

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

1. Stop Work as specified in the notice.
2. Communicate such notice to all affected Subcontractors and that their Subcontracts are not to be further performed unless otherwise authorized in writing by the Commission.
3. Place no further Subcontracts or orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.
4. Terminate all Subcontracts to the extent that they relate to the Work terminated.
5. Assign to the Commission in the manner, at the times, and as and to the extent directed by the Commission, all of the right, title and interest of the Contractor under the Subcontracts so terminated, in which case the Commission will have the right, in its sole discretion, to accept performance, settle or pay any or all claims arising out of the termination of such Subcontracts.
6. Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the Approval or ratification of the Commission, to the extent it may be required, which Approval or ratification shall be final.
7. Provide the Commission with an inventory list of all materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to the Commission, and such other information as the Commission may request; and transfer title and deliver to the Commission, in the manner, at the times, and as and to the extent, if any, directed by the Commission: (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 the Commission if the Work had been completed.
8. Complete performance in accordance with the Contract Documents of all Work not terminated.
9. Take all action that may be necessary, or that the Commission may direct, for the safety, protection and preservation of: (i) the public, including public and private vehicular movement; (ii) the Work; and (iii) the equipment, machinery, materials and property related to the Contract Documents that is in the



possession of the Contractor and in which the Commission has or may acquire an interest.

10. As authorized by the Commission in writing, use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by the Commission, any property of the types referred to in Section 15.2(7); provided, however, that the Contractor: (i) is not required to extend credit to any purchaser; and (ii) may acquire the property under the conditions prescribed and at prices Approved by the Commission. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Commission under the Contract Documents or paid in any other manner directed by the Commission.
11. If requested by the Commission, withdraw from the portions of the Site designated by the Commission and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, the Contractor and any Subcontractor in the performance of the Work as the Commission may direct.
12. Take other actions directed by the Commission.

### **15.3 Responsibility After Notice of Termination**

The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

1. The Contractor's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when the Commission certifies that those materials have been stored in the manner and at the locations directed by the Commission.
2. The Contractor's responsibility for damage to materials purchased by the Commission 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 the Commission.

Immediately after the Commission determines that the Contractor has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, the Contractor 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, the Contractor shall submit a final termination settlement proposal to the Commission in the form and with the certification prescribed by the Commission. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of termination, unless the Contractor has requested a time extension in writing within such 60-Day period and the Commission has agreed in writing to allow such an extension. The Commission



will then review the Contractor's termination settlement proposal and will act upon it, return it with comments or reject it. If the Contractor fails to submit the proposal within the time allowed, the Commission may determine, on the basis of information available to it, the amount, if any, due the Contractor because of the termination and shall pay the Contractor the amount so determined.

#### **15.4.2 Negotiated Settlement Amount**

The Contractor and the Commission may agree, as provided in Section 15.4.1, upon the whole or any part of the amount or amounts to be paid to the Contractor 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 the Commission. 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 the Contractor will be paid the agreed amount. Nothing in Section 15.5, prescribing the amount to be paid to the Contractor in the event that the Contractor and the Commission fail to agree upon the whole amount to be paid to the Contractor 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 the Contractor pursuant to this Section 15.4. Unless otherwise agreed to by the parties as a part of a negotiated settlement, the Commission'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 the Contractor from its obligations with respect thereto, including Warranties, or affect the Commission'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 the Contractor and the Commission fail to agree, as provided in Section 15.4.2, upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by the Commission in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section 15.4:

##### **15.5.1 Payment Amount**

The Commission will pay the Contractor 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 the Commission:

1. The Contractor'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 the Commission's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, 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 the Commission, 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.

2. As profit on Clause 1 above, a sum determined by the Commission to be fair and reasonable; provided, however, that if it appears that the Contractor 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.
3. The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2(6), 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 1 above.
4. The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2(9) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract, including the reasonable cost to the Contractor of handling material returned to the vendor, delivered to the Commission or otherwise disposed of as directed by the Commission, and including a reasonable allowance for the Contractor's administrative costs in determining the amount due to the Contractor as the result of the termination of Work under the Contract.

## **15.5.2 Maximum Compensation**

The Contractor 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 the Contractor, exclusive of costs described in Sections 15.5.1(3) and (4), 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 the Commission by the Contractor, such refund shall be paid directly to the Commission or otherwise credited to the Commission. Notwithstanding anything to the contrary contained herein, if a termination occurs prior to issuance of NTP2, the total amount payable to the Contractor shall in no event exceed the NTP1 Payment Cap (and previously made insurance or bond



payments).

### **15.5.3 Excluded Items**

Except for normal spoilage, and except to the extent that the Commission will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under Section 15.5.1, the fair value, as determined by the Commission, of equipment, machinery, materials and property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Commission, or to a buyer pursuant to Section 15.2(10). The amount set forth in the Proposal by the Contractor 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 the Contractor 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 the Contractor under this Section 15 shall be reduced by: (i) all unliquidated advance or other payments made to or on behalf of the Contractor applicable to the terminated portion of the Contract; (ii) the amount of any claim which the Commission may have against any Contractor-Related Entity in connection with the Contract; (iii) the agreed price for, or the proceeds of the sale of, any property, materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to the Commission; (iv) amounts that the Commission deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners; (v) the cost of repairing any Nonconforming Work, and (vi) any amounts due or payable by the Contractor to the Commission.

### **15.8 Partial Payments**

The Commission may, from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by the Contractor in connection with the terminated portion of the Contract, whenever in the opinion of the Commission the aggregate of such payments shall be within the amount to which the Contractor 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 the Contractor to the



Commission upon demand together with interest at a rate equal to the average rate at the time being received from the investment of state funds, as determined by the State Treasurer, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to the Commission. However, no interest will be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Commission by reason of the circumstances.

### **15.9 Inclusion in Subcontracts**

The Contractor 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 the Commission 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(4) of Work under any Subcontract, the Contractor 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 the Contractor be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to the Contractor determined in accordance with this Section 15 constitutes the Contractor'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 the Commission may have, and the Commission 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 the Contractor 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 the Commission, after issuance of NTP1, for more than 180 consecutive days, the Contractor shall have the right to consider the Contract to have been terminated for convenience under this Section 15. The Contractor shall notify the Commission of such election by delivering to the Commission a written notice of termination due to such suspension specifying its effective date. Upon delivery by the Contractor to the Commission of a notice of termination due to suspension, the provisions of this Section 15 shall apply.

## **16 DEFAULT**

### **16.1 Default by Contractor**

#### **16.1.1 Events of Default**

The Contractor shall be in breach under the Contract upon the occurrence of any one or more of the following events or conditions:

1. The Contractor fails to promptly begin the Work under the Contract Documents following issuance of NTP1.
2. The Contractor fails to perform the Work with sufficient resources to ensure the prompt completion thereof; (i.e., the Contractor fails to execute remedial action in accordance with the Quality Manual and Book 2, Section 3).
3. The Contractor fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by the Commission under Section 7.4.3.
4. The Contractor discontinues or suspends the prosecution of the Work (exclusive of Work stoppage due to: (i) termination by the Commission; (ii) an excusable delay pursuant to 13.3.2(g); or (iii) nonpayment by the Commission not related to a breach by the Contractor).
5. The Contractor fails to resume performance of Work, which has been suspended or stopped, within a reasonable time after receipt of notice from the Commission to do so or (if applicable) after cessation of the event preventing performance.
6. The Contractor breaches any other agreement, representation or warranty contained in the Contract Documents, or the Contractor fails to perform any other obligation under the Contract Documents, including EEO and DBE requirements.



7. The Contractor fails to provide and maintain the required insurance and payment and performance bond.
8. The Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under Section 23.4.2.
9. The Contractor fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, fails to comply with any Legal Requirement or Governmental Approval; or fails reasonably to comply with the instructions of the Commission consistent with the Contract Documents.
10. The Contractor fails to discharge or obtain a stay within ten 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).
11. The Contractor or any partner, joint venture member or other member of the Contractor 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.
12. Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against the Contractor or any partner, joint venture member or other member of the Contractor and not dismissed within 60 days.
13. Any representation or warranty made by the Contractor 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.
14. The Contractor is a party to fraud.

### **16.1.2 Right to Cure**

The Commission agrees to allow the Contractor and Surety ten (10) days notice and opportunity to cure any breach before declaring an Event of Default, provided that no such notice and opportunity to cure is required for any breach, which by its nature cannot be cured. If a breach is curable but by its nature cannot be cured within 10 days, as determined by the Commission, the Commission agrees not to declare an Event of Default provided that the Contractor commences such cure within such 10-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. The Contractor hereby acknowledges and agrees that the events described in Subsections 16.1.1(13) and (14) are not curable. Notwithstanding the foregoing, if the Commission believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, the Commission may, without notice and without awaiting lapse of any cure period, rectify the condition at the Contractor's cost, and so long as the Commission undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the Commission to liability to the Contractor and shall not entitle the



Contractor to any other remedy, it being acknowledged that the Commission has a paramount public interest in providing and maintaining safe public use of and access to the Project. The Commission's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

## **16.2 Remedies**

### **16.2.1 Rights of the Commission**

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 and/or other performance Security, the Commission shall have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing the Contractor from any obligations, and the Contractor shall have the following obligations (as applicable):

1. The Commission may order the Contractor to suspend or discontinue the Work or any portion of the Work.
2. The Commission may terminate the Contract or a portion thereof, in which case, the provisions of Sections 15.2 and 15.3 shall apply.
3. If and as directed by the Commission, the Contractor 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 Contractor-Related Entity in the performance of the Work.
4. The Contractor shall deliver to the Commission possession of any or all facilities of the Contractor 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, details and diagrams), specifications, records, information, schedules, samples, Shop Drawings and other documents, that the Commission deems necessary for completion of the Work.
5. The Contractor shall confirm the assignment to the Commission of the Subcontracts requested by the Commission, and the Contractor shall terminate, at its cost, all other Subcontracts.
6. The Commission may deduct from any amounts payable by the Commission to the Contractor such amounts payable by the Contractor to the Commission, including Liquidated Damages or other damages payable to the Commission under the Contract Documents.
7. The Commission, without incurring any liability to the Contractor, shall have the rights to: (i) take the performance of all or a portion of the Work from the Contractor (either with or without the use of the Contractor's materials, equipment, tools and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) use such other methods, as in



the opinion of the Commission, will be required for the completion of the Project.

8. If the Commission exercises any right to perform any obligations of the Contractor, in the exercise of such right the Commission may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as the Commission 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 Contractor**

If an Event of Default has occurred, the Contractor and Surety shall be jointly and severally liable to the Commission (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 the Commission or any party acting on the Commission's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work and increased financing costs). Upon the occurrence of an Event of Default, the Commission shall be entitled to withhold all or any portion of further payments to the Contractor until such time as the Commission is able to determine how much (if any) remains owing to the Contractor. Promptly upon such determination, the Commission shall notify the Contractor in writing of the amount, if any, that the Contractor shall pay the Commission or that the Commission shall pay the Contractor with respect thereto. All costs and charges incurred by the Commission, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any moneys due or which may become due to the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and its Surety(ies) shall be liable and shall pay to the Commission the amount of such excess.

It is recognized that if a default under Section 16.1.1(11) or (12) occurs, such event could impair or frustrate the Contractor's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, the Commission shall be entitled to request of the Contractor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten days of delivery of the request shall entitle the Commission 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, the Commission shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from the Commission'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 and Payment and Performance Bond.

In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work, the Commission may pay the Contractor 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 the Contractor for prospective profits on, or any other compensation relating to, Work uncompleted by the Contractor.

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.

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

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

The Contractor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by the Contractor hereunder or by the Commission's declaration of an Event of Default, or by actions taken by the Commission under this Section 16.2.

### **16.3 Right to Stop Work if Undisputed Payment is Not Made**

The Contractor shall have the right to stop Work if the Commission fails to make an undisputed payment due hereunder within seven days after receipt of notice of nonpayment. Any such Work stoppage shall be considered a suspension under Section 14.1. The Contractor shall not have the right to terminate the Contract for default as the result of any failure by the Commission to make an undisputed payment due hereunder, but the Contractor 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 Commission Breaches**

In the event of any breach of the Contract by the Commission other than a failure to make payments to the Contractor, the Contractor shall provide to the Commission a written notice describing the breach and the opportunity to cure such breach. The



Commission 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, the Commission shall have such additional period of time as may be reasonably necessary to cure the breach so long as the Commission commences such cure within such 30-day period, and thereafter diligently prosecutes such cure to completion. The Contractor 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**

#### **17.1.1 Failure to Meet Contract Requirements**

The Contractor understands and agrees that if the Contractor fails to complete the Work in accordance with the Contract Documents, the Commission will suffer substantial losses and damages. The Contractor agrees that it shall be liable for all such losses and damages. The Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the I-64 Interstate system and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, certain closure duration delays or failure to obtain access, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to the Commission and the public in the event of the Contractor's failure to achieve Segment Completion Deadlines, Lane Closure Duration Deadlines, Nighttime Lane Closure Deadlines, the Project Completion Deadline or Final Acceptance by the applicable Completion Deadlines, or to obtain necessary rights of access to encroach upon private property. Therefore, the Contractor and the Commission have agreed to stipulate the amount payable by the Contractor in the event of its failure to meet a Completion Deadline, Nighttime Lane Closure Deadline or Lane Closure Deadlines. The Contractor acknowledges and agrees that such Liquidated Damages are intended to compensate the Commission solely for the Contractor's failure to meet these Contract Document requirements, and shall not excuse the Contractor from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements.

If the Contractor fails to achieve Segment Completion(s), lane closure deadlines and/or Project Completion by the applicable Completion Deadline, the Contractor agrees to pay the Commission Liquidated Damages in the following amounts:

1. \$ 24,300 per Day (or portion of a Day) for the Contractor's failure to achieve Project Completion by the Project Completion Deadline.
2. \$ 24,300 per Day (or portion of a Day) for the Contractor's failure to achieve a Segment Completion by the Segment Completion Deadline.



3. \$ 24,300 per Day (or portion of a Day) for the Contractor's failure to achieve Final Acceptance by the Final Acceptance Deadline (unless failure to achieve Final Acceptance was no fault of the Contractor).
4. \$ 2,200 per Day (or portion of a Day) per lane mile for the Contractor's failure to meet the Lane Closure Deadlines.
5. \$ 1,150 per hour (or portion of any hour) per lane mile for the Contractor's failure to meet the Nighttime Lane Closure Deadlines.
6. Damages as provided in Exhibit D for Contractor's failure to make a good faith effort to meet the DBE participation goal.

#### **17.1.2 Maximum Damage Amounts**

Cumulative Liquidated Damages under Section 17.1.1 shall not exceed \$41,000,000.00.

#### **17.1.3 Multiple Assessments of Liquidated Damages**

Liquidated Damages may be assessed simultaneously under more than one subsection under Section 17.1.1.

#### **17.1.4 Reasonableness of Liquidated Damage Amounts**

The Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by the Commission of damages, which it will incur in each of the above events, including additional interest expense as well as administrative costs. The Contractor and the Commission agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix the Contractor's costs and to avoid later disputes over which items are properly chargeable to the Contractor. The Contractor 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 such sums are reasonable under the circumstances existing as of the date of execution and delivery of the Contract. The Contractor 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**

The Commission shall have the right to deduct any amount owed by the Contractor to the Commission hereunder from any amounts owed by the Commission to the Contractor under this Contract.

#### **17.2.2 No Waiver**

Permitting or requiring the Contractor to continue and finish the Work or any part



thereof after a Completion Deadline shall not act as a waiver of the Commission's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to the Commission.

### **17.3 Payment of Liquidated Damages**

To the extent Liquidated Damages are not deducted from any amount owed to the Commission by the Contractor, the Commission may send Contractor an invoice and the Liquidated Damages shall be payable by the Contractor to the Commission within ten days after the Contractor's receipt of the invoice therefore.

## **18 INDEMNIFICATION**

### **18.1 Indemnifications by Contractor**

#### **18.1.1 General Indemnities**

Subject to Section 18.1.3, the Contractor shall release, defend, indemnify and hold harmless the Commission and its agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from:

1. The breach or alleged breach of the Contract by any Contractor-Related Entity.
2. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Substances) or Governmental Approvals in performing the Work.
3. 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 the Commission or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from the Commission's failure to comply with specific written instructions regarding use provided to the Commission by the Contractor.
4. The alleged negligent act or omission or willful misconduct of any Contractor-Related Entity.



5. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of the Contractor 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 Contractor-Related Entity.
6. Any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or Lien, provided that the Commission is not in default in payments owing to the Contractor with respect to such Work.
7. Any spill or release or threatened spill or release of Hazardous Substances: (i) attributable to the negligence, willful misconduct or breach of contract by any Contractor-Related Entity; or (ii) that was brought onto the Site by any Contractor-Related Entity.
8. The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of work being performed by other contractors as described in Section 23.1, or failure of any Contractor-Related Entity to cooperate reasonably with other contractors in accordance therewith.

### **18.1.2 Design Defects**

Subject to Section 18.1.3, the Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties 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 Reference Documents. The Contractor agrees that, because the Basic Configuration and Reference Documents are subject to review and modification by the Contractor, it is appropriate for the Contractor to assume liability for Errors in the completed Project even though they may be related to Errors in the Basic Configuration or Reference Documents.

### **18.1.3 Losses Due to Negligence of Indemnified Parties**

The Contractor's indemnity obligation under Sections 18.1.1 and 18.1.2 shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

### **18.1.4 Claims by Employees**

In claims by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the



indemnification obligation under this Section 18.1 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

### **18.1.5 Reliance on Contractor's Performance**

The Contractor hereby acknowledges and agrees that it is the Contractor's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Contractor's performance of such obligation. The Contractor further agrees that any review, acceptance and/or approval by the Commission and/or others hereunder shall not relieve the Contractor of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

### **18.1.6 Indemnities in Connection with Utilities**

**18.1.6.1** The Contractor is advised that each MUA contains provisions for the Contractor to indemnify, save and hold harmless the Utility Owner, its employees and agents with respect to certain matters. The Contractor hereby agrees to and shall perform and comply with such provisions of the MUAs for the benefit of the Utility Owners, their employees and agents.

**18.1.6.2** The Contractor is also advised that the MUAs may include certain agreements by the Commission to indemnify, defend and hold harmless the Utility Owners with respect to certain matters. The Contractor's obligation under this Section 18.1 shall automatically apply to require it to release, indemnify, defend and hold harmless the Utility Owners, in addition to the Indemnified Parties, with respect to all such matters.

## **18.2 Responsibility of the Commission for Certain Hazardous Substances**

### **18.2.1 Pre-Existing Site Contamination**

It is recognized that the Commission may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Substances, 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 Substances under such doctrines as joint and several liability and/or strict liability. It is not the intention of the parties that the Contractor be exposed to any such liability arising solely out of: (i) pre-existing Site contamination, whether known or unknown, except as otherwise provided in Section 18.1.1(7); (ii) the non-negligent performance by the Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom the Contractor may be contractually or legally responsible, in the handling of such Hazardous Substances; and/or (iii) the activities of any Persons not described in (ii) above, including the Commission.



Accordingly, for the purposes of the Contract only, the Commission shall reimburse the Contractor for Remediation Work (through payment of the Contract Price, as it may be increased by Change Order pursuant to Section 13), and will be responsible for, any and all claims, damages, losses, liabilities, costs and expenses, including the Contractor's attorneys' fees, arising out of, or in connection with, bodily injury (including death) to persons, damage to property or environmental removal or response costs arising out of the presence, release or threatened release of Hazardous Substances on or from the Site, irrespective of whether such substances were generated or introduced on the Site before or after execution of the Contract and irrespective of whether the Commission was aware of, or directly involved in, the generation or introduction of such materials, but specifically excluding from any obligation of responsibility for those conditions for which the Contractor has agreed to be responsible as described in Section 18.1.1(7).

### **18.2.2 Generator Number for Hazardous Waste Remediation**

Except for Hazardous Substances for which the Contractor is responsible as described in Section 18.1.1(7), without contradiction of any assertion by the Commission of third-party liability, and for purposes of the Contract only:

1. The Contractor shall not be required to execute any hazardous waste manifests as a "generator."
2. Hazardous Substances encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by and carried in the name of the Commission or another Person designated by the Commission.

### **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 hereunder.

### **18.4 Comprehensive Environmental Response, Compensation, and Liability Act Agreement**

Without limiting their generality, the indemnities set forth in Section 18.1.1(7) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the parties indemnified in said Section 18.1.1(7).



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## **19 PARTNERING, CLAIMS FOR ADJUSTMENT AND DISPUTES**

### **19.1 Partnering**

The Commission intends to encourage the use of an extensive partnering program among the Commission, the Contractor, its Subcontractors and other stakeholders, where appropriate. The partnering relationship will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives include effective and efficient Project performance and completion on schedule, within budget and in accordance with the Contract Documents.

The Commission anticipates a partnering effort involving the executive management, Project management, Project staff and others. Participation is encouraged. Any cost associated with effectuating partnering will be agreed to by both the Contractor and the Commission and will be shared equally with no change in the Contract Price. The Contractor shall pay all costs and submit paid invoices to the Commission for 50 percent reimbursement.

It is the intent of the parties that the dispute resolution provisions contained in this Section 19 shall apply only in the event that the normal the Commission-Contractor issue resolution efforts through partnering are not successful. The dispute resolution provisions set forth in Section 19.2 shall apply to all Disputes arising out of the Work that are not resolved by the parties through the partnering process, except as expressly provided to the contrary in the Contract Documents.

### **19.2 Dispute Resolution; General Provisions**

All Disputes between the Contractor and the Commission (or, as provided by Section 19.6.3, between the Contractor's Subcontractors and the Commission) that have not been resolved by the parties through the partnering process shall be resolved as provided by this Section.

#### **19.2.1 Disputes; Disputes Governed by this Section; Priorities; Disputes Involving Utility Owners**

A "Dispute" is any written request for relief in any form arising out of or relating to the Contract Documents or the Project, including all contract claims, statutory claims, equitable claims, claims for extension of time, disagreements resulting from a change, a delay, a Change Order, any other written orders, or oral orders from the Commission, including any direction, instruction, interpretation, or determination by the Commission; provided, however, that this Section shall not apply to, and the DRB shall not have the authority to consider, claims that are not actionable against the Commission by the Contractor on its own behalf or on behalf of any of its Subcontractors in accordance with Section 19.6.3, claims arising in tort; claims relating to the scope or applicability of indemnities provided under the Contract Documents; claims relating to matters within the sole discretion of the Commission; claims for injunctive relief; claims against insurance companies, or claims which are



within the scope of Section 19.2.2. When a Dispute occurs, the Contractor shall pursue resolution through the process set forth in this Section.

Participation in and completion of this dispute resolution process is a condition precedent to an action for judicial review pursuant to the Missouri Administrative Procedure Act, 536.060, et.seq., RSMo or arbitration pursuant to 226.096.

Hereafter, all references to Disputes brought by the Contractor refer also to Disputes brought by the Contractor on behalf of any of its Subcontractors, provided that the additional requirements of Section 19.6.3 are complied with.

If a dispute arises relating to a MUA or a Work Order or the Utility Work there under, and the Utility Owner is a necessary or appropriate party to such dispute, then such dispute shall be resolved in the manner set forth in the applicable MUA, and the Contractor shall participate in such dispute resolution process as appropriate to resolve such dispute.

## 19.2.2 Overview of Process

The dispute resolution process shall involve the following steps, each of which must be taken before the next is available, provided, however, that the Commission may submit claims to the DRB at any time and that the parties may, by mutual agreement, submit their dispute to mediation or other alternate dispute resolution process at any time:

1. If the parties are not able to resolve a Dispute through the partnering process, the Contractor and the Commission shall file a joint position paper with the DRB.
2. Either party may file with the Commission exceptions to the initial decision of the DRB within 30 days of service of the initial decision of the DRB.
3. If neither party files an exception to the initial decision of the DRB, the decision of the DRB becomes the final decision of the Commission.
4. Failure to file the exceptions described above shall result in a waiver by the Contractor of the right to judicial review of the final order of the Commission.
5. Any party who seeks to reverse or modify the recommendations or initial decision of the DRB may file with the Director of Transportation of the Commission, or his designee, an appeal in accordance with 536.060, et.seq., RSMo, or 226.096, RSMo, whichever is applicable. The Director of MoDOT, or his designee, shall decide the issue(s) appealed in accordance with 536.060, et.seq., RSMo.
6. The Contractor may appeal the final decision of the Commission in accordance with 536.060, et.seq., RSMo or 226.096, RSMo, whichever is applicable.

## 19.2.3 Continuation of Work

At all times during this Dispute resolution process or any subsequent administrative



or court proceeding, and at all times during the pendency of any Dispute with any other project contractor, the Contractor and all Subcontractors shall proceed with the Project Work diligently, without delay, in accordance with all provisions of the Contract Documents.

#### **19.2.4 Records Related to Dispute**

Throughout the course of any work that is the subject of any Dispute, the Contractor shall keep complete records of the extra costs and time incurred related to the Dispute. The Contractor shall permit the Commission access to these and all other records needed for evaluating the disputed issue(s) as determined by the Commission. These records shall be retained for a period of not less than six years from the date of resolution of the Dispute.

### **19.3 Procedure and Schedule for Dispute Resolution**

#### **19.3.1 Time Periods**

Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation.

#### **19.3.2 Written Protest and Submittal to Dispute Resolution Board**

If the Contractor disagrees with anything required in any written order from the Commission, including any direction, instruction, modification, interpretation, rejection or modification of a proposed Change Order, or determination by the Commission, and the parties have not been able to resolve the disagreement through the partnering efforts set forth in Section 19.1, the Contractor shall comply with the following procedures:

1. Within two weeks (or as mutually agreed by the Commission and the Contractor) after the date on which the Contractor and the Commission first become aware that the dispute, decision, action, or order to which the Contractor objects, cannot be resolved through the partnering efforts of the parties, the Contractor shall meet with the Commission and attempt to agree upon a statement of the disputed issue. Within one week after meeting with the Commission (or as mutually agreed by the Commission and the Contractor), the Contractor shall provide to the Commission its position, including the information required in Section 13.3.2.
2. The Contractor also shall submit a sworn certification in a form acceptable to the Commission, executed by an authorized Representative with authority to bind the Contractor and with direct knowledge of the Dispute, certifying that: (i) the claim is made in good faith and in accordance with the terms of the Contract Documents; (ii) the amount claimed accurately reflects the appropriate adjustments in the Contract Price and time, and includes all delay claims and direct and indirect costs sought by the Contractor; (iii) the supporting cost and pricing data are accurate, current and complete; (iv) the factual basis for the claim is not falsely represented; and (v) except as expressly noted and justified by citation to legal authority, the amount claimed



includes no attorneys' fees, interest or other generally non-compensable costs.

3. In the event any such Claim or protest package, supporting statement and the required certification is not filed within the time period set forth above, the Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the Claim or protest, and shall be deemed to have waived the right to seek an extension of the Completion Deadlines with respect to any delay in the Critical Path which occurred prior to the date of the protest. The Contractor's failure shall also constitute a waiver of the right to bring the Claim or protest before the DRB. This waiver shall occur whether or not there is any showing of prejudice to the Commission resulting from the delay in filing the protest.

### **19.3.3 Commission Response**

Within 30 days of receipt of the Contractor's position, the Commission shall provide its response to the Contractor's claim in a joint position paper, and shall deliver to the Contractor and to the DRB the completed joint position paper. The Commission's response shall include a detailed statement setting forth each factual and legal defense to the claims, together with all documents that establish each defense. Any counterclaim shall set forth its nature, its factual and legal bases and all remedies sought, together with all documents that establish each counterclaim. If the Commission has set forth a counterclaim, the Contractor shall insert a detailed statement setting forth each factual and legal defense to the counterclaim in the joint position paper, and shall submit the revised final joint position paper to the DRB and the Commission within 21 days after receipt of the Commission's statement of its counterclaim.

### **19.3.4 Commission Disputes**

The Commission shall have the right to bring a Dispute before the DRB at any time, without the necessity of providing a written protest or claim, or following the procedures described in 19.3.2(2) and (3) above. In the event the Commission brings a Dispute to the DRB, the procedures set forth in Section 19.6 relating to the Contractor Disputes shall apply; provided, however, the Commission shall not be required to submit the certification referred to in Section 19.3.2, subsection 2, and the Contractor shall be required to submit such certification with respect to any counterclaims asserted by the Contractor.

## **19.4 Dispute Resolution Board**

The DRB shall consist of three members. One member will be selected by the Commission and approved by the Contractor. One member will be selected by the Contractor and Approved by the Commission. A third member will be selected by the first two members and approved by both the Commission and the Contractor. The third member will act as chairperson for all DRB Activities.



### **19.4.1 Experience of Dispute Resolution Board Members**

It is desirable that all prospective DRB members be experienced with highway design and construction and environmental compliance, as well as with resolution of disputes involving interpretation of design/build contracts. The goal in selecting the third member is to complement the dispute resolution experience of the first two and to provide leadership for the DRB's Activities. The third member shall be a lawyer or retired judge.

### **19.4.2 Avoidance of Appearance of Conflict**

It is imperative that potential DRB members show no partiality to either the Contractor or the Commission, or have any conflict of interest.

1. No member shall be an Affiliate or otherwise have a financial interest in the Contract or in the outcome of any Dispute decided hereunder, except for the right to receive payment for serving on the DRB.
2. No member shall have ever been previously employed (or have his/her employer employed) by the Commission, the Contractor or any Affiliate, within two years prior to the Proposal Due Date, except for fee-based consulting services on other projects which are disclosed to all parties, or have had financial ties to any party or Affiliate of any party to the Contract.
3. No member shall have had substantial prior involvement in the Project or relationship with any party or Affiliate of a nature which would be grounds for disqualification of a judge, or which could otherwise compromise his or her ability to impartially resolve Disputes.
4. No member shall accept employment with the Commission, the Contractor or any Affiliate during the term hereof and for so long thereafter as any obligations remain outstanding under the Contract Documents, except as a member of other disputes boards.
5. No member shall discuss employment with the Contractor, any Affiliate or the Commission or any consultants working on the Project during the term hereof and for so long thereafter as any obligations remain outstanding under the Contract Documents.

### **19.4.3 Submission of Disclosure Statements**

Before their appointments are final, the first two nominated members shall submit complete disclosure statements for the approval of both the Commission and the Contractor. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships to the Project and with all parties involved in the Contract, including disclosure of past or current professional or close personal relationships with the Contractor, any Affiliate, the Commission or its consultants working on the Project, or with any key member of any such Person. The third DRB member shall supply such a statement to the first two DRB members and to the Commission and the Contractor before his or her appointment is final.



#### **19.4.4 Selection Process**

Within 90 days after NTP2, the Commission and the Contractor shall submit two names of prospective DRB members to each other for approval and provide information regarding the selected individual to the other party. The Commission and the Contractor agree to meet as often as necessary to select four prospective DRB members between them (the “Pre-Approved DRB List”).

At any time after the parties have agreed to the Pre-Approved DRB List, either the Commission or the Contractor may request to the other in writing that the DRB be convened. Such request shall include its prospective DRB member, selected from the Pre-Approved DRB List. Within 30 days after receipt of such notice, the other party shall select its Dispute Resolution Board member from the Pre-Approved DRB List. Immediately upon approval of the first two members, the two members shall begin selection of the third member from the Pre-Approved DRB List. The first two members shall ensure that the third member meets all of the criteria listed above. The third member shall be selected within four weeks after the first two members are notified to proceed with the selection. In the event of an impasse in selection of the third member, that member shall be selected by mutual agreement of the Commission and the Contractor. In so doing, they may, but are not required to, consider the nominees offered by the first two members. If the Commission and the Contractor cannot agree in the selection of the third member, then each party may submit a list of up to five candidates to a court of competent jurisdiction for judicial resolution of the selection of the third member.

#### **19.4.5 Execution of Agreements**

Promptly upon approval of the DRB members, the Commission, the Contractor, and the individual DRB members shall enter into three-party agreements in the form of Exhibit M hereto which set forth the terms and conditions which apply to the services to be provided by the members. The Commission, the Contractor, and all three members of the DRB shall execute the DRB Agreement within four weeks after the selection of the third member.

#### **19.4.6 Reconstitution of Dispute Resolution Board**

The Commission and the Contractor shall each have the right, one time only, to require appointments of a new DRB to resolve future Disputes, which right may be exercised at any time by delivery of notice to such effect to the other party and to the DRB. In such event, a new DRB Agreement, in the same form as Exhibit M hereto, shall be executed establishing a new board, and except as otherwise mutually agreed by the Commission and the Contractor, the work to be performed by the DRB shall be limited to Disputes submitted to the DRB before delivery of the notice requiring appointment of a new board.

### **19.5 Operation**

The DRB shall formulate its own rules of operation which shall conform to the Missouri Administrative Procedure Act, 536.060, et.seq., in accordance with the DRB Agreement.



### **19.5.1 Progress Reports**

In order to keep abreast of design and construction development and progress, the members will be provided regular written progress reports and other relevant data from the Commission and the Contractor.

### **19.5.2 Regular Meetings**

Once convened, the DRB shall visit the Project and meet with representatives of the Commission and the Contractor at least annually, and at more regular intervals if the Commission and the Contractor agree that more regular meetings are necessary. The regular meetings shall be held at the job site. Each meeting shall consist of an informal round table discussion followed by a field review of the Project. The round table discussion shall be attended by selected personnel from the Commission and the Contractor. The agenda shall generally include the following:

1. Meeting convened by the chair of the DRB.
2. Opening remarks by the Commission.
3. A description by the Contractor of Work accomplished since the last meeting, current status of the current Monthly Progress Schedule, schedule for future Work, potential Disputes and proposed solutions for any problems.
4. Discussion by the Commission of the Work schedule as the Commission views it, potential Disputes, and status of past Disputes.
5. Set tentative date for next meeting.

If it is considered necessary by the parties, the Contractor will prepare minutes of regular meetings and circulate them for comments, revisions, and/or approval of all concerned. The field inspection shall cover all active segments of the work. The DRB shall be accompanied by representatives of both the Commission and the Contractor.

### **19.5.3 No Ex Parte Communications**

The parties are expressly prohibited from seeking advice from, consulting with, or discussing any aspect of an existing or potential Dispute with, any member of the DRB, unless duly authorized representatives of both parties agree otherwise, in writing.

### **19.5.4 Compensation**

Each party shall be responsible for payment of the DRB member selected by it and shall enter into a separate agreement for payment with its selected member. The Contractor shall enter into an agreement with the third DRB member and a certified court reporter, if necessary, and shall pay all costs and submit paid invoices to the Commission for 50 percent reimbursement for the services and expenses of the third DRB member and the services of a certified court reporter.



## **19.6 Procedures Before Dispute Resolution Board**

### **19.6.1 Impartiality of Dispute Resolution Board**

The DRB shall fairly and impartially consider Disputes referred to it, and shall provide an initial decision to the Commission.

### **19.6.2 DRB Procedure for Dispute Resolution**

Within ten days after the date of receipt of the Commission's answer or the Contractor's response to the Commission's counterclaim, whichever occurs later, the DRB shall set a date for a hearing on the Dispute.

The DRB may hold an informal proceeding prior to holding a hearing as set forth below if the DRB feels that it would be beneficial. If the DRB holds an informal meeting, however, it shall be recorded and the individuals making presentations shall be sworn in by the Chair of the DRB. At the conclusion of an informal proceeding, the DRB shall issue an informal recommendation to the parties based on the issues raised at the informal proceeding. However, either party may request that the DRB proceed with a hearing as set forth below.

The hearing shall be held in accordance with the Missouri Administrative Procedure and Review Statute, RSMo. Chapter 536, and the DRB shall act as the hearing officer or agency and shall have the powers set forth therein.

After the hearing on a Dispute is concluded, the DRB shall meet to formulate findings and conclusions upon all material issues of fact, law, or discretion presented by the record regarding resolution of the Dispute. All DRB deliberations shall be conducted in private and shall be confidential. The DRB shall make a concerted effort to reach a unanimous decision. The DRB shall base its findings and conclusions on the terms of the Contract Documents, established principles of law, statutes and regulations deemed by the DRB to be applicable, and the facts and circumstances of the Dispute as found by the DRB, and the information provided by the parties.

Within 30 days after the hearing (or such other time as is mutually agreed among the parties but not to exceed 60 days), the DRB shall prepare an initial decision, which shall be served on the Contractor and the Commission. The initial decision shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record, and the appropriate order, sanction, relief or demand of the DRB. The DRB's statement of findings, conclusions and recommendations shall be made in compliance with the Missouri Administrative Procedure and Review Statute, RSMo. Chapter 536.

Within 30 days after service of the DRB's initial decision, either the Contractor or the Commission may file exceptions to the initial decision with the Director of Transportation, or his designee. The record to be considered by the Director of Transportation, or his designee shall be designated in accordance with the Missouri Administrative Procedure and Review Statute, RSMo. Chapter 536.



The Director of Transportation, or his designee will render a decision within 60 days after the exceptions have been filed with the Commission in accordance with the Missouri Administrative Procedure and Review Statute, RSMo. Chapter 536. The decision of the Director of Transportation, or his designee shall constitute final agency action, which may be appealed in accordance the Missouri Administrative Procedure Act, 536.060, et seq., RSMo or arbitration pursuant to 226.096, whichever is applicable.

### **19.6.3 Dispute Resolution: Additional Requirements for Subcontractor Demands**

For purposes of this Section 19, a “Subcontractor Demand” shall include any claim by a Subcontractor (including also any pass-through claims by a lower tier Subcontractor) against the Contractor that is actionable by the Contractor against the Commission and arises from work, services or materials provided or to be provided under the Contract Documents. If the Contractor determines to pursue a Claim against the Commission that includes a Subcontractor Demand, the following additional conditions shall apply:

1. The Contractor shall identify clearly in all submissions pursuant to this Section 19, that portion of the claim that involves a Subcontractor.
2. The Contractor shall include, as part of its submission pursuant to Section 19, a certification in a form acceptable to the Commission by the Subcontractor’s officer, partner or authorized representative with authority to bind the Subcontractor and with direct knowledge of the facts underlying the Subcontractor’s claim. The Contractor also shall submit a Contractor’s certification that: (i) the Contractor has investigated the basis of the Subcontractor’s claims and has determined that all such claims are justified as to entitlement and amount of money and time requested, and has reviewed and verified the adequacy of all back-up documentation; (ii) the Subcontractor’s claim has been prepared and submitted in accordance with the terms of the Contract Documents and the applicable Subcontract(s) and contains all information required by the Contract Documents and applicable Subcontract; and (iii) the Contractor has no reason to believe and does not believe that the factual basis for the Subcontractor’s claim is falsely represented. Any claim under this Section 19 involving Subcontractor Work shall be considered incomplete if it is not accompanied by such analysis and certification.
3. At any DRB hearing on a Dispute that includes one or more Subcontractor claims, the Contractor shall require that each Subcontractor that is involved in the Dispute have present an authorized representative with actual knowledge of the facts underlying the Subcontractor’s claim to assist in presenting the Subcontractor’s claim and to answer questions raised by the DRB members or the Commission’s Representatives.
4. Failure of the Contractor to assert a Subcontractor’s claim on behalf of any Subcontractor or Supplier at the time of submission of Contractor’s Claims,



as provided hereunder, shall constitute a release of the Commission by the Contractor on account of such Subcontractor's claim.

5. The Contractor shall require in all Subcontracts that all Subcontractors and suppliers of any tier: (i) agree to submit Subcontractor's claims to the Contractor in a proper form and in sufficient time to allow processing by the Contractor in accordance with this Section 19; (ii) agree to be bound by the terms of this Section 19 to the extent applicable to Subcontractor's claims; (iii) agree that, to the extent a Subcontractor's claim is involved, completion of all steps required under this Section 19 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against the Contractor; (iv) agree that any Subcontractor's claim brought against a bonding company, that also is actionable against the Commission through the Contractor, shall be stayed until completion of all steps required under this Section 19; and (v) agree that the existence of a Dispute resolution process for Disputes involving Subcontractor's Demands shall not be deemed to create any claim, right or cause of action by any Subcontractor or Supplier against the Commission.
6. Notwithstanding the foregoing, this Section 19 shall not apply to, and the DRB shall not have the authority to consider: (i) any Subcontractor claim between the Subcontractor(s) and the Contractor that is not actionable by the Contractor against the Commission; (ii) any Subcontractor claim based on remedies expressly created by statute; (iii) any Subcontractor claim that is covered by insurance; or (iv) any Subcontractor claim that is actionable only against a bonding company.

## **20 ACCEPTANCE OF PROJECT**

### **20.1 Segment Completion**

As a pre-requisite to Segment Completion, the Contractor shall provide written notice to the Commission when all of the following have occurred with respect to a Segment of the Project:

1. MoDOT and the Contractor have agreed upon a Punch List for Segment Completion, Project Completion or Final Acceptance, as appropriate.
2. The Contractor has completed all Work in connection with Segment Completion (except for Punch List items, final cleanup and other items only included in the requirements for Project Completion or Final Acceptance).
3. The Contractor has ensured that the Work competed in connection with Segment Completion has been performed in accordance with the requirements of the Contract Documents.
4. The Contractor has ensured that the Segment may be operated safely without injury to any Person or damage to the Project or any other property on or off the Site.



5. The Contractor has ensured that the Segment is ready to be opened for public traffic and that no further Work is required which would involve any lane or shoulder closure.
6. The Contractor has received all applicable Governmental Approvals required for the Segment.
7. The Contractor has furnished to the Commission certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the Commission, certifying that there are no outstanding Nonconforming Work or Punch List items, identified by the Contractor or the Commission, as prerequisites to Segment Completion.
8. The Contractor has obtained all applicable third party approvals relating to the Work (including Utility Owners as required under any applicable MUAs and Section 6 of Book 2), and all third parties have completed all work that involves obligations by the Contractor (including Utility Owners under any applicable MUAs and Section 6 of Book 2).

## **20.2 Notice of Partial Acceptance**

Upon receipt of the Contractor's notice under Section 20.1, the Commission will verify that:

1. All Nonconforming Work identified as prerequisites to completion of a Segment has been corrected.
2. All Punch List items identified as prerequisites to completion of a Segment have been completed.
3. All other requirements identified as prerequisites to completion of a Segment have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the Commission will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Segment Completion. Upon correction of the Nonconforming Work (including incomplete Work), the Contractor shall provide written notification to the Commission and the Commission will verify that all prerequisites to Segment Completion have been met and will issue a Notice of Partial Acceptance.

## **20.3 Project Completion**

As a pre-requisite to Project Completion, the Contractor shall provide written notice to the Commission when all of the following have occurred with respect to the Project:

1. MoDOT and the Contractor have agreed upon a Punch List for Project Completion or Final Acceptance, as appropriate.



2. The Contractor has completed all Work (except for Punch List items, final cleanup and other items only included in the requirements for Final Acceptance).
3. The Contractor has ensured that the Work in connection with Project Completion has been performed in accordance with the requirements of the Contract Documents.
4. The Contractor has ensured that the Project may be operated safely without injury to any Person or damage to the Project or any other property on or off the Site.
5. The Contractor has ensured that the Project is ready to be opened for traffic and that no further work is required which would involve any lane or shoulder closure.
6. The Contractor has received all applicable Governmental Approvals required for the Project.
7. The Contractor has furnished to the Commission certifications from the Contractor's Design Manager, in form and substance satisfactory to the Commission, certifying that the Design Documents meet the requirements of the Contract Documents.
8. The Contractor has furnished to the Commission certifications from the Contractor's Project Manager, in form and substance satisfactory to the Commission, certifying that the construction meets the requirements of the Contract Documents.
9. The Contractor has furnished to the Commission certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the Commission, certifying that there are no outstanding Nonconforming Work or Punch List items, identified by the Contractor or the Commission, as prerequisites to Project Completion.
10. The Contractor has obtained all applicable third party approvals relating to the Work (including Utility Owners as required under any applicable MUAs and Section 6 of Book 2), and all third parties have completed all work that involves obligations by the Contractor (including Utility Owners under any applicable MUAs and Section 6 of Book 2).

## **20.4 Notice of Project Completion**

Upon receipt of the Contractor's notice under Section 20.3, the Commission will verify that:

1. All Nonconforming Work identified as prerequisites to completion of the Project has been corrected.
2. All Punch List items identified as prerequisites to completion of the Project have been completed.
3. All other requirements identified as prerequisites to completion of the Project have been met.



If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the Commission will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Project Completion. Upon correction of the Nonconforming Work (including incomplete Work), the Contractor shall provide written notification to the Commission and the Commission will verify that all prerequisites to Project Completion have been met and will issue a Notice of Project Completion

## 20.5 Affidavit of Final Completion

The Contractor shall provide to the Commission an executed sworn Affidavit of Final Completion in accordance with this Section 20.5 when all of the following have occurred:

1. The Commission has received all Released for Construction Documents, Design Documents, As-Built Documents, ROW record maps, surveys, test data, and other deliverables required under the Contract Documents for the Segment or Project, whichever is applicable. The Contractor has furnished to the Commission alignment points as part of the As-Built Documents.
2. All special tools, equipment, furnishings, and supplies purchased by and/or used by the Contractor, as provided in the Contract Documents, have been delivered to the Commission and all replacement spare parts have been purchased and delivered to the Commission free and clear of Liens.
3. All of the Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish, and temporary facilities have been removed from the Site, the Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of the Commission and the Site is in good working order and condition.
4. The Contractor has furnished to the Commission certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the Commission, certifying that there are no outstanding Nonconforming Work or Punch List items.
5. The Contractor has delivered to the Commission a notice of completion for the Project in recordable form and meeting all statutory requirements.
6. All of the Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the Commission) have been satisfied in full or waived in writing by the Commission.

The Affidavit of Final Completion shall include the following statement:

*To the best of the Contractor'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 the Contractor under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or event of default under any Utility Agreement; and upon receipt of final payment, the Contractor and Subcontractors acknowledge that the Commission and any and all employees of the Commission 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 the Contractor is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by the Commission. The affidavit shall include a representation of the Contractor 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.

## **20.6 Notice of Final Acceptance**

Upon the Commission's receipt of the Affidavit of Final Completion, the Commission will verify that:

1. All Nonconforming Work has been corrected (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the Commission).
2. All Punch List items have been completed (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the Commission) .
3. All other requirements identified as prerequisites to Final Acceptance have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the Commission will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Final Acceptance. Upon correction of the Nonconforming Work (including incomplete Work), the Contractor shall provide written notification to the Commission and the Commission will verify that all prerequisites to Final Acceptance have been met and will issue a Notice of Final Acceptance.

## **20.7 Overpayments; No Relief from Continuing Obligations**

Final Acceptance will not prevent the Commission from correcting any measurement,



estimate or certificate made before or after completion of the Work, or from recovering from the Contractor, the Surety(ies) or both, the amount of any overpayment sustained due to failure of the Contractor to fulfill the obligations under the Contract. A waiver on the part of the Commission of any breach by the Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve the Contractor from any of its continuing obligations hereunder, or constitute any assumption of liability by the Commission.

## **20.8 Opening of Sections of Project to Traffic**

### **20.8.3 No Waiver**

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

## **20.9 Assignment of Causes of Action**

The Contractor hereby offers and agrees to assign to the Commission 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 the Commission tenders final payment to the Contractor, without further acknowledgment by the parties.

## **21 WARRANTIES**

### **21.1 Warranties by Contractor**

#### **21.1.1 Project Warranties**

The Contractor warrants that:

1. 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 and shall be free of Errors.
2. The completed Project shall be free of defects.
3. Materials and equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new.
4. The Work shall meet all of the requirements of the Contract Documents.
5. The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.
6. The Project shall be fit for use for the intended function.



### **21.1.2 Transfer of Title**

Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the Commission for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to the Commission, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the Commission to Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Contractor 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 Partial Acceptance or Final Acceptance or until Contractor is removed from the Project.

### **21.1.3 Project Warranty Term**

The Warranty term for each element of the Project shall commence upon Acceptance thereof by the Commission or acceptance thereof by the appropriate Person who will own such element. Subject to extension under Section 21.2, the Warranties regarding all elements of the Project shall remain in effect until one year after Partial Acceptance or Final Acceptance, whichever is applicable, provided that the Warranty term for elements of the Project that will be owned by Persons other than the Commission (such as Utility Owners) shall remain in effect for such term as may be required under the applicable agreement (such as MUAs). If the Commission 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 the Contractor shall correct such Work as specified below within the one year warranty term.

### **21.1.4 Corrective Work**

Within seven days of receipt by the Contractor of notice from the Commission specifying a failure of any of the Work to satisfy the Contractor's Warranties, or of any Subcontractor representation, warranty, guarantee, or obligation which the Contractor is responsible to enforce, the Contractor and the Commission shall mutually agree when and how the Contractor shall remedy such violation; provided, however, that in case of an emergency as indicated by the Commission in its notice requiring immediate curative action, the Contractor and the Commission shall agree on a remedy immediately upon notice by the Commission of such emergency. If the Contractor does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the Contractor and the Commission fail to reach such an agreement within such 7 Day period (or immediately, in the case of emergency conditions), then the Commission, after notice to the Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Contractor. The Commission may agree to accept Nonconforming Work in accordance with Section 5.7.2.

The Commission and the Contractor shall conduct a walkthrough of the Site prior to expiration of the Warranty period and shall produce a Punch List of those items requiring Warranty Work.



### **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. The Contractor shall reimburse the Commission and pay the Commission's expenses made necessary thereby within ten days after the Contractor's receipt of invoice therefore. The Contractor 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 1-year warranty period following acceptance thereof by the Commission or acceptance thereof by the appropriate Person who will own such element.

### **21.3 Subcontractor Warranties**

#### **21.3.1 Assignment**

Without in any way derogating the Contractor's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, the Contractor shall obtain from all Subcontractors and cause to be extended to the Commission, appropriate representations, warranties, guarantees and obligations with respect to the design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors, including all such representations, warranties, guarantees, and obligations required to be furnished by Subcontractors pursuant to the Contract Documents. All representations, warranties, guarantees, and obligations of Subcontractors shall: (i) be written so as to survive all the Commission and the Contractor inspections, tests, and approvals; and (ii) run directly to and be enforceable by the Contractor and/or the Commission and their respective successors and assigns. The Contractor hereby assigns to the Commission all of the Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by the Contractor from any of its Subcontractors.

#### **21.3.2 Enforcement**

Upon receipt from the Commission of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, the Contractor shall enforce or perform any such representation, warranty, guarantee, or obligation, in addition to the Contractor's other obligations hereunder. The Commission's rights under this Section 21.3.2 shall commence at the time such representation, warranty, guarantee, or obligation is furnished, and shall continue until the expiration of the Contractor's relevant Warranty (including extensions thereof under Section 21.2). Until such expiration, the Contractor shall be responsible for the cost of any equipment, material, labor (including re-engineering) or shipping, and the Contractor



shall be required to replace or repair defective equipment, material or workmanship furnished by any Subcontractor.

## **21.4 No Limitation of Liability**

The foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Contractor'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, the Contractor shall have no further liability to the Commission hereunder for patent construction defects.

## **21.5 Warranty Beneficiaries**

In addition to benefiting the Commission and its successors and assigns, the Warranties and Subcontractor warranties provided under this Section 21 shall inure to the benefit of, and shall be directly enforceable by, any local agencies and Utility Owners with respect to those portions of the Work owned or controlled by each such Person.

## **21.6 Remedies for Breach of Warranty**

In addition to the Commission's other rights and remedies hereunder, at law or in equity, the Contractor shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work.

## **21.7 Disputes**

Any disagreement between the Commission and the Contractor relating to this Section 21 shall be subject to the dispute resolution provisions contained in Section 19, provided that the Contractor shall proceed as directed by the Commission pending resolution of the dispute.

# **22 DOCUMENTS AND RECORDS**

## **22.1 Escrowed Proposal Documents**

Within five Business Days after the Proposal Due Date, the Contractor shall have delivered its Escrowed Proposal Documents (EPD) to the Bank identified by the Proposer. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the Contract and concurrently with Approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order shall be added to the EPD. The EPD will be held in such cabinet or otherwise maintained subject to Section 22.1.1 until all of the following have occurred: (i) 180 days have



elapsed after expiration or earlier termination of the Warranties; (ii) all Disputes regarding the Contract have been settled, and (iii) final payment on the Contract has been made by the Commission and accepted by the Contractor.

### **22.1.1 Review of Escrowed Proposal Documents**

The EPD shall be available during business hours for joint review by the Contractor and the Commission 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. The Commission 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. The Commission shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that the Commission has executed and delivered to the Contractor a confidentiality agreement specifying that all proprietary information contained in such documents will be kept confidential, that copies of such documents will not be distributed to any third parties other than the Commission's agents, attorneys, and experts, the DRB, and that all copies of such documents will be either destroyed or returned to the depository (or to the Contractor if the EPD have been returned to it) upon final resolution of the Disputes. The foregoing shall in no way be deemed a limitation on the Commission's discovery rights with respect to such documents.

### **22.1.2 Property of Contractor**

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

### **22.1.3 Representation and Warranty**

The Contractor 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. The Contractor 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 Escrowed Proposal Documents**

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 the Contractor arrived at the Proposal Price. The EPD provided in connection with quotations and Change Orders shall, inter alia, 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 the Contractor arrives at its quotation and/or Change Order price. All Work shall be separated into sub-items 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 the Contractor'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 the Contractor's usual format. The Contractor'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 the Contractor under Section 9. The EPD shall include all assumptions, quantity takeoffs, rates of production, the Contractor internal equipment rental rates and progress calculations, quotes from Subcontractors (including Suppliers), memoranda, narratives, and all other information used by the Contractor 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 Escrowed Proposal Documents**

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

#### **22.1.6 Review by the Commission**

The Commission may, at any time, conduct a review of the EPD to determine whether it is complete. If the Commission determines that the EPD are incomplete, the Commission may request the Contractor to supply data to make the EPD complete. The Contractor shall provide all such data within three Business 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. The Contractor shall have no right to add documents to the EPD except upon the Commission's request. At the Commission'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 the ITP.

### **22.1.7 Confidentiality**

The EPD shall at all times be treated as proprietary and confidential non-public information and shall be used only for purposes described in Section 22.1.1. At the Contractor's request, confidentiality agreements shall be executed and delivered to the Contractor by the Commission's employees or agents who review or have access to the EPD.

## **22.2 Subcontractor Pricing Documents**

The Contractor shall require each first tier Subcontractor to submit to the Contractor 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 the Contractor, the Commission, the DRB, 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 the Contractor and/or the Commission in connection with any disputed change order made by such Subcontractor.

## **22.3 Project Records**

### **22.3.1 Maintenance of Records**

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

### **22.3.2 Audit and Inspection Rights**

The Contractor shall grant to the Commission, FHWA, and the U.S. Comptroller General and their respective authorized representatives, such audit and inspection rights and allow 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 reasonably 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 Legal Requirements, including responding with requests pursuant to the Missouri Open Records Act. The



Contractor shall grant to Utility Owners and their respective authorized representatives, such audit and inspection rights and all such Persons access to and the right to copy such books and records as such Persons may request in connection with the resolution of disputes or such other matters as such Persons reasonably deems necessary for purposes of complying or verifying compliance with the Utility-related Contractual or MUA requirements.

### **22.3.3 Audit of Force Account Work**

Where the payment method for any Work is on a Force Account 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 the Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

### **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 Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

### **22.3.5 Claims Audits**

All Claims filed against the Commission shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of the Commission or by an auditor under contract with the Commission. No notice is required before commencing any audit before 60 days after Final acceptance. Thereafter, the Commission shall provide 20 days notice to the Contractor, any Subcontractors or their respective agents before commencing an audit. The Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to the Commission, for the audit during normal business hours. The Contractor, Subcontractors, and their agents shall cooperate with the auditors. Failure of the Contractor, Subcontractors, or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of the Contractor, Subcontractors, or their agents shall constitute a waiver of the claim and shall bar any recovery there under. At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports.



2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.
8. Material cost distribution worksheet.
9. Equipment records (list of company equipment, rates, etc.).
10. Subcontractors' (including Suppliers) and agents' invoices.
11. Subcontractors' and agents' payment certificates.
12. Canceled checks (payroll and Suppliers).
13. Job cost report.
14. Job payroll ledger.
15. General ledger.
16. Cash disbursements journal.
17. E-mail, letters, and correspondence.
18. Network servers, data storage devices, backup media.
19. All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim.
20. Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals and the rates for the individuals.

Full compliance by the Contractor with the provisions of this Section 22.3.5 is a contractual condition precedent to the Contractor's right to seek relief under Section 19. The Contractor 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**

The Contractor shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to the Commission) at the Contractor's Project Manager's office in the State until seven years after the earlier to occur of: (i) the date Final Acceptance is achieved; or (ii) the termination date. If Approved by the Commission, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. The Contractor shall notify the Commission 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 the Contractor's costs and expenses under the Contract Documents. The Contractor shall make these records and documents available for audit and inspection to the Commission, at the Contractor's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to the Contractor).

## **22.5 Missouri Open Records (Sunshine) Law**

### **22.5.1 Applicability of Law**

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials in the Contractor's or the Commission's possession directly related to the Project, including materials submitted to the Commission by the Contractor, are subject to the provisions of the Missouri Open Records (Sunshine) Law. The Contractor shall be solely responsible for all determinations made by it under such Law and for clearly and prominently marking each and every page or sheet of its materials with trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning such act and its application to the Contractor.

### **22.5.2 Confidential Materials**

If any of the materials submitted by the Contractor to the Commission are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, the Commission will endeavor to advise the Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the Commission be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of the Commission, except for any disclosure of trade secrets or proprietary information in violation of the confidentiality agreement described in Section 22.1.1.

### **22.5.3 Contractor to Defend Against Disclosure Request**

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

### **22.5.4 Cooperation with the Commission Regarding Missouri Open Records (Sunshine) Law Requests**

In the event the Commission receives a Missouri Open Records (Sunshine) Law request for documents that are in the custody and control of the Contractor, the Contractor shall cooperate with the Commission in responding to the request in a



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timely manner under the Missouri Open Records (Sunshine) Law.

## **23 COOPERATION AND COORDINATION WITH OTHERS**

### **23.1 Cooperation with Other Contractors**

The Commission reserves the right to perform and to contract with others to perform other or additional work on or near the Site. The Contractor shall cooperate with the Commission and such other contractors to the extent reasonably necessary for the performance by the Commission and such other contractors of their work, and shall cause its employees, agents, officers, and Subcontractors and other Persons for whom the Contractor may be contractually or legally responsible to so cooperate. If other separate contracts are awarded by the Commission, which affect the Work, the Contractor shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

### **23.2 Interference by Other Contractors**

If the Contractor asserts that any of the Commission's other contractors have hindered or interfered with the progress or completion of the Work, then the Contractor's sole remedy shall be to seek recourse against such other contractors. The Contractor shall have the right to ask the DRB to resolve such dispute, provided the other contractor and its sureties have agreed to submit the dispute to the DRB, and provided that such proceeding shall be conducted at no cost to the Commission.

## **24 MISCELLANEOUS PROVISIONS**

### **24.1 Amendments**

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

### **24.2 Waiver**

#### **24.2.1 No Waiver of Subsequent Rights**

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.



The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

### **24.2.2 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.

### **24.2.3 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.

## **24.3 Independent Contractor**

The Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the Commission other than that of Project owner and independent contractor. In no event shall the relationship between the Commission and the Contractor be construed as creating any relationship whatsoever between the Commission and any of the Contractor's employees. Neither the Contractor nor any of its employees is or shall be deemed to be an employee of the Commission. Except as otherwise specified in the Contract Documents, the Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that the Contractor or any Subcontractor hires or engages to perform or assist in performing the Work.

## **24.4 Successors and Assigns**

The Contract Documents shall be binding upon and inure to the benefit of the Commission and the Contractor and their permitted successors, assigns and legal representatives.

### **24.4.1 Assignment by the Commission**

The Commission may assign all or part of its right, title and interest in and to the Contract, including rights with respect to the surety bonds required hereunder and any other performance security provided, to any Person with the prior written approval of the Contractor.



## **24.4.2 Assignment by Contractor**

The Contractor may assign its rights to receive payment under the Contract Documents and may subcontract Work in accordance with the Approved Subcontracting and Small Business Plan and in compliance with the requirements of the Contract Documents. The Contractor shall not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with the Commission's prior written Approval. The Contractor's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated, unless the Commission, in its sole discretion, has Approved such relief from responsibility.

## **24.5 Designation of, and Cooperation with Representatives**

### **24.5.1 Designation of Representatives**

Concurrently with execution hereof, the Commission and the Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 24.10. 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 the Commission or the Contractor.

### **24.5.2 Cooperation**

The Contractor shall cooperate with the Commission and all representatives of the Commission designated as described above.

## **24.6 Gratuities and Conflicts of Interest**

Neither the Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official, or employee of the Commission or the State of Missouri gifts, entertainment, payments, loans, or gratuities. The Contractor represents and warrants that it has not previously offered or given any gifts, entertainment, payments, loans, or gratuities in violation of such prohibitions.

## **24.7 Survival**

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.

## **24.8 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 and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Commission and a Subcontractor or any other Person except the Contractor.

## **24.9 No Personal Liability**

The Commission's authorized representatives are acting solely as agents and representatives of the Commission when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They shall not be liable either personally or as employees of the Commission for actions in their ordinary course of employment.

## **24.10 Notices and Communications**

### **24.10.1 Delivery of Notices**

Notices under the Contract Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by tele-facsimile communication followed by a hard copy 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 the Contractor shall be sent to the Contractor's Project Manager or as otherwise directed by such Project Manager. The address for such communications shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Lesley Hoffarth, P.E  
The New I-64 Project Director  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017



Telephone: (314) 340-4392  
Fax: (314) 340-4172  
E-mail: Lesley.Hoffarth@modot.mo.gov

### **24.10.2 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 fax after 4:00 p.m. Central Standard Time And all other notices received after 5:00 p.m. Central Standard (as applicable) shall be deemed received on the first Business 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.).

### **24.10.3 Copies of Correspondence to the Commission**

The Contractor shall copy the Commission on all written correspondence pertaining to the Contract between the Contractor and any Person other than the Contractor's Subcontractors, consultants and attorneys.

### **24.11 Further Assurances**

The Contractor shall promptly execute and deliver to the Commission all such instruments and other documents and assurances as are reasonably requested by the Commission to further evidence the obligations of the Contractor hereunder, including assurances regarding assignments of Subcontractors contained herein.

### **24.12 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: (i) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, Section or part.

### **24.13 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.

#### **24.14 Governing Law**

The Contract Documents shall be governed by and construed in accordance with the law of the State of Missouri. Venue for any legal action in connection with the Contract shall lie in the Circuit Court of Cole County, Missouri.

#### **24.16 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.

#### **24.17 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 date and year first set forth above.

[CONTRACTOR], a Joint Venture

MISSOURI HIGHWAY AND  
TRANSPORTATION COMMISSION

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

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## 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.

ACRONYMNS	
Abbreviation	Title or Description
AADT	Annual Average Daily Traffic
AASHTO	American Association of State Highway & 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
AJR	Access Justification Report
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute (formerly ASA and USASI)
ASTM	ASTM International
BAFO	Best and Final Offer
BMP	Best Management Practices
CADD	Computer-Assisted Drafting and Design
CCTV	Closed Circuit Television
CD	Collector-Distributor Road
CERCLA	Comprehensive Environmental Response, Compensation & Liability Act, 42 U.S.C. §§ 9601, et. seq.
CFR	Code of Federal Regulations
COE	(U.S.) Army Corps of Engineers
CPM	Critical Path Method
CR	Community Relations
CSR	Code of State Regulations
dB	Decibels
DBE	Disadvantaged Business Enterprise
DRB	Dispute Resolution Board
DMS	Dynamic Message Sign
DTM	Digital Terrain Model
EEO	Equal Employment Opportunity
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents
FAR	Federal Acquisition Regulation
FAST	Federal-Aid Acceptance Sampling and Testing



<b>ACRONYMNS</b>	
<b>Abbreviation</b>	<b>Title or Description</b>
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FTP	File Transfer Protocol
HDPE	High Density Polyethylene
IAS	Independent Assurance Sampling
IGA	Intergovernmental Agreement
ISO	International Organization for Standards
ISP	Information or Internet Service Providers
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
LED	Light Emitting Diode
LFD	Load Factor Design
LRFD	Load and Resistance Factor Design
LOS	Level of Service
MoDNR	Missouri Department of National Resources
MHTC	Missouri Highway and Transportation Commission
MoDOT	Missouri Department of Transportation
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
mph	Miles per Hour
MRCC	Missouri Regional Certification Committee
MSD	Metropolitan Sewer District
MSDS	Material Safety Data Sheet
MSE	Mechanically Stabilized Earth
MUA	Master Utility Agreement
MUTCD	Manual on Uniform Traffic Control Devices
NAD	North American Datum
NAVD	North American Vertical Datum
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NGS	National Geodetic Survey
NHS	National Highway System
NIST	National Institute of Standards & Technology
NSBA	National Steel Bridge Association
NTP1	First Notice to Proceed
NTP2	Second Notice to Proceed



<b>ACRONYMNS</b>	
<b>Abbreviation</b>	<b>Title or Description</b>
OSHA	Occupational Safety & Health Administration
PAL	Pre-Acceptance List
PCCP	Portland Cement Concrete Pavement
PCO	Potential Change Order
PE	Professional Engineer, or, in the context of right of way, PE shall mean Permanent Easements
PIP	Public Information Plan
PLS	Professional Land Surveyor
PTI	Post-Tensioning Institute
PVC	Polyvinyl Chloride
QA	Quality Assurance
QC	Quality Control
QM	Quality Manual
RCO	Request for Change Order
RCP	Request for Change Proposal
RFC	Released for Construction
RFP	Request for Proposals
RFQ	(MoDOT) Request for Qualifications (for the New I-64 Design-Build Project issued November 4, 2005)
ROD	Record of Decision
ROM	Rough Order of Magnitude
ROW	Right of Way
RSMo	Revised Statutes of the State of Missouri
SEMA	State Emergency Management Agency
SHPO	State Historic Preservation Officer
STD	State Transportation Department
TCE	Temporary Easement
TCP	Traffic Control Plan
TMC	Transportation Management Center
TRB	Transportation Research Board (of National Research Council)
TYP	Typical
UE	Utility Easement
UIS	Utility Information Sheet
UL	Underwriters Laboratories
USA	United States of America
USACE	United States Army Corps of Engineers
USC	United States Code
USDOT	United States Department of Transportation
USGS	United States Geological Survey
USFWS	U.S. Fish & Wildlife Service



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ACRONYMNS	
Abbreviation	Title or Description
VE	Value Engineering
VECP	Value Engineering Change Proposal
WBS	Work Breakdown Structure



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Abandonment	The Work necessary for each Utility (including appurtenances) to decommission a Utility which Utility is not removed using proper Utility Owner and/or industry procedures (e.g., flushing, capping, filling with grout or sand) or other procedures Approved by MoDOT.
Acceleration Costs	Those fully documented increased costs reasonably incurred by the Contractor; (i.e., costs over and above what the Contractor 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.
Activity or activity	Parts of the Work including finished products or functional processes required as subcomponents of the Work Breakdown Structure as defined by the Contractor.
Additional Applicable Standards	Standards, manuals, specifications and technical requirements which have been submitted by Contractor, accepted by the Commission, and incorporated as Applicable Standards in Book 3.
Affected Area	As related to mined land reclamation, the total disturbed surface of a pit or quarry such as sand, gravel, topsoil, or borrow, that is being mined or will be mined. The area includes, but is not limited to, the excavation area, plant, and stockpile areas, parking and storage areas, and the haul roads.
Affidavit of Final Completion	The meaning set forth in Book 1, Section 20.5.
Affiliate	<p>(1) Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the: (i) Contractor or (ii) any Major Participant; and</p> <p>(2) Any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by the: (i) Contractor, (ii) any Major Participant, or (iii) any Affiliate of the Contractor under Part (1) of this definition.</p> <p>For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship, or otherwise.</p>
Applicable Laws	See Legal Requirements.
Applicable Standards	The standards included in Book 3, including Additional Applicable Standards submitted by the Contractor and accepted by the Commission.
Application for Final Payment	The application described in Book 1, Section 11.6.1.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Approve or Approval	Formal conditional determination in writing by the Commission Project Manager 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 and may reflect preferences of the Commission.
Architectural and Engineering Services	All Work relating to the design, including preparation and interpretation of architectural and engineering plans and specifications, development of design solutions for conformance with all codes and public safety requirements and other design related decision-making, and any other activities, collectively, which are required to be practiced by an architect or engineer in accordance with the laws of the State of Missouri.
As-Built Documents	The documents to be provided by the Contractor as described in Book 2, Section 3.2.4.
As-Built Schedule	The meaning set forth in Book 2, Section 2.
Auxiliary Lane	The portion of the roadway adjoining the traveled way and designated for speed change, or for other purposes supplementary to through traffic movement.
Award	The Acceptance of the Proposal by the Commission (with the understanding that the order of priority of the various Contract Documents shall be as set forth in Book 1, Section 1.3, and that the Commission shall have the right to require compliance with the requirements of the Contract Documents, even though it may necessitate performance of Work by the Contractor not contemplated in the Proposal Documents).
Backfill	Material used to replace or the act of replacing material removed during construction.
Baseline Schedule	The meaning set forth in Book 2, Section 2.
Betterment	As related to Utilities, a betterment is generally defined as 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 is able to achieve such upgrade 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.
Book 1	The Contract Document designated as Book 1 in the RFP.
Book 2	The Contract Document designated as Book 2 in the RFP.
Book 3	The Contract Document designated as Book 3 in the RFP.
Book 4	The Contract Document designated as Book 4 in the RFP.
Book 5	The Informational Documents designated as Book 5 in the RFP.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Bridge	A structure having a clear span greater than 20 feet (6.1 m) measured on a horizontal plane along the centerline of roadway; also a multiple span structure where the total length of spans is in excess of 20 feet (6.1 m). For both single and multiple span bridges, the clear span shall be construed to mean the total distance from stream face to stream face of end beats or outer walls of the structure.
Business Day	A day that MoDOT is open for business, excluding holidays, Saturdays and Sundays.
Calendar Day	Each and every day shown on the calendar, including Saturdays and Sundays, beginning and ending at midnight.
Certified Invoice	Any invoice or billing endorsed by the Contractor, certifying that material, specialty work, subcontract work, rental, lease, services, etc. were acquired for the Project and that the invoiced or billed amount represents the actual costs.
Certified Test Report	A test report from the manufacturer or an independent testing laboratory, including a signature by a person having legal authority to act for the manufacturer or the independent testing laboratory stating that the test results show that the product or assembly to be incorporated into the Project has been sampled and tested and the samples have passed all specified tests.
Change Order	The meaning set forth in Book 1, Sections 12 and 13.
Claim	A separate demand by the Contractor for: (i) a time extension which is disputed by the Commission, or (ii) payment of money or damages arising from work done by or on behalf of the Contractor in connection with the Contract which is disputed by the Commission. 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.
Commercial Vehicle(s)	A vehicle used on highways, in interstate commerce, that meets one of the following criteria: (i) has a Gross Vehicle Weight Rating (GVWR) or Gross Combination Weight Rating (GCWR), or gross vehicle weight or gross combination weight of 10,001 pounds or more, whichever is greater; (ii) is designed to transport more than eight passengers (including the driver) for compensation; (iii) is designed to transport 16 or more people, including the driver and is not used to transport passengers for compensation; (iv) functions to transport hazardous materials in quantities requiring the vehicle to be placarded.
Commission or MoDOT	The Missouri Highways and Transportation Commission or the Project Director for the Project, acting directly or through a representative authorized in writing, who is responsible for administrative supervision of the Project, whichever the context requires.
Commission-Directed Changes	Any changes in the Work (including changes in the standards applicable to the Work), which the Commission has directed the Contractor to perform as described in Book 1, Section 13.
Completion Deadline	Any or all of the following deadlines, depending on the context: any Milestone Completion Deadline and/or the Final Acceptance Deadline.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Constructive	When used in connection with the terms “change in the Work,” “delay,” “suspension,” or “acceleration,” that change in the Work, delay, suspension, or acceleration which, but for the express terms of the Contract Documents, could be inferred or implied at law.
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: (i) the Design-Build Contract, or (ii) collectively, the Contract Documents, which establish the rights and obligations of the Commission and the Contractor.
Contract Deadlines	The deadlines set forth in Book 1, Section 4.3
Contract Documents	The meaning set forth in Book 1, Section 1.2.
Contract Drawings	The drawings included in Book 4.
Contract Price	The meaning set forth in Book 1, Section 11.1.1.
Contract Schedule	The meaning set forth in Book 2, Section 2.1.
Contractor	The meaning set forth in the first page of Book 1.
Contractor-Related Entities	Contractor, Major Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Contractor may be legally or contractually responsible.
Contractor Specifications	The specifications describing the Work that are developed by the Contractor.
Contractor’s Engineer	A professional engineer registered in the State of Missouri who is responsible for engineering and administrative supervision of the Project on behalf of the Contractor, who is either an employee of the Contractor, or a consulting engineer under contract to the Contractor.
Cost	Cost will mean the actual cost incurred, as distinguished from forecasted cost and determined in accordance with prevailing principles applicable to public contracts including Contract Cost Principles and Procedures, 48 CFR, Part 31 and Government Auditing Standards, as published by the Comptroller General of the United States.
Critical Path	The precedence of activities with total Float less than or equal to zero on each applicable Contract Schedule.
Culvert	A structure not classified as a bridge that provides an opening under any portion of a roadway.
Day	The meaning set forth in Book 1, Section 1.8.
DBE Performance Plan	The plan provided by the Contractor and Approved by the Commission as described in Book 1, Exhibit D (or, prior to such Approval, the draft DBE Performance Plan included with the Proposal Documents).



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Defect or Defective Condition	Nonconforming Work.
Delay and Disruption Damages	The meaning set forth in Book 1, Section 13.7.2.
Design-Build Contract	The Design-Build Contract (The New I-64 Design-Build Project) executed by the Commission and the Contractor (to which this Exhibit A is attached), and any and all amendments thereto.
Design Documents	All drawings (including plans, elevations, sections, details, and diagrams), specifications, reports, calculations and records, at any stage of development or revision necessary for design of the Project in accordance with the Contract Documents.
Differing Site Conditions	"Differing Site Conditions" shall mean (a) subsurface or latent conditions encountered at the exact boring holes identified in the geotechnical reports included in Book 4, which differ materially from those conditions indicated in the geotechnical reports for such boring holes, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract. The term shall specifically exclude all such conditions of which Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes (w) Utility facilities, (x) Hazardous Substances, (y) non-contaminated water and (z) any conditions which constitute or are caused by a compensable event listed in Book 1, Section 13.10.
Directive Letter	The letter described in Book 1, Section 13.1.
Disadvantaged Business Enterprise or DBE	A contracting firm certified to participate in the U.S. Department of Transportation financial assistance programs as a DBE by MoDOT or by the Missouri Regional Certification Committee pursuant to Title 49 CFR, Part 26, and pursuant to Title 7 CSR Division 10, Chapter 8, governing MoDOT's DBE Program.
Dispute	The meaning set forth in Book 1, Section 19.2.
Dispute Resolution Board	The board described in Book 1, Section 19.4
Divided Highway	A highway with separated traveled ways for traffic in opposite directions. Traveled ways separated by painted medians will not be considered divided.
Drainage Ditch	An open depression constructed for the purpose of carrying off surface water.
DRB Agreement	The agreement among the Commission, the Contractor, and the members of the Dispute Resolution Board, as described in Book 1, Section 19.
Effective Date	The date of execution of the Contract by the Commission.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Engineer	See “Contractor’s Engineer.” The Contractor acknowledges and agrees that the Commission 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 the Commission rather than the Contractor's Engineer. In the event any question arises regarding whether any such rights are applicable the Commission or how to apply such rights, the Commission's interpretation regarding such matter shall control.
Environmental Approvals	The FEIS, ROD, COE Section 404 Permit, COE Section 401 Certificate, and the Section 106 programmatic agreement.
Environmental Laws	All Legal Requirements now or hereafter in effect relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare, or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the statutes listed in the definition of Hazardous Substances; the National Environmental Policy Act, as amended, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; and the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. §§ 1801; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.; and the Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Equal or Better Change Order	The meaning set forth in Book 1, Section 13.2.
Equipment	All machinery, tools, and apparatus together with supplies for upkeep and maintenance, necessary for the proper construction and acceptable completion of the Work.
Error	An error, omission, inconsistency, inaccuracy, deficiency or other defect.
Escrowed Proposal Documents	The meaning set forth in Book 1, Section 22.1.
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 the Commission of notice that an Event of Default has occurred.
Existing Utility Plans	The set of plans included in Book 5, Reference Documents – Utilities, which is labeled "Existing Utility Plans with Recommended Relocations."
Federal Requirements	All Legal Requirements applicable to work financed with federal funds and the provisions required to be included in FHWA-assisted contracts, including the provisions set forth in Book 1, Exhibit C.
Final Acceptance	Acceptance of the Project as described in Book 1, Section 20.6.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Final Design Documents	A compiled set of Design Documented created at the end of the design phase as described in Book 2, Section 3.2.3.
Final Technical Proposals and Price Allocation	The meaning set forth in the ITP, Section 2.4.
First Notice to Proceed (NTP1)	A first written notice issued by the Commission to the Contractor to proceed with certain limited Work on the date specified therein.
Fixed Price	The maximum Contract Price of \$410,000,000.
Float	The meaning set forth in Book 2, Section 2.1.
Force Account Change Order	The meaning set forth in Book 1, Section 13.5.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.
Governmental Person	Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the State of Missouri and agencies and subdivisions thereof, other than the Department of Transportation.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Hazardous Substances	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(a) Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 USC Sections 2601 et seq.; the Clean Water Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect,</li> <li>(b) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court,</li> <li>(c) Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles, and</li> <li>(d) 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).</li> </ul>
highway	A public way for purposes of vehicular travel, including the entire area within the ROW.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Holidays	<p>Missouri public legal holidays are: January 1 - New Year's Day Third Monday in January - Dr. Martin Luther King Day February 12 – Lincoln’s Birthday Third Monday in February – President’s Day May 8 – Truman’s Birthday Last Monday in May – Memorial Day July 4 – Independence Day First Monday in September - Labor Day Second Monday in October – Columbus Day November 11 - Veterans Day Fourth Thursday in November - Thanksgiving Day December 25 - Christmas Day.</p> <p>When any of the above holidays falls on Sunday, the holiday will be observed on the following Monday; when any of the above holidays falls on a Saturday; the holiday will be observed on the immediately preceding Friday.</p>
Including, or including, includes, included	All references in the Contract Documents to “including”, “includes” or “included” shall mean “including, but not limited to”.
Incremental Costs	Those costs, if any, which the Contractor incurs as a result of a particular circumstance, which the Contractor would not have incurred but for the circumstance. In determining such costs, one would determine the total cost that the Contractor 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 the Contractor 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 the Contractor is entitled (pursuant to Book 1, Section 12.4) to a Change Order increasing the Contract Price on account of such newly discovered water line, the Commission 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.
Independent Assurance	The meaning set forth in Book 2, Section 3.
Informational Documents	The RFP Documents designated as Book 5, Informational Documents, and described in Book 1, Section 1.4.
Initial Technical Proposal	The meaning set forth in the ITP, Section 2.3.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Inspection	The act of viewing or looking carefully at construction, manufacturing, design, and maintenance practices, processes, and products, including document control and shop drawing review, to ensure that the practices, processes, and products comply with the quality requirements contained in the Contract Documents.
Inspector or Inspector	The Contractor's authorized representative assigned to perform inspection of Contract performance.
Instructions to Proposers	The RFP Document identified as Instructions to Proposers.
ITS Work	All elements of the Work necessary for completion of the ITS Elements, including providing equipment to meet specified performance measures, development of computer software, installation of equipment, testing and acceptance of equipment and software, integration of newly installed components with existing ITS infrastructure and maintenance of ITS components.
Key Personnel	The persons listed on Contract Exhibit E, subject to revision in accordance with the Contract Documents.
Laboratory	The testing laboratory of the Contractor, the Central Laboratory, or any other certified testing laboratory.
Lane Closure Duration Deadline	Achievement of all Work necessary to meet a Lane Closure Duration Deadline as described in Book 1, Section 4.3.
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.
Lead Workers	Hourly employees in direct charge of the specific operations on a project. Formerly referred to as the foremen.
Legal Requirements	All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals or tax laws.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Liquidated Damages	The damages described in Book 1, Section 17.1.
Local Traffic	Traffic that has either its origin or its destination at some point within the limits of the Project. Local traffic will also include that traffic on all side roads that lead into the Project where such traffic does not have a satisfactory outlet over a public road or street.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Lump Sum Change Order	The meaning set forth in Book 1, Section 13.4.
Major Participant	Any of the following entities: (1) All general partners or joint venture members of the Submitter; all individuals, persons, partnerships, limited liability partnerships, corporations, limited liability companies, business associations, or other legal entities, however organized, directly or indirectly holding a 15% or greater interest in the Submitter; (2) the lead engineering/design firm(s); (3) each subcontractor that will perform work valued at 10% or more of the construction work; and (4) each subconsultant that will perform 20% or more of the design work.
Master Utility Agreement	An agreement made between the Commission and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project.
Materials	All components required for use in the construction of the Project.
Median	The portion of a divided highway separating the traveled ways for traffic in opposite directions.
MoDOT or Commission	The Project Director for the Project, acting directly or through a representative authorized in writing, who is responsible for administrative supervision of the Project; or the Missouri Highways and Transportation Commission, whichever the context requires.
Monthly Progress Schedule	The meaning set forth in Book 2, Section 2.1.4.
New Environmental Approval	Any of the following: (a) A new Governmental Approval of the same type as an Environmental Approval; and (b) A renewal, revision, modification or amendment to one or more of the Environmental Approvals.
New I-64 Design-Build Project Office	The meaning set forth in Book 2, Section 2.3.1.
Nighttime Lane Closure Deadlines	Achievement of Nighttime Lane Closure Deadlines as described in Book 1, Section 4.3.
Nonconforming Work	Work performed that does not meet the requirements of the Contract Documents.
Notice or notice	The meaning set forth in Book 1, Section 24.10.
Notice of Final Acceptance	The notice delivered to the Contractor under Book 1, Section 20.6 stating that final MODOT acceptance of the Project has occurred.
Notice of Termination (or Partial Termination)	A notice issued by the Commission to terminate the Contract and the performance of Work by the Contractor, either in whole or in part, pursuant to Book 1, Section 15.
NTP1 Payment Cap	The amount of \$10,000,000.
Original Baseline Schedule	The meaning set forth in Book 2, Section 2.1.2.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Overburden	Any material that overlays material designated for road or bridge construction.
Partial Acceptance	Acceptance by the Commission of a Segment after Segment Completion. Partial Acceptance relieves the Contractor of maintenance responsibilities and it begins the warranty period.
Pavement Structure	The combination of one or more of the following courses placed on a subgrade to support and distribute the traffic load to the roadbed. Subbase. The layer or layers of specified or selected material placed on a subgrade to support a base course, surface course, or both. Base Course. The layer or layers of specified or selected material placed on a subbase or a subgrade to support a surface course. Surface Course. One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called "Wearing Course."
Payment Bond	The payment bond described in Book 1, Section 8.2.
PCO Notice	The potential change order notice described in Book 1, Section 13.4.3.
Performance Bond	The performance bond described in Book 1, Section 8.1.
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including the Commission or MoDOT
Preliminary Baseline Schedule	The meaning set forth in Book 2, Section 2.1.1.
Profile Grade	The trace of a vertical plane usually intersecting the top surface of the proposed rail or wearing surface and usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.
Project	The New I-64 Design-Build Project as described by the Contract Documents.
Project Completion Deadline	Achievement of all Work necessary to meet the Project Completion Deadline as described in Book 1, Section 4.3.
Project Director	The person designated by the Commission to direct the Project and to receive delivery of notices to the Commission per Book 1, Section 24.10.1.
Project Manager	The person designated by the Contractor to supervise the Project Persons performing Work, and to receive delivery of notices to the Contractor per Book 1, Section 24.10.1.
Proposal or Proposal Documents	Those documents constituting the Contractor's proposal in response to the RFP, including any best and final offers or supplements to proposals as may have been requested by the Commission.
Proposal Due Date	The date the Final Technical Proposal and Price Allocation was due as specified in the Instructions to Proposers.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Proposer	An individual, firm, partnership, corporation, joint venture, or combination thereof that was shortlisted under the Commission's Request for Qualifications issued on November 4, 2005 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 plan provided by the Contractor and Approved by the Commission as described in Book 2, Section 6 (or, prior to such Approval, the draft Public Information Plan included with the Proposal Documents).
Punch List	The list of Work items with respect to the Project which remain to be completed after achievement of each Segment Completion or the Project Completion, generally limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety or operability of the Project.
Quality Assurance (QA)	All those planned and systematic actions necessary for the Contractor to certify to the Commission that all Work fully complies with the requirements of the Contract Documents and that all materials incorporated in the Work, all equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended.
Quality Control (QC)	The Activities performed by the Contractor, designer, producer or manufacturer to ensure and document that a product meets the requirements of the Contract Documents. Activities may include checking, materials handling and construction procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any sampling, testing, and inspection done for these purposes.
Quality Manual	The plan provided by the Contractor and Approved by the Commission as described in Book 2, Section 3 (or, prior to such Approval, the draft quality program manual included with the Proposal Documents).
Real-Time Notice	Information about construction activities as they happen. This information will be disseminated to stakeholders through a variety of tools to give them access to current Project conditions.
Reasonable Accuracy	The meaning set forth in Book 2, Section 7.
Record Set	A reproduction of a drawing or set of drawings, design calculations, or other record of engineering work required to be performed by the Contractor's Engineer in accordance with the Rules of Procedures of the State Board of Registration for Professional Engineers and Land Surveyors.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Recovery Schedule	The schedule described in Book 2, Section 2.1.5, and which Contractor is required to provide under Book 1, Section 4.5.
Released for Construction Documents	The documents described in Book 2, Section 3.2.2.
Relocation or Relocate	As related to Utilities, each Removal, transfer of location, Abandonment and/or Protection of Existing Utilities as necessary to ensure their continued safe operation and structural integrity (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.
Remediation Work	After identification by the Contractor that a Hazardous Substance(s) exists, sampling, treatment, and/or off-Site disposal of Hazardous Substances and materials containing Hazardous Substances, as Approved by the Commission.
Removal	All Work necessary to remove any existing Utilities for which leaving the existing Utility in place is not feasible or not allowed, or which is required to be removed in order to accommodate or permit construction of the Project.
Request for Change Order (RCO)	A Contractor-initiated request for a change order under Book 1, Section 13.
Request for Change Proposal (RCP)	A proposal issued by the Commission under Book 1, Section 13.
Request for Proposals	The Request for Proposals for the New I-64 Design-Build Project issued by the Commission on May 15, 2006, including all addenda thereto.
Review Documents	The meaning set forth in Book 2, Section 3.2.1.
Revised Baseline Schedule	The meaning set forth in Book 2, Section 2.1.3.
RFP Documents	The documents listed in ITP Section 1.
Right of Way	Land acquired by the Commission for the construction and maintenance of a highway.
Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Roadbed	The graded portion of a highway between the outside shoulder lines, including the base course, surface course, shoulders and median.
Roadbed Material	Material in cuts, embankments, and in embankment foundations from the subgrade down that supports the pavement structure.
Roadside	A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Roadside Development	Those items necessary for the preservation of landscape materials and features. The rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers. Suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.
Roadway	The portion of a highway within the limits of construction, including bridges and other structures.
Routine Maintenance Activity	The type of work performed on a routine; (e.g., daily or weekly) basis to maintain the highway surfaces, shoulders, roadsides, facilities, and structures; such as litter pickup, graffiti removal, and vegetation control.
ROW Plans	The meaning set forth in Book 4.
ROW Schedule	The ROW Schedule in Book 4.
Salvable Material	Material that can be saved or salvaged. Unless otherwise specified in the Contract, all salvable material shall become the property of the Contractor.
Second Notice to Proceed (NTP2)	A written notice issued by the Commission to the Contractor to proceed with the remainder of the Work on the date specified therein.
Segment Completion Deadline	Achievement of all Work necessary to meet a Segment Completion Deadline as described in Book 1, Section 4.3.
Service Line	As related to Utilities, a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, 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.)
Shall	When used in the Contract Documents, states a mandatory duty on the part of the Contractor.
Shop Drawings	A general term that includes drawings, diagrams, illustrations, samples, schedules, calculations, and other data, which provide details of the construction of the Work and details to be used by the Engineer for inspection.
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 constructed for pedestrian use.
Site	The parcels of ROW identified on the ROW Drawings or upon which the Project is to be constructed and installed as well as all other areas in the vicinity used by the Contractor for construction Work.
Specialty Item	Work requiring highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organization qualified and expected to bid on the Contract as a whole, and generally limited to minor components of the overall Contract.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Stakeholder	An individual or group whose interests may be impacted similarly (whether real or perceived) by the construction of the Project.
Stabilization	Modification of soils or aggregates by incorporating materials that increase load-bearing capacity, firmness, and resistance to weathering or displacement.
Standards of the Industry	Practices, procedures, methods and standards that: (i) are consistent with current industry practices established for, or employed by, leading participants in the design, construction, operation, and maintenance industries; (ii) comply with applicable laws and applicable industry underwriters' and the fire and life safety codes and standards; and (iii) promote reliability, efficiency, safety, and security. Standards of the Industry include, without limitation, taking reasonable steps to assure that sufficient personnel are employed and available to perform the work and that such personnel are adequately skilled, experienced, and trained to design, construct, install, operate, and maintain the work properly and efficiently, and that appropriate coordination, monitoring, and testing is performed to assure that all elements of the work are designed, constructed, and installed so as to function as required by the Contract Documents.
State	The State of Missouri, acting by and through the Commission.
Stipend	The meaning set forth in the ITP, Section 5.1.
Street	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Structures	Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, storm drains, service pipes, underdrains, foundation drains, fences, guardrail, signs, end sections, traffic signals, light standards, and other features which may be encountered in the Work and not otherwise classified.
Subbase	Layer(s) of specified material thickness placed on a subgrade to support a base course.
Subcontract	Any subcontract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between the Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor or Subconsultant	Any Person with whom the Contractor 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, shoulders, and curbs are constructed.
Subgrade Treatment	Modification of roadbed material by stabilization.
Substructure	That part of a bridge structure below the bearings of simple and continuous spans; all buttresses and piers below the skewbacks of arches; all parts of rigid frames, or integral bents below tops of footings or tops of caissons; and also, all parts of the abutments, backwalls and wingwalls, except handrails and handrail posts.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Superintendent	The Contractor's authorized employee responsible for the construction Work related to the Project.
Superstructure	All parts of a bridge structure not defined as substructure.
Supplier	Any Person other than employees of the Contractor not performing work at the Site that supplies machinery, equipment, materials or systems to the Contractor or any Subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	A corporate body duly authorized to do business in the State of Missouri, and which has issued one or more of the Payment and Performance Bonds.
Surface Course	One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "Wearing Course."
Technical Concepts Proposal	The meaning set forth in the ITP, Section 2.2.
Technical Criteria	The Performance Requirements described in Books 2, 3 and 4 that establishes the minimum acceptable standards of quality, materials, and performance for the Work, and which will be used as a basis for reviews, and as a basis for Final Acceptance.
Temporary Structures	Structures required for the use of traffic while construction is in progress and not designated to remain a part of the permanent roadway.
Test	The procedure and method of acquiring and recording physical data and comparing it to set standards and submitting a statement to such conditions or operations as will lead to its Acceptance or rejection (deficiency, Defective Condition, Nonconformance) of the item.
Test-Based Acceptance	Acceptance based on each test meeting minimum requirements.
Test Procedure	Methods that detail the practice of acquiring the Test data.
Through Traffic	Traffic that has neither its origin nor its destination within the limits of the Project.
Traffic Control Plan	The plan described in Book 2, Section 17.
Traveled Way	The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
Unit Price	The meaning set forth in Book 1, Section 13.5.
United States Department of Transportation (USDOT)	United States Department of Transportation or any executive department or agency thereof, or as the context may require, the USDOT Secretary or other person who may at the time be acting in the capacity of Secretary, or an authorized representative or any other person otherwise authorized to perform the functions to be performed hereunder by USDOT.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
USA	Any of the 50 states, the District of Columbia, Puerto Rico and any other territories and possessions of the United States of America.
Utility or utility	(i) A privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, signal systems and other products that directly or indirectly serve the public; and/or (ii) a privately owned irrigation facility. 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 the owner or operator of any such line, facility and/or system (a "Utility Owner"). The term "Utility" shall specifically exclude existing storm water facilities, traffic signals and street lights, without regard to whether or not such items are included in the definition of "Utility" in the MUAs.
Utility Agreement	A MUA and/or a Work Order, and other agreements entered into with Utility Owners in Book 4.
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 Work Order, which failure by the Utility Owner delays the Critical Path so as to impair the Contractor's ability to meet a Completion Deadline; provided, however, that: (i) to the extent that such failure is excused under a "force majeure" provision in the applicable MUA or in the Work Order, such failure shall not be the basis for calculating a Utility Delay against the Utility Owner; however, the Contractor shall be entitled to an extension of any Completion Deadline(s), (ii) once the Contractor has issued a Design Acceptance Letter for a particular Utility-Owner furnished design pursuant to Book 2, Section 7, any subsequent failure by such Utility Owner to meet the time parameters in the applicable Work Order resulting from any failure of such design to comply with the requirements of Book 2, Section 7 shall not constitute a Utility Delay, and (iii) once the Contractor has issued a Construction Inspection Acceptance Letter for construction by a particular Utility Owner pursuant to Book 2, Section 7, any subsequent failure by such Utility Owner to meet the time parameters in the applicable Work Order resulting from any failure of such construction to comply with the requirements of Book 2, Section 7 shall not constitute a Utility Delay. Any time parameters set forth in a MUA shall not be the basis for calculating a Utility Delay. Time extensions as related to Utility Delays are described in Book 1 Section 6.2.
Utility Design Sheet (UDS)	A form to be prepared by the Contractor after NTP1 using the form supplied in Book 2, Section 7, that will document the existing conditions of a Utility and the final Relocation recommendation to mitigate potential conflict. This form will be signed by the Commission, the Utility Owner, and the Contractor and will be an attachment to the respective Work Order.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Utility Information Sheet (UIS)	A form, completed prior to NTP1 for each Utility impacted by the Project, which documents the existing condition of such Utility and a preliminary Relocation recommendation to mitigate the potential conflict. The UISs are found in Book 5, Utilities. The information was prepared by the Commission in cooperation with the Utility Owner. The form was signed by the Commission and the Utility Owner.
Utility Owner	The owner or operator of any Utility.
Utility Owner Identification Number	The number that has been assigned to each Utility Owner on the UISs.
Utility Relocation Plans	The design plans for Relocation of a Utility impacted by the Project to be prepared by the Contractor or the Utility Owner, as determined pursuant to Book 2, Section 7.
Removal	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 the Contractor 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 Commission report summarizing Utility conflicts, as shown on the UISs, for all Utility Owners within the ROW, found in Book 5.
Value Engineering Change Proposal (VECP)	The meaning set forth in the Book 1, Section 13.3.
Verification/Verify	The act of testing or inspecting performed by qualified testing or inspecting personnel employed by the Commission or its designated agent to independently establish Conformity to the Contract.
Vision Message	The Project message communicated by the Commission Public Information Team, which will include the overall goals, strategies, direction, and philosophy of the Project.
Warranty	Any warranty made by the Contractor in Book 1, Section 21.1.
Wheel Path	Wheel paths are the two sections of each through-traffic lane that bear the wheel loading. The center of each wheel path is located 3 feet from the center of the lane; each wheel path is 2 feet wide.
Will	When used in the Contract Documents, states a mandatory duty on the part of the Engineer or on the part of both the Commission and the Contractor, which is indicated by the context of use.



<b>DEFINITIONS</b>	
<b>Term</b>	<b>Meaning</b>
Work	All duties and services to be furnished and provided by Contractor as required by the Contract Documents, including the administrative, design, engineering, quality control, quality assurance, Relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Materials, equipment, documentation and other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by the Commission or other Persons. In certain cases the term is also used to mean the products of the Work.
Work Breakdown Structure	The meaning set forth in Book 4.
Work Order	An ordering agreement (as the same may be amended from time to time) among the Commission, a Utility Owner and the Contractor, providing detailed information and terms relating to the Relocation of a particular Utility, which is executed pursuant to a MUA.
Written Permission of the Commission	A letter signed by the authorized representative of the Commission granting specific permission and outlining limitations of the permission.



## **EXHIBIT B – COMPLETION DEADLINES**

Form D and Form G from the Proposal Documents is to be included with the execution copy.



## EXHIBIT C – FEDERAL REQUIREMENTS

1. General. The Work will be financed in whole or in part with Federal funds, and the Contractor shall observe the federal laws, rules and regulations applicable to projects, which are so funded, including the requirements set forth in this Exhibit C and all attachments hereto.
2. Federal Aid Participation. The Work shall be subject to the inspection of the proper officials of the United States Government. Inspections made by authorized Federal representatives shall not make the United States Government a party to this Contract and will not interfere with the rights of the Contract parties.
3. FHWA Buy America Requirements:
  - A. FHWA Federal-aid projects are subject to 23 CFR § 635.410, Buy America requirements.
  - B. Contractor's proposal documents indicate Contractor's certification to use only domestic steel and iron. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes, which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1 percent of the Contract Price.
4. Convict Produced Materials:
  - A. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.
  - B. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison; or (ii) produced in a prison facility in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal aid highway construction during the 12 month period ending July 1, 1987.
5. Performance of Previous Contract. In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions contained in FHWA Form 1273 (Attachment 1 to this Exhibit C), the Contractor shall comply with the following:

The Contractor has executed the "Certification of Compliance with EEO Clause Requirements" located in the proposal. No request for subcontracting any portion of the



Contract in excess of \$10,000 will be considered under Section VII of the required contract provisions contained in FHWA Form 1273 unless such request is accompanied by the form of Certification referred to above, executed by the proposed subcontractor.

**FEDERAL PROVISIONS:**

- Attachment 1 Required Contract Provisions Federal-Aid Construction Contracts (FHWA Form 1273)
- Attachment 2 On-the-Job Training Special Provisions
- Attachment 3 On-the-Job Training Monthly Time Report (MoDOT Form ECR 02)
- Attachment 4 Statement of Materials and Labor used by Contractors on Highway Construction involving Federal Funds (FHWA Form 47)

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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**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 special provisions, 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 a 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 than the applicable wage rate and fringe benefits or cash equivalent for the classification of work 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

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA

resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## 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 than \$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 or 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.

# ON-THE-JOB TRAINING SPECIAL PROVISION

**DESCRIPTION.** This provision supplements subparagraph 7e of the Contract Provision entitled, "Standard Federal Equal Opportunity Construction Contract Specification ", and in the implementation of CFR 230, Subpart A, Appendix B

## Purpose:

It is the policy of the MoDOT to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups, disadvantaged persons and women in all phases of the highway construction industry. The intent of the On the Job Training Program is to recruit entry-level individuals, when feasible, and provide them with meaningful training intended to lead to journey-level employment. MoDOT and its sub-recipients, in carrying out the responsibilities of a federally assisted contract, shall determine which federal-aid construction contract shall include "Training Special Provisions." Under the Training Special Provisions, the Contractor shall make every reasonable effort to enroll minority, disadvantaged persons and women trainees to the extent such persons are available within a reasonable recruitment area. This training provision is not intended, and shall not be used to discriminate against any applicant for training.

The Contractor is hereby advised that it is no excuse for a union, with which the Contractor has a collective bargaining agreement providing for exclusive referral, to fail to refer minority and female employees (23 CFR 230.411(e)(1)). Contractors are here by made aware that if union referral practices prevent the contractor from meeting the EEO requirements, the contractor should make written notification to MoDOT's External Civil Rights Office (ECR) immediately. Furthermore, the FHWA's Form FHWA-1273 EO bid conditions are the Contractor's affirmative action plan (AAP). The EEO bid conditions specifically state, "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. Unions are not allowed to discriminate based on race, color, national origin or sex, union membership or non-membership, or domicile.

Contractors can sometimes demonstrate that they referred minorities and women to the unions for referral back to them, or the Contractors can demonstrate efforts made to request minorities and women from the union when they see their work force is deficient in certain construction trades. These efforts should be documented and will be verified by MoDOT.

## Missouri State Department of Transportation's Responsibility to Federal Highway Administration (FHWA)

### A. Program Administration

All training goals, including the number of training hours, on federally funded projects are to be established by the External Civil Rights Office with Federal Highway Administration (FHWA) oversight. The following guidelines will be utilized in selecting projects and determining the goal to be set:

1. Availability of minorities and women for training.
2. The potential for effective training.
3. Duration of the contract.
4. Dollar value of the contract (# of working days).
  - Under \$1,000,000 – 0
  - Over \$1,000,000 to \$3,000,000 – 1-2
  - Over \$3,000,000 to \$5,000,000 – 2-3
  - Over \$5,000,000 to \$10,000,000 – 3-4
  - Over \$10,000,000 to \$15,000,000 – 4-5
  - Over \$15,000,000 to \$20,000,000 – 5-6
  - Over \$20,000,000 – \* 6-7

## ON-THE-JOB TRAINING SPECIAL PROVISIONS

\* One Additional trainee per \$5,000,000 of estimated construction Contract amount over \$20,000,000.

5. Total normal work force that the average bidder could be expected to use.
6. Geographical location.
7. Type of work.
8. The need for additional journeymen in the area.
9. The need to correct underutilization of minorities and females in specific trades.  
A satisfactory ratio of trainees to journeymen expected to be on the contractor's workforce during normal operations (considered to fall between 1:10 and 1:4).  
Recognition of the suggested minimum goal for the State

The intent of the program is to recruit entry-level individuals when feasible and provides them with meaningful training, which will normally be expected to lead them towards journeyman-level. The unions, Associated General Contractors (AGC), and the Contractors have voiced concern over the lack of young people seeking employment in the highway construction trades. This, coupled with an aging workforce, could cause us to experience a major shortage of trained highway construction workers in the near future. The industry is already experiencing a shortage of minority and female construction workers in most trades with the only exception being possibly Laborers in some areas. If the Contractors do not voluntarily train as many people as possible with beneficial training, they will have no one to work on contracts, which will affect their bidding ability as well as their business.

No apprentice/trainee can be assigned less than 500 hours on a contract. MoDOT will not assign training on contracts that will not support the 500 hours. Providing less than 500 hours is not considered to be beneficial training nor helping to achieve journey-level status. Therefore, a trainee/apprentice, regardless of craft, must have been trained on the contract for at least 500 hours to be eligible for reimbursement. However, the contractor may transfer the trainee, with MoDOT's approval, to another MoDOT highway construction project in order to continue the training. Upon reaching the 500 hours, the road builder will be compensated as noted herein. If the enrollee is transferred to a **non**-federal project, MoDOT, upon availability of funding, may have the option of reimbursing the contractor for those hours completed that achieve the 500-hour minimum and for any hours that continue the successful training of the individual(s). The same documentation will be required to be submitted in order to determine if hours will be approved. However, if the trainee is moved to another federally funded enhancement, then a "change order" could be requested for the additional hours, and thus offer the Contractor the necessary credit so as to accomplish the 500 hour plateau. FHWA and MoDOT will only approve training programs meeting the requirements of the Training Special Provisions (TSP). A program will be approved if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training will also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

No individual shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status or in which the individual has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. It is the Contractor's responsibility to verify that the individual has not be trained or worked at the journey level and their records shall document the findings. Training under the TSP should only be directed toward those trades where underutilization/under representation exists. Flagging/traffic control programs are not considered as meeting the intent of the TSP. However, other programs that including flagging training will be approved if the flagging portion is limited.

## **ON-THE-JOB TRAINING SPECIAL PROVISION**

### **B. Approval Process General**

The intended training plan must be submitted 30 days prior to work commencing. Failure to submit the plan will result in withholding of the first monthly progress payment. A written explanation outlining why the delay occurred may be submitted to the External Civil Rights Office for consideration. A revised training plan must be resubmitted when modifications to the plan or schedule occur. The plan must contain the trades proposed in which to accomplish the training item in the contract, the number of trainees, hours assigned to the trade, and the estimated beginning work date for the trainee/apprentice. Acceptable training programs include:

1. BAT Programs – Apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training.
2. Any other program, such as the Missouri Manpower Programs, which have been approved by FHWA and MoDOT on an annual basis.

### **Apprentice/Trainee Approval Forms**

Submittal of the CAT TRAINEE NOTIFICATION/APPROVAL/UPGRADE – After the training plan has been approved, the Trainee Approval Form should be submitted prior to the trainee commencing work on the project. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification will be permitted only with the approval of the External Civil Rights Office with concurrence from the FHWA Division Office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training. Reimbursement to the Contractor for off-site training as indicated above may only be made when the Contractor does one or more of the following and the trainees are concurrently employed on federal-aid projects.

- Contributes to the cost of the training.
- Provides the instruction to the trainee.
- Pays the trainee's wages during the off-site training period.

### **Good Faith Efforts (GFE)**

Substantial Compliance – Although the OJT Program is specifically designed to increase minority, and female participation on federal aid highway construction projects where underutilization exists, it is not intended to be discriminatory. Contractors and subcontractors may utilize a non-minority male apprentice/trainee if sufficient documented good faith efforts are taken to fill the specific training position with either minorities or females. The Contractor shall enroll minorities, women or economically disadvantaged individuals, where possible, and document their good faith efforts, prior to the hiring of non-minority males not identified as economically disadvantaged. The Contractor may suggest that a subcontractor fulfill a portion of the contract work. However, he/she shall determine how many, if any, of the trainees are to be trained by the subcontractor, and secure approval from MoDOT. Never the less, the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Special Provision. The Contractor shall apply the requirements of this Training Special Provision to such subcontracts. Where feasible, 25% of apprentice or trainees in each craft shall be in their first year of apprenticeship training. The Contractor shall be aware that even if a trainee has been previously approved to work on a prior MoDOT project, that trainee may not be approved on future projects if the trainee is not in their first year of apprenticeship training.

A good faith effort requires that the Contractor furnish evidence of his/her systematic and direct recruitment efforts through the use of public and private sources likely to yield minorities and females. The following, example, represents one element of good faith efforts: The Contractor must submit letters that are project specific (where is the project, how long it will last, type of pay) and targeted for the crafts

## ON-THE-JOB TRAINING SPECIAL PROVISIONS

utilized and must be sent to Community Based Organizations (CBOs) (two or three that are likely to refer minorities or females), and unions/apprenticeships (if union shop). The letters must be forwarded prior to job startup to alert CBOs to the possibility of the Contractor needing assistance finding minorities and females. These letters should be ongoing and targeted when the Contractor needs assistance in locating minorities and/or females in a specific craft. The Contractor's letters should also address anything the Contractor has done to hire minorities and/or females as well as files including employee referrals. The Contractor in his or her letter **must** request a response and the Contractor must note the results of the Contractor's request for assistance. Good faith efforts must be two-way communications with documented results. If a union contractor, contact the union first, then any and all other resources to include two or three CBOs.

The Contractor shall, upon requests, be able to provide documentation of written solicitations to the unions, local or regional community action agencies, or other sources likely to refer minorities or women, such as the St. Louis Agency on Training and Employment or (SLATE), if applicable. Such efforts may be considered good-faith efforts if they were **results oriented**. If the Contractor's efforts are repetitive mechanical exercises that have never produced a referral or are "stuffing" - that is copies of letters not sent, then the non-productive activity cannot be considered to have been made in good faith. If, however, the Contractor can demonstrate that it employed referrals from the sources contacted on prior occasions and some efforts were not productive due to the lack of availability from usually dependable and responsive sources, then the non-productive effort can be considered good faith. In the absence of reasonable representation in any craft, the Contractor should be able to provide proof of its having requested referrals of minorities and women (i.e., records of telephone requests, including dates and times, persons talked with, and for which crafts minorities and women were requested). Letters should be detailed and include the type of vacancy to be filled, location of the project, potential employment opportunities with the company, and current as it relates to the specific job opportunity (ies).

All sources relied upon by the Contractor in advertising for vacancies and recruiting employees, especially those that resulted in referrals and employment should be identified and reported. Lists of minority organizations and other recruiting sources that have not been used or which have not been used recently or which if used, have never referred anyone for employment should not be considered to meet the good faith effort test. All efforts reported by the Contractor to contact recruiting sources will be verified with the recruiting source listed. Contractors often send these recruiting sources "form" letters indicating they are under contract for a federal project. To be considered valid, recruitment letters should be specific. For example, recruitment letters should specify the positions for which referrals are sought, the number of employees needed, position requirements, estimated dates, who to contact, wage/salary range, and other information sufficient to elicit interest and references of potential employees. Form letters without specific information **will not** be considered good-faith efforts.

The terms and conditions of employment practiced by the Contractor should be explored to allow the Contractor the opportunity to demonstrate whether there is adequate representation of minorities and women throughout the life of the contract.

While it is the Contractor's prerogative to select who will be hired, recalled, rehired, or name requested, it is also the Contractor's responsibility to ensure equal employment opportunity for minorities and women.

The hours of minority and female employment and training should be substantially uniform throughout the length of the contract, and in each trade, and the Contractor is required to make a good faith effort to employ minorities and women evenly on each project when there are opportunities to do so. The Contractor should not wait to hire minorities and women at the "eleventh hour" or "bicycle" employees from project to project.

# ON-THE-JOB TRAINING SPECIAL PROVISION

## Ethnicity Verification

When there is a questionable ethnic claim concerning an individual submitted for participation in the OJT Program, further documentation of that claim may be necessary to ensure eligibility. Acceptable documentation for ethnicity verification includes, in order of preference:

Birth certificate

Naturalization papers

Native American – Indian Tribal roll, tribal voter registration certificate, or other official document

History of individual having held himself to be a member of the minority group or community (driver's license, school, medical, and service records)

Recognition of applicant in a particular minority community as a minority through sworn and notarized statements from bona fide members of the community who are clearly disinterested parties

Proof of membership and interaction in recognized minority organizations

If requested, the Contractor will be required to obtain this information from the employee claiming the minority status

If an individual requesting minority status cannot provide acceptable documentation and does not manifest the visual characteristics of the ethnic group claimed, the individual **cannot** claim minority status for the purpose of the OJT Program

If a person manifests the visual characteristics of an acceptable ethnic minority group, the contractor may consider the person to be a member of that group

## Beneficial Training

MoDOT will ensure its contractors provide on-the-job training aimed at developing or contributing to full journey level status in the type of trade(s) involved. Training shall be consistent with the trainee/apprentice program. Training tasks will be consistent with the approved trade classification for the specific contract. The Contractor shall furnish the trainee a copy of the program the Contractor will follow in providing the training. The Contractor shall provide each trainee and Resident Engineer documentation showing the type and length of training that will be completed include classroom and on-the-job hours. This includes providing information on the monthly trainee report and trainee notification as to the total working and classroom hours the trainee/apprentice has completed to date.

## Training Reimbursement Process

Submittal of a certified invoice requesting payment for training is required. Except as otherwise noted herein, the Contractor will be reimbursed \$3.50 per hour of training given an employee on this contract in accordance with an approved training program.

Payments will not be made under the bid item "Training", if the failure to provide the required training is caused by the Contractor and a lack of good faith on the part of the Contractor to meet the training requirements has been determined. For example, if the goal on the project is 1,000 hours and only one trainee reaches the 500 minimum threshold, then the Contractor will be reimbursed for the 500 hours. However, if the trainee goal on the project is 1,000 hours and two trainees receive less than the 500-hour minimum for each, the Contractor will not secure credit for any of the hours under 500 that each of the trainees completed. If the trainee goal on the project is not met, then the remaining hours will be subject to the sanctions as outlined in this TSP. If a trainee quits the project voluntarily, then the Contractor is required to fill the trainee slot as soon as possible and shall be reimbursed according to these standards. The hours completed by the previous trainee will not be counted toward the new enrollee, if the original unskilled party has not obtained the 500 hours.

Training will not be reimbursed if the Contractor fails to provide beneficial training. This includes only partially meeting the training goal on the project.

## ON-THE-JOB TRAINING SPECIAL PROVISIONS

Change orders may be submitted to the External Civil Rights Office to increase the Training Hours assigned to a contract. Approval of such requests by the External Civil Rights Office will be granted on a case-by-case basis.

Overrun hours of the training item must not exceed 25% of the contract quantity of hours assigned or 1,000 hours, whichever is less.

6. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided those sources do not specifically prohibit the contractor from receiving other reimbursement.

### **Monitoring**

MoDOT will monitor contractors to ensure trainees and apprentices are receiving beneficial training in the type of trades submitted. Training shall be consistent with the training program or those OJT Programs the FHWA and MoDOT have approved.

It is normally expected that the trainee/apprentice will begin training on the project as soon as possible, utilizing the skills involved and remaining on the project as long as training opportunities exist in the work classifications or until the completion of the training program.

Onsite Interviews are performed to determine:

- Whether apprentice/trainee is receiving in designated craft
- Work place environment
- If trainee/apprentice is experiencing problems on the job site
- If the apprentice/trainee is being treated fairly

MoDOT monitors contracts with training through onsite visits, monthly training reports and construction reports. These reports are generated by the Contractor and are to be disseminated to the Resident Engineer Office. If there are problems, the External Civil Rights Office will contact the Contractor to address the deficiencies.

1. If there are deficiencies, the Contractor must provide a corrective action plan addressing the deficiencies.  
No payment will be made under the bid item "Training" if the Contractor fails to provide the required training.  
Payment will not be made if the Contractor fails to submit trainee reports in a timely manner.

### **Wages**

Trainees will be paid at the rate set by the training program. The appropriate minimum journeyman's rate paid cannot be less than the amounts set out in the 23 CFR Subpart A, Appendix B. For example, at least 60 percent of the appropriate minimum journey person's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period and 90 percent for the last quarter of the training period. The appropriate rates approved by the Department of Labor or Transportation in connection with the existing programs shall apply to all apprentice or trainees being trained for the same classification who are covered by the Training Special Provision.

### **Reports**

The Contractor shall provide for the maintenance of records and furnish monthly reports documenting the Contractor's performance under this provision. All trainee notifications must be submitted prior to the start of the project. If a trainee has been previously approved by MoDOT, the Contractor must still notify

## ON-THE-JOB TRAINING SPECIAL PROVISION

MoDOT of the name of the individual(s) and proposed craft the trainees will be trained in, as well as, indicate which project the trainees will be working on. The trainee notifications or listing of the proposed trainees must be submitted via fax, mail or electronically to the ECR Office. If the Contractor fails to submit the trainee notification or list of proposed trainees prior to the onset of the project, the Contractor will be subject to the sanctions as outlined in this OJT TSP. Monthly reports shall include at least the following information:

- Contractor's name and address
- Period, which the report covers
- Job Number, Description, and Federal Aid number
- Information for each employee being trained on the project, including:
  - Name
  - Social Security Number
  - Trade/craft
  - Pay percent, based on portion of training complete (if applicable)
  - Journeyman's full prevailing wage applicable
  - Trainee wage
  - Hours this period
  - Total trainee hours for the project for this period

### **Non-Compliance Sanctions**

Progress payments shall be withheld for failing to comply with all OJT Program requirements unless MoDOT accepts Good Faith Efforts.

Sanctions (Violations of EEO/OJT Provisions):

When the job is 50% complete the Contractor must have at least 50% of the trainee hours assigned on that job completed. The percentage of job completion is based on the total value of the contract paid to the Contractor. The remaining amount of the hours must be completed before the completion of the project or the Contractor will be subject to liquidated damages unless a GFE is submitted to and approved by the External Civil Rights Office.

If the training hours have not been obtained and a GFE has not been displayed upon project completion, the Contractor will be assessed liquidated damages in the amount of \$7.00 per hour for those hours not realized. For instance, if the project goal was 1,000 hours and only 450 hours were met, then liquidated damages would be assessed at  $550 \times \$7.00 = \$3,850.00$ .

If the External Civil Rights Office approves a GFE, then liquidated damages may not be assessed.

If the Contractor does not achieve the full OJT goal, they will not receive partial credit for hours completed. For instance, if the goal on the project was 1,000 hours and only 450 were convened, then no reimbursement will be given for any hours fulfilled.

In the event the Contract exceeds the trainee goal on the project, the Contractor must submit a request to ECR to obtain an extension of hours. The maximum amount of hours beyond those enumerated in the contract cannot exceed 500 hours per 1,000. For instance, if the goal was 1,000, the Contractor can be granted an extra 500 hours subject to the advance approval of the ECR Office, and concurrence from the FHWA.

Trainee reports must be submitted following the last pay period of the month. Failure to timely submit the reports, hours completed during that month will not be credited. In the cases of voluntary or involuntary trainee termination or when the trainee completes the hours specified in the program, the contractor must complete the trainee completion form within five working days. The Contractor's failure to submit the

## **ON-THE-JOB TRAINING SPECIAL PROVISIONS**

proper reports in a timely manner may result in the loss of reimbursement for the training hours for that month

Failure to satisfactorily comply with the OJT requirements will be reflected in the contractor's performance evaluation.

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State of Missouri Department of Transportation  
**O.J. T. MONTHLY TIME REPORT**

Form Number ECR 02

Name of Company \_\_\_\_\_ State Project No.: \_\_\_\_\_ F.A.P. No. \_\_\_\_\_ County: \_\_\_\_\_

Name of Trainee \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_ Rate of Pay: \_\_\_\_\_

Month Ending \_\_\_\_\_ Instructor \_\_\_\_\_ Contract Work Day \_\_\_\_\_

Breakdown of Training Construction Technician	Training Hours	1 <sup>st</sup> Week	2 <sup>nd</sup> Week	3 <sup>rd</sup> Week	4 <sup>th</sup> Week	5 <sup>th</sup> Week	Monthly Total	Previous Time Reported	Time To Date
<b>I. Aggregate Testing</b>									
A. Sampling Aggregate	40								
B. Gradation, including determination of minus 200	100								
C. Moisture Determination	35								
<b>II. Concrete Testing</b>									
A. Sampling of Freshly-Mixed Concrete	40								
B. Slump of Hydraulic Concrete	100								
C. Air Content of Freshly-Mixed	100								
D. Making and Curing Concrete Test Specimens in the Field	100								
E. Temperature of Freshly Mixed Portland Cement Concrete	25								
<b>III. Soil Testing</b>									
A. Moisture-Density Relations of Soils	125								
B. Density and Moisture Content of Soil and Soil-Aggregate By Nuclear Methods (Shallow Depth)	125								
<b>IV. Safety</b>									
A. Location of Testing and Curing Areas	25								
B. Selection-Use of Personnel Protective Equipment/Material-Safety Data Sheets/Safety-Health Regulations	15								
<b>Total Hours</b>									

**PERFORMANCE OF TRAINEE:**

Please check only one

- Poor
- Fair
- Good

**MoDOT USE ONLY**

Date checked against Payroll \_\_\_\_\_ Initials \_\_\_\_\_

(MDOT)

Compliance Comments: \_\_\_\_\_

**THIS FORM IS DUE THE 10<sup>TH</sup> OF EACH MONTH FOLLOWING THE ENROLLMENT OF THE TRAINEE UNTIL COMPLETION OR TERMINATION OF THE TRAINEE.  
 DISTRIBUTION: 1 COPY - RESIDENT ENGINEER (Forward to External Civil Rights Office)**

**State of Missouri Department of Transportation  
O.J.T. Monthly Time Report  
Instruction for Completing Form**

**The Prime Contractor should submit this report to the Resident Project Office. The contractor is responsible for completing the form and submitting it. The monthly time report is due the 10<sup>th</sup> of each month following the enrollment of the trainee until completion or termination of the specified training.**

**Name of Company** – Name of contractor or subcontractor providing the training

**State Project Number** – The Missouri Department of Transportation’s Financial Project Number

**Federal Aid Project Number (F.A.P. No.)** – The Federal Aid Project Number assigned to federally funded projects. Leave Blank or insert N/A when training is performed on wholly state funded projects

**County** – County or counties project work is being performed in

**Name of Trainee** – Print or Type the trainee’s name

**Social Security Number (Soc.Sec.No.)** – Print or Type the Trainee’s 9-digit social security number

**Rate of Pay** – Insert the trainee’s current rate of pay

**Month Ending** – Month being reported

**Instructor** – Print or Type the trainee’s current instructor’s name

**Contract Work Day** – Contract Day that coincides with the month ending

**BREAKDOWN OF TRAINING**

**Weekly columns:** Insert actual number hours trained for each week of the monthly report on the line that coincides with the area in which training occurred.

**Monthly column:** Total the hours reported for the month on each line that hours are reported

**Previous Time Reported:** Insert the total hours previously reported on each line that training occurred prior to this report

**Time To Date:** Insert the total of the current month’s training totals and the previous training hours.

**Total Hours:** Insert the total of each column on this row

**PERFORMANCE OF TRAINEE**

Poor, Fair or Good: Assess the Work Performance of the Trainee for this reporting period and blackened the circle that coincides with that assessment.

**MoDOT USE ONLY**

You are not required to complete this section.

**DISTRIBUTION**

Submit Completed Form to the Resident Engineer’s Office



## STATEMENT OF MATERIALS AND LABOR USED BY CONTRACTORS ON HIGHWAY CONSTRUCTION INVOLVING FEDERAL FUNDS

**PART A** To be completed by FHWA or State Highway Personnel (See instructions on reverse)

STATE*		COUNTY		FEDERAL PROJECT NO.*		URBAN ( ) RURAL ( )*	
ITEM	DESCRIPTION		ROADWAY	BRIDGE (Over 20 ft)	DATE STARTED*		
CONSTRUCTION TYPE CODES							
1	LENGTH OF PROJECT	MILES			DATE COMPLETED*		
2	FINAL* CONSTRUCTION COST	DOL			TOTAL NO. BRIDGES		

**PART B** To be completed by; contractor - see instructions on reverse (REMARKS Attach a plain sheet of paper)

ITEM	DESCRIPTION	UNIT	PROJECT QUANTITY	GROSS EARNINGS		28 CLAY PIPE	
				SIZE (In.)	LGTH (Lin ft)	SIZE (In.)	LGTH (Lin ft)
3	LABOR* TOTAL PROJECT		TOTAL LABOR-HOURS				
4	TOTAL COST OF ALL MATERIALS AND SUPPLIES*	DOL.		26 CORR. STEEL CULVERT			
5	PETROLEUM PRODUCTS*	GAL.					
6	CEMENT	BBL.					
7		LB.					
8		TON.					
9	AGGREGATES PURCHASED	TON.				29 CORR. ALUMINUM CULVERT	
10		CU. YD.					
11	BITUMINOUS MATERIAL	GAL.					
12	LUMBER	THSD. BD. FT.					
13	REINFORCING STEEL	LB.					
14	STRUCTURAL STEEL	LB.		27 CONCRETE PIPE			
15	READY-MIXED CONCRETE	CU. YD.					
16	PREMIXED BITUMINOUS PAVING MATERIALS	TON.					
17	AGGREGATES PRODUCED	TON.				30 PLASTIC PIPE	
18		CU. YD.					
19	MISCELLANEOUS STEEL	LB.					
20	NOISE BARRIERS	LIN. FT.					
21	GUARDRAIL	LIN. FT.					
22	BRIDGE RAIL	LIN. FT.					
23	FINAL CONTRACT AMOUNT FOR SIGNS	DOL.					
24	FINAL CONTRACT AMT. FOR LIGHTING	DOL.					
25	FINAL CONTRACT AMT. FOR TRAFFIC SIGNALS	DOL.					

\*MUST BE REPORTED ON ALL REPORTS REVIEWED BY DATE

DISCARD BEFORE  
SUBMISSION

DEPARTMENT OF TRANSPORTATION  
Federal Highway Administration

SUPPLEMENTAL  
INFORMATION

**STATEMENT OF MATERIALS AND LABOR USED BY  
CONTRACTORS ON HIGHWAY CONSTRUCTION INVOLVING FEDERAL FUNDS**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this form is 2125-0033. The average completion time for this form is 5 hours. If you wish to make suggestions, please fax them to 202-366-3988; or mail to:

Federal Highway Administration  
Construction Cost Analysis Group, HNG-13  
400 7th Street, SW  
Washington, D.C. 20590



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## EXHIBIT D – DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

1. **Policy Statement.** It is the policy of the Missouri Department of Transportation (MoDOT) that Disadvantaged Business Enterprises (DBEs) as defined herein have an equal opportunity to participate in the performance of design-build contracts financed in whole or in part with Federal funds.
2. **Contractor Assurances.**
  - a) The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration and performance of its subcontracts. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in termination of the Contract or such other remedy as the Commission deems appropriate.
  - b) The Contractor agrees to ensure that DBEs as defined herein have a full and equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard the Contractor shall take all necessary and reasonable steps in accordance with this Exhibit D to ensure that DBEs have an equal opportunity to compete for and perform Work on contracts. **The Contractor shall ensure that this Exhibit D is included, in its entirety, in all subcontracts awarded on The New I-64 Design-Build Project (“the Project”).**
3. **Bank Services.** The Contractor, and each of its subcontractors, is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services, and the fees charged for services, typically will not be eligible for DBE credit toward the DBE goal on this Project. Any questions on this subject should be directed to the MoDOT External Civil Rights Administrator. See Section 4. below.
4. **DBE Program Information.** DBE Program information may be obtained from the MoDOT External Civil Rights Administrator, 105 W. Capitol Avenue, P. O. Box 270, Jefferson City, MO 65102-0270. Phone (573) 751-2859, Fax (573) 526-0558, E-Mail [dbe@modot.mo.gov](mailto:dbe@modot.mo.gov). It is the duty of the Contractor, and each subcontractor and surety, to take the steps necessary to determine the legal obligations and limitations under the DBE Program, as an element of responsibility. It is also the duty of each certified DBE firm and the Contractor to know, understand and comply with the legal obligations and limitations under the DBE Program, as a requirement of program participation. A surety providing a bid or contract bond will be bound by those bonds to the duties of the surety's principal.
5. **Contract DBE Goals.** MoDOT has determined that the DBE participation goal on this Project is 16%. The Contractor shall establish individual contract DBE goals as appropriate for each subcontract, or consultant, subconsultant, regular dealer, and service provider agreements in amounts to ensure that the 16% Contract DBE goal is met or exceeded. The Commission will monitor the Contractor's activities to determine if they are conducted in a manner consistent with the requirements of 49 CFR Part 26, the



Contract requirements and the Contractor's DBE Plan. The Commission has the right to review all subcontracts, consultant, subconsultant, regular dealer, and service provider agreements for program compliance prior to or after award or selection. The Commission has the sole discretion to approve or deny such DBE subcontracts, consultant, subconsultant, regular dealer, and service provider agreements based upon their compliance with the requirements of 49 CFR Part 26.

6. **Submittal of Documents.** The following documents shall be submitted:
- a) **DBE commitments** shall be submitted as part of the Final Technical Proposal. The DBE commitments shall include completed copies of Forms 1 and 2. The DBE commitments will be evaluated as described in the ITP.
  - b) **Draft DBE Performance Plan** shall be submitted as part of the Final Technical Proposal. The draft DBE Performance Plan shall include completed copies of Forms 3 and 4 and will be evaluated on a pass/fail basis as described in the ITP.
  - c) **Final DBE Performance Plan** shall be submitted within sixty days after NTP2.
  - d) **Monthly Reports** shall be submitted monthly with the Contractor's invoice.
  - e) **Good Faith Efforts** shall be submitted as requested by the Commission if the Monthly Reports indicate that the Contractor is not meeting the DBE Performance Plan.
7. **Definitions.** For purposes hereof, the following terms shall be considered to have the following meanings:
- a) **Affiliates.** Affiliates (except as otherwise provided in 13 CFR Part 21) means that concerns are affiliates of each other when, either directly or indirectly:
    1. One concern controls or has the power to control the other; or
    2. A third party or parties controls or has the power to control both; or
    3. An identity of interest between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, all appropriate factors will be considered, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the size of firms in the DBE program.
  - b) **Compliance** means the condition existing when the Contractor and its Subcontractors have met and implemented all of the requirements of this Exhibit D.
  - c) **Contract.** A contract, for purposes of this Exhibit D, means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.
  - d) **Disadvantaged Business Enterprise (DBE).** A Disadvantaged Business Enterprise is a for-profit small business concern, as defined pursuant to Section 3 of



the Small Business Act and relevant regulations promulgated pursuant thereto, subject however to the business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm performs and 49 CFR part 26; that is owned and controlled by one or more socially and economically disadvantaged individuals who are citizens (or lawfully admitted permanent residents) of the United States; and is certified by the Missouri Regional Certification Committee (MRCC).

- e) **DBE Joint Venture.** Means an association of a DBE firm and one or more other firms formed to carry out a single, for-profit business enterprise for which purpose the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. DBE Joint Ventures must be pre-approved by the MoDOT External Civil Rights Administrator.
- f) **DBE Owned and Controlled.** Means a small business concern that is at least 51 per centum owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more such individuals. The socially and economically disadvantaged owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements.
- g) **Missouri Regional Certification Committee.** The MRCC consists of certifying and non-certifying members who are recipients of USDOT funds within the State of Missouri. The MRCC is organized for the purposes of certifying DBEs through a "one-stop shop" in Missouri under 49 C.F.R. Part 26.
- h) **Noncompliance.** Noncompliance means the condition existing when the Contractor or a Subcontractor has not met and implemented any one or more of the requirements of this Exhibit D.
- i) **Regular Dealer.** Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business, as provided in 49 CFR § 26.55, and firms are certified as such by the MRCC.
- j) **Small Business Concern.** A small business concern, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, means a small business as defined pursuant to the Small Business Act, 13 C.F.R. §121.
- k) **Socially and Economically Disadvantaged Individuals.** Socially and Economically Disadvantaged Individuals means persons who are citizens or lawful permanent residents of the U.S. and who are:



1. Any individual whom the MRCC finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
  - i. Native Americans – persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or
  - ii. Asian-Pacific Americans – persons having origins from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Territories of the Pacific Islands, the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong King; or
  - iii. Hispanic Americans – persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race; or
  - iv. Black Americans – persons having origins in any of the Black racial groups of Africa; or
  - v. Subcontinent Asian Americans – persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; or
  - vi. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such times as the Small Business Administration designation becomes effective; or
  - vii. Women.
- f) **Subcontractor.** A subcontracting arrangement is generally considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present:
  1. The person or firm performing the work is particularly experienced and equipped for such work.
  2. Compensation is related to the amount of work accomplished rather than being on an hourly basis.
  3. Choice of work methods, except as restricted by the specifications, and the furnishing and controlling of labor and equipment are exercised by the Subcontractor with only general supervision being executed by the prime contractor.
  4. Personnel involved in the operation are under the direct supervision of the Subcontractor and are included on the Subcontractor's payroll.

All conditions involved shall be considered and no one condition alone will normally determine whether a subcontract actually exists. In all cases, a DBE Subcontractor must be an independent organization, and the ownership and control by the socially and economically disadvantaged individual(s) must be real and continuing. The firm



will not be considered independent if prime contractor or another Subcontractor or supplier provides significant operating and management support for the DBE firm.

8. **Draft DBE Performance Plan.** The Proposer shall submit a draft DBE Performance Plan with its Proposal. The Contractor shall submit the final DBE Performance Plan within sixty days after NTP2 of the Contract. The DBE Performance Plan shall be a Contract requirement.

The DBE Performance Plan shall set forth Contractor's plan to meet the DBE participation goal, and shall provide for an effective method of achieving those goals, and reporting to the Commission regarding DBE participation. The DBE Performance Plan shall also set forth a proactive outreach program for DBE firms. The minimum requirements are as follows:

a) **DBE Goals.** The plan shall set forth the Contractor's plan to meet the Project 16% goal for DBE participation, with meaningful design and construction representation, throughout the design-build phase of the Contract. It shall include the following information:

1. The estimated dollar amount of DBE subcontracts to be awarded and paid for during each of Contractor's fiscal year, separately for design and construction; and
2. The areas of anticipated Work to be subcontracted to DBE firms during each of Contractor's fiscal year.

The plan shall provide a detailed description of the scopes of Work/services anticipated throughout the life of the Project and for a uniform distribution of DBE subcontracts and sub-consultant agreements throughout the design-build phase. DBE subcontracts shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of DBE firms in the various classifications.

b) **Good Faith Efforts.**

The Contractor shall submit with its Final Technical Proposal the following documentation of its good faith efforts:

1. Form 3 – Bidder's List, providing information on all DBE and non-DBE firms that submitted a bid/proposal for the Project, and the proposed firms to be used on the Project as contractors, subcontractors, consultants, sub-consultants, suppliers or service providers, including:
  - i. The firm's name;
  - ii. The firm's address;
  - iii. The firm's status as a DBE or non-DBE;
  - iv. The age of the firm;
  - v. The annual gross receipts of the firm; and



vi. The type of work/work category the firm proposed to perform.

2. Form 4 – Good Faith Efforts showing the good faith efforts that the Contractor has made to provide equal opportunities to DBE firms as of the Proposal Due Date, and including a certification on behalf of the Contractor and its subcontractors and subconsultants that at the time of the Proposal Due Date the Contractor has made a Good Faith Effort to ensure that DBEs have an equal opportunity to compete for and perform on the Contract.

Contractor's "Good Faith Efforts" information and documentation must indicate the Proposer has made a good faith effort as of the Proposal Due Date to offer DBE firms an equal opportunity to participate in the performance of the Contract as required by the Contract Documents.

The information and documentation on the Contractor's DBE Good Faith Efforts, Form 4, which includes the information specified below as of the Proposal Due Date. Form 4 is not required if the Contractor has met the DBE Goal for this Contract at the time of the Proposal Due Date.

- i. The names and dates of advertisement of each newspaper, trade paper and minority-focus paper in which the Contractor placed requests for DBE participation (the actual advertisement and the number of times it was run shall be included);
- ii. The names and dates of written notices to certified DBEs solicited by direct mail or other means for this Project, and the methods used to follow up on these solicitations;
- iii. Items of work for which the Contractor requested bids, proposals or materials to be supplied by DBEs and the information furnished to DBEs, for example plans, specifications and requirements for the work and any break downs of work into economically feasible units to facilitate DBE participation;
- iv. The names of DBEs that submitted bids or proposals for any of the work indicated above, which were not accepted by the Contractor; a summary the Contractor's discussions and/or negotiations with them; the name of the contractor, subcontractor, consultant, sub-consultant, supplier or service provider that was selected for the work and the reasons therefore. If the reason for the DBE rejection is price, state the rejected DBE's price bid/proposal and that of the selected contractor, subcontractor, consultant, sub-consultant, supplier or service provider.
- v. A description of the assistance the Contractor extended to rejected DBEs identified above to remedy the bid deficiencies;
- vi. Efforts to assist DBEs on obtaining bonding, lines of credit, insurance;
- vii. Effective use of services of available minority/women community organizations, contractor groups and local/state/Federal minority/women business assistance offices.



- viii. Any additional documentation that demonstrates the Contractor made good faith efforts, including but not limited to the Contractor's efforts to encourage its design team consultants, subcontractors, sub-consultants and service providers to solicit DBE participation in their agreements.

During the term of the Contract, the Contractor shall continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully bid and perform on the Contract, and that the Contractor meets its DBE goal. These efforts shall include but not be limited to the following:

- i. Negotiating in good faith to secure a Contract, Subcontract, Consultant, Sub-Consultant, Supply or Service Provider agreement with DBEs whether or not committed to prior to Contract award;
- ii. Continuing to provide assistance to DBE Contractors, Subcontractors, Consultants, Sub-Consultants, Suppliers or Service Providers in obtaining bonding, lines of credit, etc., if required by the contract;
- iii. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting the Commission's statement of no objection to substitute the DBE;
- iv. Timely payment of all monies due and owing to DBE contractors, subcontractors, consultants, sub-consultants, suppliers and service providers;
- v. Timely submittal of complete and accurate DBE payment reports in accordance with the reporting requirements specified in the Contract herein.
- vi. Timely submittal of "Good Faith Efforts" information and documentation to the Commission throughout the Contract, as contracts are let and new vendors, subcontractors, sub-consultants, suppliers and service providers are selected;
- vii. Informing the Commission in writing in a timely manner of any problems anticipated in attaining the 16% DBE participation goal for the Project; and

If the Contractor or its contractor, subcontractor, consultant, sub-consultant, supplier, or service provider requests a substitution of a DBE firm, the Contractor or its contractor, subcontractor, consultant, sub-consultant, supplier or service provider must exert good faith efforts to replace the DBE firm with another DBE firm, and must include all documentation to substantiate its good faith efforts, subject to the Commission's statement of no objection.

- c) **Civil Rights Compliance Manager.** The DBE Performance Plan shall provide for at least one employee or subcontractor (the Civil Rights Compliance Manager), who has a bachelor's degree in business administration, public administration or related field, and is knowledgeable and has at least four years of experience in the areas of civil rights compliance, including contract compliance, DBE administration and OJT administration, or who has other substantially equal qualifications Approved by the



Commission. The responsibilities of the Civil Rights Compliance Manager shall include managing and implementing the DBE Performance Plan, and ensuring compliance with 49 CFR, Part 26, the Plan and with the non-discrimination provisions set forth in the Standard Federal Equal Opportunity Construction Contract Specification, and the On-the Job Training Provision, both of which are included in Exhibit C (Federal Requirements). The Civil Rights Compliance Manager shall be responsible for developing, managing and implementing the DBE Performance Plan on a day-to-day basis, for carrying out technical assistance activities for DBEs, and for disseminating information on available business and subcontracting opportunities so that DBEs are provided an equitable opportunity to compete and perform the Work on behalf of the Contractor. The Civil Rights Compliance Manager will also be responsible for day-to-day management of the Affirmative Action Requirements and On-the Job Training Provision set forth in Exhibit C (Federal Requirements). The Civil Rights Manager will work with the MoDOT DBE specialist assigned to the Project to ensure that all rules and regulations are carried out in accordance with MoDOT's DBE requirements and the federal regulations. All DBE participation will be reviewed and Approved by the Commission prior to being counted towards the Project DBE goal.

d) **DBE Outreach Program**

Describe in detail the processes Contractor will use to achieve the following:

- i. Develop a proactive outreach program for DBEs;
- ii. Assist DBEs in identifying subcontracting opportunities on the Project, and assist subcontractors in identifying concerns for their specific subcontracting needs;
- iii. Provide for financial assistance for DBEs, in cooperation with any existing MoDOT programs;
- iv. Provide for training for DBEs, and coordinate with MoDOT's Office of External Civil Rights on training matters;
- v. Provide technical business assistance for DBEs; and
- vi. Work cooperatively with MoDOT and the Commission, including the obligation to forward to the Commission any complaints received regarding the Contractor's DBE Program.

9. **Final DBE Performance Plan.** The Contractor shall submit the final DBE Performance Plan for Approval within sixty days after NTP2 of the Contract. The DBE Performance Plan shall be a Contract requirement. The final DBE Performance Plan shall contain, at a minimum, the following elements.

- a) **DBE Goals.** As described in Section 8 above.
- b) **Civil Rights Compliance Manager.** As described in Section 8 above.
- c) **DBE Outreach Program.** As described in Section 8 above.



d) **Monthly DBE Progress Reports.** The Contractor shall keep records regarding the progress of DBE participation. The Contractor shall provide DBE progress reports to the Commission simultaneously with its monthly invoice, (*and at more frequent intervals if requested by the Commission*), including the following information for each DBE subcontract separately for design and construction:

1. The name of the DBE Subcontractor.
2. Dollar amount of the subcontract.
3. Quantities (or other measure of performance) completed as of the month just ended.
4. Dollar amount paid under the subcontract as of the end of the month (separately stating the amount paid during the month in question with a cumulative total for the month and all prior periods).
5. Dollar amount retained, if any, as of the end of the month.
6. Certification of release of retainage, if any, to Subcontractors within a month after the Subcontractor's satisfactory completion of the work.
7. Certification of payment to subcontractors within one month of Contractor's receipt of payment from the Commission in accordance with Section 34.057, RSMo.
8. Dollar amount of outstanding invoices and of uncompleted work remaining on the subcontract.
9. Expected completion date of subcontract.
10. Any performance problems with DBE subcontractors and how the problems were resolved.

The report shall also include a narrative summary stating whether the Contractor is on target with respect to its DBE goals, whether it has exceeded its goals (and stating the amount of the excess), or whether it is behind (and stating the amount of the deficit).

If a monthly report shows that the Contractor is not on track to achieve the DBE goals stated in the DBE Performance Plan, the Contractor shall provide with the report a written plan to remedy the deficit to be Approved by the Commission. The Contractor shall submit a revised plan within ten (10) working days if the plan is not Approved. The Contractor shall also provide with the report a certification in the form of an affidavit, documenting what good faith efforts it undertook to meet the goals and what good faith efforts it will make in the future to do so. Specific documentary evidence of the Contractor's good faith efforts must accompany such certificate.

e) **DBE Subcontracts**

1. Whenever a DBE subcontract is signed the Contractor shall promptly provide the Commission with the following information regarding the subcontract:
  - i. The name and business address of the Subcontractors.



- ii. The total dollar amount of the subcontract.
  - iii. The specific work items covered by the subcontract.
  - iv. The amount of the subcontract to be credited to design or construction.
  - v. The estimated quantities of each work item.
  - vi. Individual unit prices (if applicable).
  - vii. Cost loaded schedule of participation by the DBE firm.
- f) **Good Faith Efforts.** If the Contractor's Monthly Reports indicate that the DBE Goal is not on track to being met, the Contractor shall also submit completed copies of Form 3 and Form 4 as described in Section 8 above on an annual basis from the date of Approval of its Final DBE Performance Plan.

10. **Counting DBE Participation Toward Goals.** The Commission will recognize and grant DBE credit for work subcontracted and performed by DBE Subcontractors ONLY in the types of work for which DBE certification has been granted. It is recommended that all proposers contact the MoDOT External Civil Rights Administrator referred to in paragraph 8(c) above if they need direction and guidance, or if they have any questions.

The Contractor may count toward the DBE goals a portion of the total dollar value of the contract with a DBE joint venture equal to the percentage of the ownership and control of the DBE partner in the joint venture and commensurate with the Work performed by the DBE firm with its own equipment and resources.

The Contractor may count toward the DBE goals only expenditures to a DBE that performs a commercially useful function in the work pursuant to a contract, as defined in 49 CFR § 26.55. If the Commission determines, in its sole discretion, that the firm does not perform a commercially useful function in the transaction, no credit toward goals shall be granted. Contractor's civil rights compliance manager shall certify to the Commission that each DBE firm counted for participation in determining availability percentages serves a commercially useful function, which includes the requirements set forth in 49 CFR § 26.55. Upon request by the Commission, Contractor shall provide information to enable the Commission to verify such determination.

The Contractor may count toward the DBE goals expenditures to all tiers of DBE Subcontracts.

The Contractor may count toward the contract goal expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBE assumes the actual and contractual responsibility for the provision of the materials and supplies.

- a) DBE Manufacturers. The Contractor may count the entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- b) Other Suppliers. The Contractor may count 60 percent of their expenditure to DBE suppliers who are not manufacturers, provided the DBE supplier is certified by the



MRCC as a regular dealer in the product involved and performs a commercially useful function in the supply process.

A regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question.

A supplier of bulk goods may qualify as a regular dealer if the supplier either maintains an inventory or owns or operates distribution equipment. With respect to the distribution equipment (e.g., a fleet of trucks) the term "or operates" is intended to cover a situation in which the supplier leases the equipment on a regular basis for its entire business. It is not intended to cover trucks owned or leased by another party (e.g., a prime contractor). It also does not cover leases of trucks on an ad hoc basis for a specific job.

- c) Service Providers/Brokers. A business that simply transfers title of a product from manufacturer to ultimate purchaser or a firm that puts a product into a container for delivery would not be considered a regular dealer. The Contractor would not receive credit based on a percentage of the cost of the product for working with such firms.

However, fees received by a service provider/broker may be counted toward goals. For example, use of a minority sales representative or distributor for a steel company, if performing a commercially useful function, will entitle the Contractor receiving the steel to count only the fee paid to the representative or distributor toward their contract goal. No portion of the steel would count toward the goal.

If a DBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor, the commercially useful function the trucking company is performing is not that of a supplier, but simply that of a transporter of goods. Unless the trucking company is itself the manufacturer of or a regular dealer in the product, credit cannot be given based on a percentage of the cost of the product. Rather, credit would be allowed for the cost of the transportation service only.

The Contractor can only count DBEs who are certified by the MRCC at the time the subcontractor begins to perform work on the Project. The Contractor may count toward the contract goal expenditures to a DBE Subcontractor if, during the term of the original subcontract or during the term of a change order extending the original contract for Work within the scope of the original subcontract, the DBE graduates from the DBE program.

The Contractor shall maintain records of payments to DBE Subcontractors listing all DBEs that worked under this Contract and reporting the following information:

11. **Contractor's Responsibility.** It is the Contractor's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE Subcontractor. The Contractor shall ascertain that the proposed DBE Subcontractor is particularly experienced and equipped for such Work. It is also the Contractor's



responsibility to ensure that if a DBE firm is subcontracting Work to a non-DBE firm, that only the Work being performed by the DBE firm with its own equipment and resources be submitted for Approval to be counted towards the Project DBE goal.

- 12. Changes and Substitutions.** Any change in previously identified DBE firms, or any reduction in the scope of work to be performed by a DBE firm, or any change in or variance from the approved DBE Performance Plan, will require the Commission's prior written Approval.

The Contractor may propose a substitution of a DBE Subcontractor who is unable to perform successfully. However, substitutions of any DBE Subcontractor(s), reductions in scope for DBE subcontracts, substitution of work item(s), or decreases of total dollar amount(s) committed to DBE Subcontracts will not be allowed without prior submission of written justification to the Commission and Approval of the Commission.

The Contractor shall make good faith efforts to replace any DBE Subcontractor who fails to perform its obligations with another DBE.

Unauthorized substitutions and/or under-runs in total dollar amounts may result in a withholding of part or all of progress payments as described below in Paragraph 12.

- 13. Contract Sanctions.** Noncompliance with any of the provisions of the Contract Documents is a material breach of this Contract. Noncompliance shall result in one or more of the following remedies:

- a) If the Contractor fails to provide documentation required by this Exhibit D, the Commission shall have the discretion to withhold all or part of the monthly progress payments until such time that the Contractor provides the required documentation. The amount withheld shall be within the sole discretion of the Commission.
- b) If the Contractor fails to comply with its DBE Performance Plan or with the requirements of this Exhibit D in any other manner, the Commission shall have the discretion to withhold all or part of the monthly progress payments until such time that the Contractor comes into Compliance. The amount withheld shall be within the discretion of the Commission.
- c) Failure on the part of the Contractor to achieve the DBE participation goal may result in liquidated damages for breach of Contract and non-compliance. If it is determined by the Commission that the Contractor's failure to meet all or part of the DBE participation goal is due to the Contractor's inadequate good faith efforts, the Contractor may be required to pay DBE liquidated damages equal to the amount of the unmet goal.



**EXHIBIT D FORM 1  
DBE COMMITMENTS**

Proposer:

The Proposer has executed contracts with the following DBE contractors, subcontractors, consultants, subconsultants, regular dealers, and services providers:

<b>SUMMARY OF DBE CONTRACTS</b> as of Proposal Due Date				
<b>DBE Firm</b>	<b>Date of Execution of Contract</b>	<b>Type of Work to be Performed by DBE</b>	<b>Dollar Amount of Work to be Performed by DBE</b>	<b>Duration of Agreement</b>
(add rows as needed)				

NOTE: Attached a copy of each executed contracts

The Proposer has executed a Letter of Subcontractor Intent (LSI) with the following DBE contractors, subcontractors, consultants, subconsultants, regular dealers, and services providers:

<b>SUMMARY OF DBE LSI</b> as of Proposal Due Date	
<b>DBE Firm</b>	<b>Date of LSI</b>
(add rows as needed)	

NOTE: Attached a copy of each LSI



**EXHIBIT D FORM 2  
LETTER OF SUBCONTRACTOR INTENT (LSI)**

Proposer:

\_\_\_\_\_ [Proposer], intends to subcontract work for The New I-64 Design-Build Project to \_\_\_\_\_ [DBE Firm] to perform the following type(s) of work:

- [work item]
- [work item]
- [work item]
- [work item]

Question	Answer
Does this firm have the capacity to perform the agreed value of the Services/ Contract?	[yes or no]
Will this firm be performing the Service/Contract with its own resources and equipment?	[yes or no]
Does this firm have subcontractors, consultants, subconsultants, regular dealers, or service providers working under them on this Contract? (If yes, attach a list and corresponding LSIs)	[yes or no]
Is this firm currently a DBE certified by the Missouri Regional Certification Committee (MRCC)?	[yes or no]

[PROPOSER]

[DBE FIRM]

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

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone Number

NOTE: Proposer's subcontractors, consultants, subconsultants, regular dealers, and service providers that have firms working under them on this Project, are required to complete and submit LSIs for such firms. Submission of a signed LSI is not a guarantee that there will be a subcontract.



**EXHIBIT D FORM 3  
BIDDERS LIST**

Proposer:

List all comparative quotes of participants performing on the Project and participants that bid or submitted proposals, including DBEs and non-DBEs. Include all contractors, subcontractors, subconsultants, regular dealers and service providers.

Firm Name	Firm Address	Is the Firm a DBE? (yes/no)	Will the Firm be used on the Project? (yes/no)	Age of Firm	Average Annual Gross Receipts Category	Type of Work/Work Category Firm to Perform
(add rows as needed)						

NOTE: This information may be submitted in an alternate form.

Average Annual Gross Receipts Categories	
Category	Annual Gross Receipts
A	< \$1,000,000
B	\$1,000,000 - \$5,000,000
C	\$5,000,000 - \$10,000,000
D	\$10,000,000 - \$15,000,000
E	> \$15,000,000



**EXHIBIT D FORM 4  
GOOD FAITH EFFORTS**

Proposer:

The Proposer shall submit the following information to demonstrate that a good faith effort has been made to provide opportunities for DBE firms, including contractors, subcontractors, consultants, subconsultants, regular dealers, and service providers, etc. on the Project.

The Proposer shall submit the following information at the Proposal Due Date if the Proposer has not met the DBE Goal, and, if selected, shall update the form annually thereafter until the goal has been met.

1. List the names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for DBE participation for this Project was place by the Proposer:

Publication	Date of Advertisement

2. List the names and dates of written notices of all certified DBEs solicited by direct mail or other means for this Project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested:

DBE Firms Solicited	Dates of Solicitations	Follow-up Methods and Dates

3. List the items of work for which the Proposer requested bids, proposals or materials to be supplied by DBEs, if any; the information furnished to interested DBEs in way of plans, specifications and requirements for the Work, and any breakdown of items of Work into economically feasible units to facilitate DBE participation. Where there are DBEs available for doing portions of the Work normally performed by the Proposer with its own forces, the Proposer will be expected to make portions of such work available for DBEs to bid on.
  - a. Items of Work: [\[Describe\]](#)
  - b. Information Furnished: [\[Describe\]](#)
  - c. Breakdown of Items: [\[Describe\]](#)
4. List the names of DBEs selected to work on the Project; names of DBEs that submitted bids or proposals for any of the Work indicated above which were not accepted, a summary of the Proposer's discussions and/or negotiations with them, the name of the subcontractor,



## EXHIBIT D FORM 4 GOOD FAITH EFFORTS

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Proposer:

consultant, subconsultant, regular dealer, or service provider who was selected for that portion of the work, and the reasons for the Proposer's choice. If the reason for rejecting a DBE bid was price, give the bid price or proposal by the rejected DBE and the bid price by the selected subcontractor, subconsultant, regular dealer, or service provider. Since the utilization of available DBEs is expected, only significant price differences will be considered as cause for rejecting such DBE bids.

- a. Proposed DBEs to be utilized on the Project: [\[List\]](#)
  - b. Rejected DBEs: [\[List\]](#)
  - c. Summary of discussions and negotiations: [\[Describe\]](#)
  - d. Selected Non-DBEs and reasons for that choice: [\[Describe\]](#)
5. List any assistance that the Proposer extended to the rejected DBEs identified above to remedy the deficiencies in their bids:

[\[List\]](#)

6. List all efforts Proposer made to assist interested DBEs on obtaining required bonding, lines of credit, or insurance:

[\[List\]](#)

7. List all efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services:

[\[List\]](#)

8. List the Proposer's effective use of services available from minority/women community organizations, contractor groups and local/state/Federal minority/women business assistance offices and other organizations to assist in recruitment and placements of DBEs:

[\[List\]](#)

9. List any additional data to support a demonstration of good faith efforts, such as contacts with DBE assistance agencies:

[\[List\]](#)

NOTES:

- 1) This form provides for a minimum of good faith efforts requirements, see Federal Register, Vol. 64, No. 21, Tuesday, February 2, 1999/Rules and Regulations, Appendix A to Part 26 – Guidance Concerning Good Faith Efforts for additional good faith effort considerations.
- 2) Appropriate documentation such as copies of newspaper ads, letters soliciting bids, and telephone logs should accompany this form.



**EXHIBIT D FORM 4  
GOOD FAITH EFFORTS**

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Proposer:

**GOOD FAITH EFFORTS AFFIDAVIT:**

The undersigned, being first duly sworn, deposes and says that (he/she) is the [Title] \_\_\_\_\_ of [Company Name] \_\_\_\_\_, which entity is a [shareholder, partner, joint venture member or other] \_\_\_\_\_ of [Proposer's Name] \_\_\_\_\_, a [corporation, partnership, limited liability company, joint venture, or other] \_\_\_\_\_, and he/she affirms that the Proposer has made good faith efforts to achieve the DBE goals identified in the Contract.

[Proposer's Name]

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

Signature

\_\_\_\_\_

Typed or Printed Name

\_\_\_\_\_

Title

STATE OF \_\_\_\_\_ S.S

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Notary Public  
in and for said County and State

\_\_\_\_\_  
My commission expires



## **EXHIBIT E – KEY PERSONNEL**

Form B from the Proposal Documents is to be included with the execution copy.



## EXHIBIT F – PERFORMANCE BOND

BOND NUMBER: \_\_\_\_\_

WHEREAS, the Missouri Department of Transportation (“MoDOT”) (referred to herein as “Obligee”), have Awarded to [Name] \_\_\_\_\_, a [corporation, partnership, limited liability company, joint venture, or other] \_\_\_\_\_, (“Principal”) a Design-Build Contract for The New I-64 Project dated as of \_\_\_\_\_, 2006 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract) concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and [Name of Surety] \_\_\_\_\_, a \_\_\_\_\_ (“Surety”), an admitted surety insurer in the State of Missouri, are held and firmly bound unto Obligee in the amount of \$\_\_\_\_\_ (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents are incorporated by reference herein.
2. This bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to its liability for Liquidated Damages and Warranties as specified in the Contract Documents, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive the final completion of the design and construction called for in the Contract Documents with respect to those obligations of Principal, which survive such final completion.
4. An Additional Obligee Rider will be included that names the Utility Owners whose Work is included in the Contractor’s Work under the Contract Documents up to the cost of their Relocation(s). The Additional Obligee Rider does not cause this Bond to exceed the Bonded Sum.
5. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:
  - A. Remedy such default;
  - B. Complete the Project in accordance with the terms and conditions of



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the Contract Documents then in effect; or

- C. Select a contractor or contractors to complete all Work for which a notice to proceed has been issued in accordance with the terms and conditions of the Contract Documents then in effect, using a procurement methodology approved by Obligee, arrange for a contract between such contractor or contractors and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph), sufficient funds to pay the cost of completion less the unpaid balance of the Contract Price; but not exceeding, including other costs and damages for which Surety is liable hereunder, the Bonded Sum.
- 6. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond. Surety waives notice of any alteration, modification, supplement or extension of time.
  - 7. Correspondence or claims relating to this bond should be sent to Surety at the following address:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
  - 8. No right of action shall accrue on this bond to or for the use of any entity other than Obligee or its successors and assigns.



IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of [date] \_\_\_\_\_, 2006.

[To be signed by authorized signatory or signatories of the Principal and the Surety]

[PRINCIPAL]

[SURETY]

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

Signature

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

Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## EXHIBIT G – PAYMENT BOND

BOND NUMBER: \_\_\_\_\_

WHEREAS, the Missouri Department of Transportation (“MoDOT”) (referred to herein as “Obligee”), have Awarded to [Name] \_\_\_\_\_, a [corporation, partnership, limited liability company, joint venture, or other] \_\_\_\_\_, (“Principal”) a Design-Build Contract for The New I-64 Project dated as of \_\_\_\_\_, 2006 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing payment of claims as described in C.R.S. secs. 38-26-105 through 38-26-107 concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and [Name of Surety] \_\_\_\_\_, a \_\_\_\_\_ (“Surety”), an admitted surety insurer in the State of Missouri, are held and firmly bound unto Obligee in the amount of \$\_\_\_\_\_ (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall fail to pay any of the persons named in Exhibit H (Form C-242), with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents are incorporated by reference herein.
2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond. Surety waives notice of any alteration, modification, supplement or extension of time.
3. Correspondence or claims relating to this bond should be sent to Surety at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. This bond shall inure to the benefit of the persons named in Exhibit H (Form C-242) so as to give a right of action to such persons and their assigns in any suit brought upon this bond.



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IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of [date] \_\_\_\_\_, 2006.

[To be signed by authorized signatory or signatories of the Principal and the Surety]

[PRINCIPAL]

[SURETY]

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

Signature

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

Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

County \_\_\_\_\_  
Route \_\_\_\_\_  
Contract ID \_\_\_\_\_

MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION

**CONTRACTOR'S AFFIDAVIT  
REGARDING  
SETTLEMENT OF CLAIMS**

(To be executed and filed in duplicate)

\_\_\_\_\_, 20 \_\_\_\_\_

To the Missouri Highway and Transportation Commission  
Jefferson City, Missouri

Gentlemen:

This is to certify that all lawful claims for material, lubricants, fuel, coal, coke repairs on machinery, groceries and foodstuffs, equipment and tools consumed or used in connection with the construction of the above mentioned project, and all insurance premiums, both compensation and all other kinds of insurance on said work, and for all labor performed in said work, whether by subcontractor or claimant in person or by his employee, agent, servant, bailee or bailor, have been paid and discharged.

\_\_\_\_\_  
Contractor

By \_\_\_\_\_ (Title)

By \_\_\_\_\_ (Title)

State of \_\_\_\_\_

County of \_\_\_\_\_ ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of

\_\_\_\_\_, 20 \_\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires \_\_\_\_\_, 20 \_\_\_\_\_



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## EXHIBIT I – LETTER OF VESTED INTEREST

The New I-64 Design-Build Project Director  
Attn: Lesley Hoffarth, P.E  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017

Dear Ms. Hoffarth:

It is hereby understood that the MoDOT Project No. J610978 (the Project) fully intends to reimburse

\_\_\_\_\_  
(Contractor)

for materials owned by said Contractor-Purchaser and intended for incorporation into the Project.

Said materials, as described below, are now stored on property owned

by \_\_\_\_\_ and leased by \_\_\_\_\_.  
(if applicable)

Said storage property is located as follows:

\_\_\_\_\_  
(Address and/or Description of Property)

Said stored materials are described as follows:

(Detailed Description of Materials)

It is hereby recognized that once reimbursement has been accomplished, MoDOT will have a vested interest in the materials. Access to and possession of the materials will be granted to MoDOT upon demand and providing that acceptable proof is offered substantiating that reimbursement to Contractor was, in fact, accomplished.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Lessee (if applicable)

Attachments: (When existing)  
Warehouse Receipt of Contract for Storage



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## EXHIBIT J – EQUAL OR BETTER CHANGE PROPOSAL

Title:

EBCP Number:

---

EBCP Contract Document  
Reference:

---

Description why the proposed  
change is equal or better than the  
existing requirements:

---

Description of any previous use:

---

Does this change affect any schedule activities?  Yes    If Yes, attach details  
 No

---

**ATTACH A REDLINE OF THE PROPOSED CHANGES  
TO THE CONTRACT REQUIREMENTS**



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## EXHIBIT J – EQUAL OR BETTER CHANGE PROPOSAL

Title:

EBCP Number:

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### Technical Concurrence:

We have reviewed this “Equal or Better” Change Proposal and concur that the changes are “equal to or better than” the underlying requirements contained in the Contract Documents.

**[Contractor]**

**MoDOT**

\_\_\_\_\_  
Signature of Task Force Co-Lead

\_\_\_\_\_  
Signature of Task Force Co-Lead

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Deputy Project Manager]

\_\_\_\_\_  
Technical Requirements Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

---

### Approvals:

**[Contractor]**

**MoDOT**

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Project Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
FHWA Representative

\_\_\_\_\_  
Date



## EXHIBIT K – VECP SAMPLE CALCULATION

The following example concerns a proposal by Contractor to acquire additional Right of Way in lieu of wall construction.

<b>CALCULATION OF VECP SAVINGS</b>	<b><u>ITEM COST</u></b>	<b><u>TOTAL COST</u></b>
Cost of wall	\$ 250,000	\$ 250,000
VECP Savings		– 185,000
Cost of preparing VECP	– 10,000	
Cost of implementing proposal:		
o Contractor's expenses	– 15,000	
o MoDOT's cost of personnel	– 10,000	
o MoDOT's cost of property	– 150,000	
<b>Net Savings from VECP</b>		<b>\$ 65,000</b>

### CONTRACT ADJUSTMENT

MoDOT's total cost	\$ 160,000
Plus Contractor's share of VECP Savings (50%)	<u>32,500</u>
<b>Total Reduction in Contract Price</b>	<b>\$ 192,500</b>





## EXHIBIT M – DISPUTE RESOLUTION BOARD AGREEMENT

THIS DISPUTE RESOLUTION BOARD AGREEMENT (this “Agreement”) is made and entered into this \_\_\_\_\_, 2006, among the Missouri Highways and Transportation Commission (hereinafter, “Commission”); [Name] \_\_\_\_\_, a [corporation, partnership, limited liability company, joint venture, or other] \_\_\_\_\_, (“Contractor”); and [Name] \_\_\_\_\_, [Name] \_\_\_\_\_, and [Name] \_\_\_\_\_, (the “Dispute Resolution Board”), with reference to the following facts:

- A. The Commission and Contractor have entered into a design-build contract for the New I-64 Design-Build Project (the “Project”), with an effective date of \_\_\_\_\_, 2006, as evidenced by the document executed by the Commission and Contractor entitled “Design-Build Contract” (the “Contract”).;
- B. Section 19 of the Contract provides for the establishment and operation of a Dispute Resolution Board (the “Board”) to assist in resolving all disputes, claims and other controversies in connection with the Contract.

NOW THEREFORE, in consideration of the terms, conditions, and covenants contained herein, the parties hereto agree as follows:

### 1. Establishment of Board

- 1.1 The Board shall begin operation upon execution of this Agreement by the Commission, Contractor and the first two Board Members, and shall terminate upon completion of all work required to be performed by the Board hereunder unless sooner terminated in accordance with this Agreement or applicable law. The Board shall initially consist of two members, one selected by the Commission and one selected by the Contractor. The first duty of the Board shall be to select its third member as provided in Section 19 of the Contract. All capitalized terms used in this Agreement, and not defined or modified herein, shall have the same meaning as set forth in the Exhibit A to the Contract.
- 1.2 Each member of the Board represents, warrants and covenants on his/her behalf that he/she:
  - (a) Does not have an ownership interest in MoDOT or Contractor, or a financial interest in the Project or in the outcome of any dispute decided hereunder, except for payment for serving on the Board.
  - (b) Has not been employed, and his/her employer has not been employed, by the Commission, Contractor or any Affiliate, within two years prior to the Proposal Due Date, except for fee-based consulting services on other projects which are disclosed to all parties.
  - (c) Has not had substantial prior involvement in the Project or relationship with any party or Affiliate of a nature which could affect his/her ability to impartially resolve disputes, and does not know of any reason why he/she cannot be impartial in rendering decisions.



- (d) Shall not accept employment from the Commission, Contractor or any Affiliate during the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract, except as a member of other disputes boards.
  - (e) Shall not discuss employment, nor make any agreement regarding employment, with the Commission, Contractor, any Affiliate or any consultants working on the Project, during the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract.
- 1.3 Prior to hearing the first claim or dispute, and thereafter upon request by the Commission or Contractor from time to time, and at least annually, each Board Member shall provide the Commission and Contractor with an affidavit affirming that such member meets the qualifications set forth in Section 1.2 and stating that the member agrees to be bound by the terms of the Contract. Each Board Member shall promptly notify the Commission and Contractor if any circumstances are likely to prevent a prompt hearing and decision or if the member fails to meet such qualifications. Any Board Member failing to meet such qualifications shall be removed from the Board.

**2. Board Organization and Responsibilities**

- 2.1 The Board is an advisory body created to assist in the resolution of disputes between the Commission and Contractor. The Board is intended to fairly and impartially consider disputes brought to it, provide special dispute-resolution expertise, and to furnish non-binding findings and recommendations in accordance with the requirements of Section 19 to the parties to assist in the resolution of the differences between them. The Board Members shall perform the services necessary to participate in the Board's actions in accordance with this Agreement and Section 19.
- 2.2 The Board Members shall visit the Site periodically during the term of this Agreement to keep abreast of construction activities and to develop a familiarity with the work in progress, as requested by the Commission and the Contractor, or as may be deemed desirable or necessary in the consideration of any claim or dispute. A special site visit shall be scheduled at the request of either party or any Board Member; provided that all reasonable efforts shall be made to allow issues to be raised at the regularly scheduled site visits except where a special visit is warranted due to special circumstances such as the need to observe site conditions before they are disturbed. Representatives of the Commission and Contractor shall have the right to accompany the Board on any such visit.
- 2.3 All Board Members are to act independently in the consideration of facts and conditions surrounding any dispute. Seeking the Board Members' advice or consultation, ex parte, is expressly prohibited; provided, however, that either party may seek such advice or consultation from the entire Board, at a Board meeting, after first giving notice to all interested parties.
- 2.4 Board Members may withdraw from the Board upon delivery of written notice of withdrawal to the Commission, Contractor and the other Board Members, which notice shall specify a withdrawal date at least 28 days following the date of



delivery of the notice. In addition, a member may be terminated by the Commission or Contractor if at any time that member fails to meet the qualifications set forth in Section 19.4 of the Contract. Should the need arise to appoint a replacement Board Member, the replacement member shall be appointed in the same manner as provided by the Contract for appointment of the original member. The selection of a replacement Board Member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 28 days thereafter. The change in Board membership shall be evidenced by the new member's signature on this Agreement.

- 2.5 The Board Members acknowledge that the Commission and Contractor have the right to require appointment of a new Dispute Resolution Board to assist in resolution of future claims and disputes, which right may be exercised at any time by delivery of notice to such effect to the other party and to the Board Members. In such event a new agreement in the same form as this agreement shall be executed establishing the new board, and except as otherwise mutually agreed by the Commission and Contractor, the work to be performed by the Board established under this Agreement shall be limited to claims and disputes submitted to the Board before delivery of the notice requiring appointment of a new Board.
- 2.6 The personal services of each Board Member are a condition to receiving payment hereunder. No Board Member shall assign any of his or her work pursuant to this Agreement without the prior written consent of both the Commission and Contractor.
- 2.7 Each Board Member, in the performance of his or her duties on the Board, is acting as an independent contractor and not as an employee of either the Commission or Contractor. No Board Member will be entitled to any employee benefits.

### **3. Hearings and Decisions**

- 3.1 Each dispute shall be heard by the Board as provided in Section 19 of the Contract.
- 3.2 The Board shall establish procedures and time limits consistent with \_\_\_\_\_, including the right to establish or to waive evidentiary rules and procedures. Each party shall retain the right to discovery and to present its witnesses and evidence in its own discretion, within the parameters established by the Board.
- 3.3 Upon receipt by the Board of a written notice of appeal pursuant to Section 19 of the Contract, either from Contractor or the Commission, the Board shall convene a hearing to review and consider the matter as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Both the Commission and Contractor are encouraged to provide exhibits, calculations and any other pertinent material to the Board for review prior to the hearing. All such material shall concurrently be given to the other party.
- 3.4 The Board shall convene to consider question presented to it and shall at the conclusion of each hearing either provide its recommendation or advise the



parties when a recommendation will be forthcoming, in accordance with the Contract.

**4. Provision of Documents to Board**

- 4.1 The Commission shall furnish to each Board member one copy of all Contract and any other documents pertinent to the performance of the Work and necessary to the Board's work.
- 4.2 Contractor, with assistance of the Commission, shall furnish to each Board member one copy of all documents it has, other than those furnished by the Commission, which are pertinent to the performance of the Board.

**5. Expenses**

- 5.1 Payment for services rendered by Board Members and for their direct, non-salary expenses shall be calculated in accordance with the separate agreements between each party and the Board Member, which it appointed, or with the separate agreement among the Commission, Contractor, and the third Board Member.
- 5.2 Invoices for payment for work completed shall be submitted no more often than once per month. Such invoices shall be in a format approved by the party responsible for payment thereof and accompanied by a general description of activities performed during this period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Board Member together with direct, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.
- 5.3 Each Board Member shall keep available for inspection, for a period of five years after final payment, the cost records and accounts pertaining to this Agreement, provided that the Commission shall be allowed access to the records of the Contractor-appointed member only with respect to costs and expenses which the Commission has been requested to pay, and Contractor shall be allowed access to the records of the Commission-appointed member only with respect to costs and expenses which Contractor has been requested to pay.

**6. Term**

This Agreement shall commence upon execution hereof by Contractor, the Commission and the first two until Final Acceptance, or for such longer period as may be necessary in order to complete the review of disputes submitted to the Board prior to the Final Acceptance Date. The foregoing is subject to the right of the Commission and Contractor to terminate the services of Board members as specified herein.

**7. Miscellaneous**

- 7.1 The parties intend for Section 19 of the Contract and the other terms of this Agreement to be members. The parties anticipate that the Board shall continue to operate on a regular basis complementary. In the event of any conflict between this Agreement and said Section 19, Section 19 shall control.
- 7.2 Notices hereunder shall be sent as provided in the Contract. The addresses for



the Disputes Board members are set forth on the signature pages hereto.

7.3 This Agreement shall be governed by and construed in accordance with the law of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[BOARD MEMBER]

[BOARD MEMBER]

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

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
City, State, ZIP

[BOARD MEMBER]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, ZIP



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[CONTRACTOR]

[MISSOURI DEPARTMENT OF  
TRANSPORTATION]

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

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



**FINAL REQUEST FOR PROPOSALS  
for The New I-64 Design-Build Project**

**BOOK 2 — PERFORMANCE  
REQUIREMENTS**

Project Number J6I0978  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017





## CONTENTS of BOOK 2

Section	Title
1	Configuration Requirements
2	Project Management
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5	Environmental
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17	Maintenance of Traffic
18	Maintenance During Construction



## **1 CONFIGURATION REQUIREMENTS**

The Project configuration requirements are as follows:

- The Contractor shall provide direct interstate to interstate connections at the junction of I-64 and I-170
- The Contractor shall provide at least one additional mainline capacity lane on I-64 from west of Spoede Road to I-170 in both directions
- All Work is to be constructed within the Right of Way shown in Book 4, except for additional Right of Way or Permanent Easements as allowed in Section 8



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## **2 PROJECT MANAGEMENT**

All Project Management Activities, including scope, schedule, cost and document management shall be based on the Work Breakdown Structure (WBS) provided in Book 4. The Contractor shall not change the WBS at levels I through IV except that the Contractor shall add Activities to level IV where level IV is required to be detailed by area. The Contractor shall provide additional breakdown below level IV to meet requirements of this section. The Contractor shall incorporate the WBS into the Contract Schedules that shall be used to manage the Project.

### **2.1 Schedules**

Contract Schedules include the Preliminary Baseline Schedule, Original Baseline Schedule, Revised Baseline Schedule, Monthly Progress Schedule, Recovery Schedule, and the As-Built Schedule.

#### **2.1.1 Preliminary Baseline Schedule**

The Preliminary Baseline Schedule is the initial Project schedule for the purpose of initiating Work on the Project. The Preliminary Baseline Schedule will be used to evaluate progress and payment for up to the first 120 days of the Project. The Preliminary Baseline Schedule will be replaced with the Approved Original Baseline Schedule as a condition of NTP2.

The Contractor shall submit the Preliminary Baseline Schedule to MoDOT within fifteen Working Days following NTP1. Activities occurring within 120 Days following NTP1 are subject to the 40-Day maximum duration requirements.

#### **2.1.2 Original Baseline Schedule**

The Original Baseline Schedule is the Contractor's original plan for the Project from NTP1 through Final Acceptance. It shall represent conditions of the Project at NTP1 and shall not be modified to reflect progress from NTP1 through Original Baseline Schedule Approval.

The Contractor shall submit the Original Baseline Schedule to MoDOT for Approval within 90 Days after issuance of NTP1. Once Approved, this schedule shall become the Baseline Schedule against which all progress and revisions shall be measured. The Original Baseline Schedule shall not change after Approval. The Original Baseline Schedule shall be the basis for the Monthly Progress Schedule by the Contractor in its scheduling and performance of the Work.

#### **2.1.3 Revised Baseline Schedule**

The Revised Baseline Schedule is defined as the Original Baseline Schedule with cost and schedule changes from Approved Change Orders, including Work Orders that become Change Orders, incorporated. Each Revised Baseline Schedule shall have a unique name that includes the revision number. This schedule will not show



progress but shall maintain the original data date from the Original Baseline Schedule as a baseline.

The Contractor shall submit a Revised Baseline Schedule to MoDOT for Approval within 30 Days of any Approved cost or schedule changes. Once Approved, this schedule will become the Baseline Schedule against which all progress and revisions shall be measured.

#### **2.1.4 Monthly Progress Schedule**

The Monthly Progress Schedule shows actual progress against the Baseline Schedule and the planned execution for the remainder of the Project. Monthly progress updates shall accurately represent all planning changes, adjustments, or updates in the sequencing and timing of Work remaining that have been made or are required to be made to ensure that the schedule stays current with the Contractor's plan for completing the Work. The Contractor may include modifications, subject to MoDOT Approval, such as adding or deleting Activities or changing Activity durations or logic that do not (1) alter the Critical Path or near Critical Path or (2) extend the Completion Deadlines or (3) disrupt the integrity or comparative relationship between the Baseline Schedule and the Monthly Progress update.

The Monthly Progress Schedule shall be submitted to MoDOT each month, concurrent with the invoice submittal. The Monthly Progress Schedule shall include all information current as of the data date.

#### **2.1.5 Recovery Schedule**

The Recovery Schedule is defined as the Contractor's program and proposed plan for the recapture of lost schedule progress and to achieve Lane Closure Duration Deadlines, Segment Completion Deadlines, or the Project Completion Deadline, whichever are applicable. The Recovery Schedule shall be based on the latest Monthly Progress Schedule and shall include equivalent detail. The Recovery Schedule shall show the proposed changes to the schedule, include cost loading and additional detail to substantiate the recovery plan, and shall reflect all proposed changes to WBS Level V Activities through Project completion.

If the Work is lagging the late start cost curve in the Current Baseline Schedule for a period that exceeds the greater of (a) fifteen Days in the aggregate or (b) that number of Days in the aggregate that equals 10% of the days remaining until the Project Completion Deadline, then the Contractor, within fourteen Days after Contractor first becomes aware of such schedule delay, shall prepare and submit a Recovery Schedule demonstrating the Contractors program and proposed plan to regain lost schedule progress and to achieve all Lane Closure Duration Deadlines, Segment Completion Deadlines, the Project Completion Deadline and Final Acceptance of the Project to MoDOT for review and Approval. MoDOT will notify the Contractor within fourteen Days after receipt of each such Recovery Schedule whether the schedule is Approved or describing changes that MoDOT believes should be made to the schedule. The Contractor shall incorporate and fully include the Recovery Schedule (including MoDOT's comments) into the next scheduled



Monthly Progress Schedule (or, if the next scheduled Monthly Progress Schedule is due within seven Days of Approval of the Recovery Schedule, then the Recovery Schedule shall be incorporated into the subsequent Monthly Progress Schedule), and shall concurrently provide to MoDOT a Revised Baseline Schedule.

### **2.1.6 As-Built Schedule**

The last Monthly Progress Schedule submitted shall be identified by the Contractor as the As-Built Schedule. The As-Built Schedule shall reflect the exact manner in which the Contractor executed the Work (including start and completion dates, Activities, actual durations, sequences, and logic), and shall be signed and certified by the Contractor's Project Manager and the Contractor's scheduler as being a true reflection of the way in which the Work was executed at the time of Final Acceptance.

### **2.1.7 Float**

Float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every Activity in the schedule. Float shall be for the benefit of all parties to the Contract and not for the exclusive benefit of the Contractor. Suppression or consumption of Float by extended Activity duration, dummy Activities, or preferential sequencing shall not be allowed. Critical Activities shall be defined as Activities with a total Float less than one Day.

### **2.1.8 Schedule and Software Requirements**

#### **1. Scheduling Software**

The software for all schedules shall be Primavera Systems' Primavera Project Planner (P3) V 3.1.

#### **2. General Scheduling Constraints**

In all Contract Schedules, the Contractor shall:

- Ensure that the actual number of Activities in the schedule is sufficient to assure adequate planning of the Work and to permit monitoring and evaluation of progress and the analysis of time impacts.
- Limit the maximum duration of any Activity to 40 Business Days. Long duration Project management Activities that will be paid in equal monthly payments are exempted from this requirement.
- Cost load to WBS level V or greater as necessary to meet maximum Activity durations. When summarized for aggregate costs, the Activities shall roll up to prices set forth in the Contract.
- Design Activities shall be consistent with the WBS in Book 4 and shall also identify individual Release For Construction packages.



- Provide a graphic representation of all Activities necessary to complete the Work.
- Show the order in which the Contractor proposes to carry out the Work with logical links between time-scaled Work Activities.
- Use the Critical Path Method (CPM) to determine controlling operations. The Contractor shall utilize progress override method of calculating the CPM schedules. All out of sequence Work must be discussed at the monthly review meeting.
- Depict the sequence and interdependence of Activities required for complete performance of the Work beginning with the date at NTP1 and concluding at Final Acceptance.
- Include the Completion Deadlines set forth in the Contract. Only Completion Deadlines shall be included as constraints.
- Include phasing of the Work, Released for Construction Documents submission dates, Subcontractor Work, procurement, fabrication, preparation of mock-ups and prototypes, delivery, installation, testing of materials and equipment, and any long lead time (over 90 Days) orders for materials and equipment.
- Depict the required coordination with and Work to be performed by other contractors, Utility Owners, Governmental Persons, engineers, architects, Subcontractors, and Suppliers.

## **2.2 Progress, Invoicing and Payment**

### **2.2.1 Progress Payment Calculations**

MoDOT will base progress payments on MoDOT's estimate of physical percent complete of the Work, not on measured quantities (except where specifically stated in the Contract). The percent complete for each Activity multiplied by the cost associated with each Activity will determine the amount of the Contractor's progress payments.

The payment to the Contractor will be the undisputed amount shown on the Contractor's invoice less any deductions.

The Contractor shall ensure that all cost breakdowns are consistent and total up to the Contract Price.

The following items will be paid in equal monthly amounts, as averaged from the number of months remaining until Final Acceptance:

- Project Management (except Mobilization and premiums for bonds and insurance, which will be paid as described in Book 1)
- Public Information Management



- Quality Management
- Maintenance During Construction

Payment for surety bond and insurance premiums will be paid as a pass-through of actual cost based on invoices from the bond and insurance companies.

## 2.2.2 Invoice Submittals

The Contractor shall utilize a monthly invoice period. Each invoice submittal shall include one paper copy (color) and one electronic copy.

The invoice documents shall include:

### 1. Invoice Cover Sheet

The signed and dated invoice cover sheet shall include the Project number and title, invoice number, and invoice period. At a minimum the cover sheet shall show the total earned for the invoice period, the total earned to date for the Project as a whole and the total contract value.

### 2. Monthly Progress Report

The monthly progress report shall include the following:

- A brief narrative description of activity and progress at WBS level III and the Project as a whole, including design and construction.
- Identification of any Completion Deadlines achieved during the period.

### 3. Payment Breakdown

The Contractor shall include the updated payment breakdown. The payment breakdown shall include the Activity ID, the Activity name, percent complete, total cost per Activity, cost for the billing period for each Activity, and total cost to date for each Activity.

### 4. Updated Monthly Progress Schedule

The Contractor shall include the Monthly Progress Schedule. The status date of the Monthly Progress Schedule shall be the invoice date. The Monthly Progress Schedule shall include the updated percent complete for each Activity and shall incorporate previous corrections requested by MoDOT.

MoDOT may withhold invoice payment if there is not a current Monthly Progress Schedule and Current Baseline Schedule in place.

The Contractor shall make all corrections to the Monthly Progress Schedule requested by MoDOT and resubmit the Monthly Progress Schedule. If the



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Contractor does not agree with MoDOT's comments the disagreement will be resolved pursuant to Section 19, Book 1.

## 2.3 Facilities

The Contractor shall provide office space and equipment, as specified in this section. This shall include providing a common location for Contractor staff, MoDOT personnel and other personnel working under the direction of MoDOT. All Contractor staff, including administration, design and construction staff shall be located in the I-64 Design-Build Project Office except that construction staff may be located in field offices located on the Project Site. However, up to 15% of design staff, performing routine design tasks and not including design discipline leads, may be located off-Site.

The Contractor shall make its proposed facilities available for inspection and Approval by MoDOT prior to MoDOT occupying any Contractor provided facilities. Both parties shall participate in a facility condition inspection prior to and at the completion of occupancy. MoDOT shall return possession of Contractor provided facilities to the Contractor in essentially the same condition as when MoDOT initially occupied the facilities except for reasonable wear and tear.

The Contractor shall secure sites, obtain all site permits, install, set up, and provide utility services, and maintain the facilities as part of the Work.

In the event that office spaces or appurtenant facilities are stolen, destroyed, or damaged during the Work, except by fault of MoDOT, the Contractor shall at its expense repair or replace those items provided to their original condition within five Working Days. If loss or damage is caused by MoDOT personnel, the Contractor shall replace the facilities within five Working Days, except MoDOT shall be responsible for costs incurred.

### 2.3.1 Project Office

The Project Office shall be located within two miles of I-64, between State Route 141 and the easterly Project limit. The Contractor shall provide space and facilities to allow MoDOT staff to co-locate within the same building as Contractor staff. The Contractor shall furnish MoDOT's staff with offices that are in good and serviceable condition, at least of the same quality as the Contractor's counterpart staff, and be available for occupancy no later than 60 Days after NTP1. The Contractor shall maintain the office for at least 90 Days after Final Acceptance of the Project.

The Contractor shall be responsible for disposal or removal of all Contractor-provided facilities and any Site restoration Work required.

At a minimum, the Contractor shall provide:

1. Telephone service for MoDOT offices, conference rooms, break room, and filing room, consisting of 40 workstation telephones with direct dial, speakerphone, voice mail, transfer, conference calling, and rollover



- capabilities. The Contractor shall be responsible for its own staff receptionist/operator.
2. One dedicated telephone line for fax service.
  3. Facilities that meet OSHA and code requirements for office space.
  4. Office space for MoDOT staff not less than the size indicated below:
    - A. Ten offices: 150 square feet of enclosed office space (with door) per office.
    - B. Twenty-Five offices: 100 square feet enclosed office space per office (cubicles/partitions are acceptable).
    - C. One enclosed conference room with doors capable of accommodating a 30 person meeting, with at least 15 seats at the conference table. This can be a shared conference room between the Contractor and MoDOT.
    - D. One enclosed conference room with doors for MoDOT's exclusive use capable of accommodating a 20 person meeting, with a fifteen person seating capacity at the conference table. The conference room shall be in an adjacent space to the MoDOT offices.
    - E. One reception area, with common access to Project office space.
    - F. Break room: 150 square feet with hot and cold running water, sink, counter, microwave, and 20 cubic foot refrigerator.
    - G. Filing space: 500 square feet, enclosed, with lockable door and 16 steel, 5-drawer, locking, lateral file cabinets (approximate size = 18 inches by 42 inches). The file room shall also have two 30 inch by 72 inch utility tables with two chairs each.
  5. Workstations for MoDOT staff, as follows, for each office:
    - A. Desk and chair, compatible for computer utilization, with locking drawers
    - B. Two drawer filing cabinet, with locking drawers
    - C. OSHA-approved desk chair
    - D. Extra office chair
    - E. Book shelf
    - F. Wastebasket
  6. Furnishings, as follows, for each conference room:
    - A. Conference table and chairs.
    - B. Wastebasket.
    - C. Hanging, erasable white board, six foot wide minimum.
  7. Indoor restrooms, men's and women's.



8. Hard-surfaced (paved) parking, one space per office for MoDOT staff plus twenty MoDOT visitor spaces.
9. Daily janitorial service (except weekends and holidays).
10. Maintenance of the exterior area of office, including access to parking and snow removal.
11. Heating, ventilation and air conditioning/cooling systems adequate for office use.
12. 24-hours/7-days a week access with security after normal working hours.

### **2.3.2 Field Laboratory**

The Contractor shall provide field laboratories that are adjacent to or part of each of the Contractor's field offices for use by MoDOT staff. If the field laboratories are part of the Contractor's field office, the designated space shall be for the exclusive use of MoDOT's personnel. If the Contractor does not use field offices, the field laboratory shall be located at the Project office. Each laboratory shall have a minimum of three parking spaces, all contained within a security fence. Field laboratories shall be provided to MoDOT at least fifteen Working Days prior to commencement of any field Activities involving earthwork of any type, analysis of mix designs, or planned placement of concrete or bituminous and shall be maintained until Final Acceptance.

Each field laboratory shall be weatherproof with wood or concrete floors and shall have a minimum of two outside doors and four windows. Windows and doors shall be equipped with screens and locks. The outside doors shall be located such that ingress and egress is permitted from opposite ends of the building. Each window shall provide at least 4 square feet of glazed area. The laboratory shall have a minimum of 320 square feet of floor space, with a minimum width of 8 feet and a minimum ceiling height of 7 feet. The laboratory shall be of a sufficient size that all necessary equipment shall fit and be operable while leaving adequate space for easy movement of two persons, adequate storage of equipment and samples, and a sufficient amount of 36" high, 24-30" deep workspaces for testing purposes. An exhaust fan shall be provided that is capable of moving a volume of air each hour equal to at least ten times the volume of the laboratory. The laboratory shall have grounded electrical outlets with 110 to 120 volts, 60-Hertz continuous current or any other type of grounded electrical outlets necessary to accommodate the Contractor provided laboratory equipment. The laboratory shall have a climate control capable of maintaining an ambient temperature range of 72° to 80°F. Circuitry shall be such that all indicated equipment can be used without disruption. The Contractor shall provide an adequate supply of potable water available at all times. Lighting facilities shall be located to adequately illuminate all work in the interior of the laboratory.

A locked storage area for nuclear equipment shall be provided that is at least 15 feet from the normal work areas. A steel box shall be provided in the storage area with locks for the purpose of storing nuclear equipment in accordance with Nuclear Regulatory Commission specifications.



The laboratory shall be constructed with a dividing wall and doorway to allow for a separate testing work area and an office area suitable for computer operation. The laboratory shall have at least one anchored worktable 30 inches high, with a smooth one-piece top, no less than 8 feet long and 30 inches wide. The laboratory shall be equipped with storage shelves, a minimum of four chairs, a desk, a two-drawer filing cabinet and a fire extinguisher.

Each field laboratory shall include all accommodates and testing equipment necessary for field verification that the Work meets the specifications in accordance with the testing procedures required by the Contractor's Additional Applicable Standards. This equipment shall be for the exclusive use of MoDOT. The Contractor shall be responsible for maintenance and calibration of the Contractor furnished testing equipment. The Contractor will not be required to provide nuclear equipment for MoDOT's use. The field laboratories and Contractor supplied testing equipment will remain the property of the Contractor and shall be disposed of by the Contractor upon completion of the Work.

## **2.4 Network Requirements**

The Contractor shall provide and maintain the following for MoDOT's exclusive use at the Project Office:

1. **Computer Network:** The Contractor shall provide a 100 Megabyte per second (Mbs) network wiring infrastructure. The network shall be complete and separate from the Contractor's network wiring topology. The network-wiring infrastructure shall use category 5E cable and category 5 rated patch panels and shall be compliant with ANSI/EIA/TA 568A standards. Rack space shall be provided for MoDOT file servers, patch panels, routers, and switches. The Contractor shall supply wiring topology, As-Built Documents, and cable test certifications. Staff installing the network shall hold current industry certification for 5E.
2. **Internet Connection:** MoDOT's computer network shall have a dedicated Internet connection consisting of an ATM T-1. MoDOT will provide firewall protection.

The Contractor shall provide and maintain the following at each MoDOT Field Laboratory:

1. **Computer Network:** Each field office shall be wired as one network using category 5E cable and category 5 rated patch panels and shall be compliant with ANSI/EIA/TA 568A standards. The Contractor shall supply wiring topology and cable test certifications. Staff installing the network shall hold current industry certification for 5E.
2. **Internet Connection:** Each field laboratory shall have a 640Kbs (minimum) DSL connection, or better. MoDOT will provide firewall protection.



## 2.5 Project Directory

The Contractor shall maintain and furnish to MoDOT a project directory listing the names, addresses and telephone (office, home, mobile, facsimile and pager) numbers of the Key Personnel and critical support staff of the Contractor and each Subcontractor. The project directory shall be submitted to MoDOT within 30 Days following NTP1. The Contractor shall update the Project Directory quarterly for the duration of the Work.

## 2.6 Deliverables

All deliverables for all disciplines shall include a minimum of one hard copy and one electronic copy unless otherwise specified in Book 1 or Book 2.

At a minimum, the Contractor shall submit the following to MoDOT:

Deliverable	For Approval	Schedule	Reference Section
Preliminary Baseline Schedule		Within fifteen Working Days following NTP1	2.1.1
Original Baseline Schedule	✓	Within 90 Days following NTP1	2.1.2
Revised Baseline Schedule	✓	Within 30 Days of Contract changes	2.1.3
Monthly Progress Schedule		Monthly	2.1.4
Monthly Invoices	✓	Monthly	2.2.2
Office Facility	✓		2.3
Project Directory		Within 30 Days of NTP1	2.5



### **3 QUALITY MANAGEMENT**

#### **3.1 Quality Management System**

The terms and definitions used in this Section 3, not otherwise defined shall have the meanings prescribed by the ISO 9000:2000 standard. The Contractor shall develop, implement and maintain a quality management system meeting the requirements of ISO 9001:2000 standard and the requirements below.

The scope of the quality management system shall cover all requirements of the Work included in the Contract Documents. The Contractor's quality management system shall include a Quality Manual which shall be submitted to MoDOT for Approval. MoDOT will respond to the Contractor within 21 days of receipt of the Quality Manual.

The Quality Manual shall indicate the frequency at which the Contractor's top management will review the quality management system. The Quality Manager and Quality Assurance staff shall have no responsibilities in the production of the Work and shall report to the Contractor's top management only. Quality Control staff shall only have responsibilities in the production of the Work and shall remain independent of the Quality Assurance staff. The Contractor shall ensure that all personnel who perform inspection, sampling or testing are certified according to a recognized technician certification program and any other required certifications, for the tasks for which they are responsible. The Contractor shall ensure that all laboratories performing testing participate in and achieve a score of three or greater in the AASHTO Materials Reference Laboratory (AMRL) and/or Cement and Concrete Reference Laboratory (CCRL) proficiency sample programs for the tests being performed by that laboratory.

The following quality planning aspects shall be included in the Quality Manual:

- All Quality Control and Quality Assurance Activities and their standards, methods or procedures, and frequencies for product control and acceptance.
- All release points at which Work shall be formally accepted by Quality Assurance personnel prior to proceeding with additional Work Activities.
- The requirements to be verified by Quality Assurance staff at each release point.
- The Quality Assurance staff position responsible to perform the verification responsibilities including inspection, checking and testing.
- The method of performing Quality Assurance verification responsibilities including inspection, checking and testing.
- The system for recording all Quality Control and Quality Assurance activities including inspection, checking and testing activities.

The Contractor shall include in the Quality Manual its proposed process to resolve Contractor and MoDOT identified Nonconforming Work. The Contractor shall ensure



that this process is applied to all Contract Documents requirements, including design, construction/operational and management systems. The Engineer responsible for the design shall approve all resolutions of Nonconforming Work that require design changes, repairs, or rework. MoDOT shall Approve all remedies for Nonconforming Work.

The Contractor shall include in the Quality Manual its proposed process to address corrective action requests. MoDOT will issue to the Contractor corrective action requests in areas where Nonconforming Work is found to be reoccurring. The Contractor shall be responsible to submit to MoDOT for Approval remedies to eliminate the reoccurring Nonconforming Work (corrective action). Following MoDOT Approval of the proposed corrective action, the Contractor shall advise MoDOT when the corrective action has been implemented so MoDOT may confirm the implementation, should MoDOT so choose.

The Quality Manual shall describe how the Quality Assurance verification records/forms will clearly document conforming and Nonconforming Work. The Quality Manual shall describe how material quantities will be calculated and documented in order to enable the Contractor and MoDOT to sample at their required frequencies.

## **3.2 Design Documents**

Design Documents include Review Documents, Released for Construction Documents, Final Design Documents, and As-Built Documents. The Contractor shall ensure that all Design Documents are 8½" x 11" or 11" x 17" and in English units. All Design Documents shall be developed using a version of MicroStation compatible with MoDOT's and shall follow MoDOT's CADD Standards. MoDOT will provide seed files upon request. Electronic submissions shall be in original MicroStation format and in MoDOT's version of Acrobat. Each deliverable shall include an index detailing the contents and an Acrobat file of the Design Documents, created directly from the native software and organized in a manner that allows easy retrieval of any part of the Design Documents, including individual drawings.

### **3.2.1 Review Documents**

Review Documents shall be incomplete or partial Released for Construction Documents that are being used by the Contractor during its design review process. Five hard copies and one electronic copy of all Review Documents shall be submitted to MoDOT at each stage of review. The Quality Manual shall describe MoDOT's participation in the design review process.

### **3.2.2 Released for Construction Documents**

Released for Construction Documents shall be all drawings, specifications, shop drawings, reports, calculations, revisions thereto, and any other items necessary to construct the Work. The Contractor shall ensure that no construction Work is undertaken without Quality Assurance approved Released for Construction Documents. Five hard copies and one electronic copy of all Released for Construction Documents shall be submitted to MoDOT.



### **3.2.3 Final Design Documents**

Final Design Documents shall be fully completed Design Documents, except for necessary field design changes, for a geographic area organized by discipline. Final Design Documents shall include design information from the most current version of Released for Construction Documents and all design back-up information, including design plans, shop drawings, calculations, reports, specifications, and electronic MicroStation data.

### **3.2.4 As-Built Documents**

As-Built Documents shall be the final record set of documents that incorporate: any changes occurring after the Final Design Documents; all manufacturers' warranties, guarantees, instruction sheets, parts lists, and other product data; and all required evidence of conformance with Contract Documents requirements. The As-Built Documents shall be organized and indexed to facilitate easy retrieval of information and be certified by the Contractor's Project Manager to reflect the actual condition of the constructed Work.

## **3.3 MoDOT Quality Oversight**

MoDOT's quality oversight will use an audit approach for assessing the Contractor's performance. This will entail checking on a sampling basis whether the Work is complying with the Contract Documents requirements.

Auditing will entail the collection and documentation of objective evidence to confirm whether specified requirements have been met. The results of auditing will be documented on standardized audit report forms with copies provided to the Contractor. Nonconforming Work will be tracked and communicated to the Contractor. The audit results may also be recorded in a database, and regular summary and status reports will be provided to the Contractor. The timing, frequency, and depth of auditing will be at MoDOT's discretion.

The Contractor shall provide safe access to the Work, its organization, and all Subcontractor and Supplier organizations to allow MoDOT to carry out quality oversight activities. This will include the allowing of samples for the purposes of testing, the provision of information and records, and interviews with personnel from the Contractor's organization and all Subcontractor and Supplier organizations.

The Contractor shall not use the results of MoDOT's quality oversight activities as a substitute for its own quality Activities. The Contractor shall provide to MoDOT copies of specific records within three Days of receipt of request. When requested, the Contractor shall advise MoDOT of the time, to within four hours accuracy, that a specific Activity, scheduled within the next five Days, is scheduled to occur.

Representatives of agencies of the federal, state and local government shall have the right to inspect the Work to the same extent provided above for MoDOT. The Contractor shall notify MoDOT District Independent Assurance Sampling (IAS) prior to starting construction, through the District 6 Materials Office (314-340-4260). The IAS will be in addition to MoDOT's quality oversight.



### 3.4 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
Quality Manual	✓	Condition of NTP2	3.1
Review Documents		At each review stage	3.2.1
Released for Construction Documents		When released for construction	3.2.2
Final Design Documents		After completion of design	3.2.3
As-Built Documents		Condition of Final Acceptance	3.2.4



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## **4 PUBLIC INFORMATION**

### **4.1 Public Information Plan**

The Contractor shall prepare and maintain a Public Information Plan (PIP) to address the development and communication of information to and from the public on the Project. This plan shall be used throughout the Project by the Contractor to manage and implement the construction and traffic coping aspects of the public information process.

A member of the Contractor's public information staff shall be accessible to MoDOT and the media 24 hours a day, 7 days a week and shall respond to address Project issues. The Contractor shall provide MoDOT contact information on its key personnel of which at a minimum shall include the Project Manager and Public Information Manager within 30 Days following NTP1. The Contractor's PI Manager shall be co-located with MoDOT as part of the Contractor's team.

#### **4.1.1 Final Public Information Plan**

The Contractor's final PIP shall be submitted to MoDOT for Approval no later than 60 Days following NTP1.

#### **4.1.2 Information Materials**

Printed information materials, such as newsletters and brochures, developed by the Contractor for release to the public shall be Approved by MoDOT before public distribution.

### **4.2 Commercial Vehicle Access and Restriction Information**

The Contractor shall inform MoDOT District 6 Transportation Management Center of any construction-related events, including geometric constraints that could restrict or impede the movement of commercial vehicles.

### **4.3 St. Louis Community Eruv**

The Contractor shall inform the St. Louis Community Eruv of any construction-related activities before they disturb the Eruv line, which runs along the MoDOT property line on the north side of I-64 from approximately Boland Avenue to Clayton/Warson.

### **4.4 Public Hearing**

The Contractor shall conduct a public hearing at least 30 days before the first roadway closure is implemented. The public hearing is required to inform the public of the general schedule for construction including expected closures and detours. The public must be notified of the public hearing at least two weeks in advance.



#### 4.4 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
Public information staff contact information		Within 30 Days following NTP1	4.1
Final Public Information Plan (PIP)	✓	Within 60 Days following NTP1	4.1.1
Printed information materials	✓	Prior to the scheduled distribution date	4.1.2
Public hearing		At least 30 days prior to the first roadway closure	4.4



## **5 ENVIRONMENTAL REQUIREMENTS**

The Contractor shall comply with the Environmental Requirements set forth in the Final Environmental Impact Statement/Section 4(f) Evaluation and its Record of Decision.

### **5.1 General/Community**

The Contractor shall complete the following mitigation measures:

- I-64 street crossings shall incorporate bicycle and pedestrian accommodations and meet ADA requirements. Designated bike paths shall be striped and signed on Bellevue and Tower Grove. Pedestrian and bicycle trail detours for existing facilities shall be required during construction.
- Each stream crossing currently bridged shall continue to be bridged at the stream, and all other stream crossings shall use culverts or culvert extensions. All stream crossings shall maintain the low flow characteristics of the streams.

### **5.2 A.B. Green Athletic Complex, Section 4(f) Property**

The Contactor shall comply with the following requirements or shall obtain approval from Richmond Heights to change the following requirements.

- The existing basketball courts shall be reconfigured to relocate the western court south, rotating the eastern court and relocating playing surface. The court fence and lighting shall be replaced.
- The playground area and structures shall be replaced and relocated adjacent to the tennis courts on replacement acres. The playground fence, gate, and lighting shall be replaced.
- A cross walk shall be installed across Laclede Station Road south of I-64 near the northern park entrance.

### **5.3 Forest Park, Section 4(f) Property**

The Contactor shall comply with the following requirements or shall obtain approval from the City of St. Louis to change the following requirements.

- The Contractor shall replace grass landscaping in Forest Park disturbed areas after construction is complete.
- The Contractor shall replace the Tamm Avenue bridge, its approaches and provide six foot wide sidewalks.
- In Forest Park south of I-64, from east of Tamm Avenue to Hampton Avenue, between I-64 and the existing paved walking path, the Contractor shall re-grade disturbed open space to provide less steep slopes. The Contractor shall replace the walking path if disturbed.



- The Contractor shall expand and re-stripe the east end of the existing zoo parking lot to result in no net loss of parking spaces if disturbed.
- The Contractor shall construct a roundabout to replace the existing Hampton Avenue/Wells Drive intersection. Across Hampton, south of Wells Drive, the Contractor shall install a grade-separated crossing for the Forest Park recreational path. The Contractor shall install paved path connections from the relocated path across Hampton to the sidewalks along the east and west side of Hampton.

## 5.4 Erosion Control

**Section 402 NPDES Permit.** The Contractor shall be responsible for preparing and obtaining the National Pollutant Discharge Elimination System (NPDES) permit and preparing erosion control plans following the Missouri Department of Natural Resources guidelines for obtaining the NPDES permit. Land disturbance shall not commence before the NPDES permit is issued and furnished to the Contractor.

## 5.5 Regulatory Floodway and Floodplains

The Contractor shall complete hydraulic studies to assess floodplain and regulatory floodway impacts. All impacts shall be documented and meet the requirements of all federal and state regulations. The Contractor shall obtain a Flood Plain Development Permit from SEMA for construction within areas of identified flood hazard prior to proceeding with construction. The Contractor shall obtain a “No Rise” certificate for construction within a regulatory floodway.

## 5.6 Wetlands and Waters of the USA

### 5.6.1 Section 404 of the Clean Water Act

MoDOT has obtained a Nationwide Section 404 Permit from the U. S. Army Corps of Engineers. The Contractor is responsible for fulfilling the terms of the Clean Water Act Section 404 permit. This permit addresses impacts to streams (including concrete-lined ditches carrying streams) and wetlands caused by the project. This permit is based on projected impacts prior to final design for the project. The Contractor shall work to further minimize stream and wetland impacts during final design and construction. The Contractor shall present the final design quantities for projected stream and wetland impacts to MoDOT and to the US Army Corps of Engineers St. Louis District Regulatory Office to affirm the validity of the original permit. Any stream impacts below ordinary high water exceeding 0.5 acre will require notification to the U. S. Army Corps of Engineers prior to construction and may require an individual permit. Any wetland impacts will require prior notification of the U. S. Army Corps of Engineers. If the Corps deems that a permit modification is required, the Contractor shall work with MoDOT and the Corps to obtain the modified permit before construction can proceed. The Contractor is responsible for fulfilling the terms of any modified Clean Water Act Section 404 permit acquired during the final design process or else due to construction changes.



## 5.6.2 Section 401 of the Clean Water Act

MoDOT has entered into a Memorandum of Understanding with the Department of Natural Resources in lieu of Section 401 certification (Section 401 MOU). The Contractor shall comply with the following conditions of the Clean Water Act Section 401 MOU:

- Temporary stream crossings shall be designed so that no drops or dams are created that impede the passage of fish.
- Stream channel modifications shall be minimized. Where modifications are necessary for highway design safety or protection of state resources, they shall be designed using the Missouri state channel modification guidelines.
- The following materials shall not be used for stream bank stabilization: earthen fill, gravel, fragmented asphalt, broken concrete with exposed rebar, large slabs of unbroken concrete, tires, vehicle bodies or liquid concrete, including grouted riprap.
- During construction, clearing of vegetation shall be kept to the minimum necessary to accomplish the project.
- Petroleum products, hazardous chemicals, hazardous waste, equipment and solid waste shall not be stored after construction hours below the ordinary high water mark.
- Equipment shall not be operated in wetland areas, except where permitted, expressed by the project plans or the engineer in writing. Petroleum products shall not be stored in wetlands.
- Riparian areas and stream banks shall be restored to a stable condition as soon as possible after final contouring.
- Work done in streams shall be conducted during low flows whenever that is reasonably possible.
- Petroleum products spilled into any stream or body of water or in areas where those materials could enter a stream or body of water shall be cleaned up immediately and the collected petroleum products shall be disposed of properly.
- The following materials shall not be used for stream bank stabilization: earthen fill, gravel, fragmented asphalt, broken concrete with exposed rebar, large slabs of unbroken concrete, tires, vehicle bodies or liquid concrete, including grouted riprap.

## 5.7 Noise and Vibration

### 5.7.1 Traffic Noise Mitigation

The Contractor shall provide noise mitigation in accordance with MoDOT's Traffic Noise Policy for a Type I Project and with 23 CFR Part 772. Noise analysis shall be performed using FHWA's Traffic Noise Model version 2.5. Existing noise levels have been determined and are provided in Book 4.



If walls are used for noise mitigation, the cost of a noise wall must not exceed \$30,000 per benefited receptor. The cost index shall be calculated using a cost of \$20 per square foot for a noise wall. The cost per residence shall be calculated over the length of the project. That is, the cost of all noise walls must not exceed \$30,000 multiplied by the total number of benefited receptors from Ballas Road to the easterly project limits. Parallel noise barriers have the potential to generate multiple reflections of sound waves, reducing the effectiveness of the designed noise barriers significantly. The Contractor shall examine the highway cross-section at all locations where parallel noise barriers are proposed. If the width to height ratio is greater than 20:1, no further action is required. If the width to height ratio is less than 20:1, further analysis is required. The Contractor shall then follow the procedure for parallel noise barrier analysis contained in the TNM 2.5 User's Manual to determine if modification of the barrier's height is necessary to achieve the original design goal for each barrier.

The Contractor shall conduct the noise analysis from Ballas Road to the eastern terminus of the Project and determine the need for sound abatement within these limits. Information on proposed sound abatement, including proposed noise levels and the type, size, and location of the abatement measures shall be provided to MoDOT for Approval. MoDOT will present the proposed sound abatement design to the benefited receptors. Each benefited receptor will receive one vote in determining if the sound abatement will be constructed. A simple majority of benefited receptors, for a section from interchange to interchange, will determine if the sound abatement is to be constructed. MoDOT will complete this voting process within 45 days of receiving the sound study and design information from the Contractor. Once MoDOT completes the voting process, MoDOT will then provide the results to the Contractor so the Contractor can proceed with construction of the sound abatement. If a majority of benefited receptors for a section vote "no" on abatement, noise abatement shall not be constructed.

Noise mitigation shall be provided along the Forest Park athletic field.

### **5.7.2 Construction Noise and Vibration Mitigation**

The Contractor shall submit a plan to mitigate construction noise and vibration impacts that meets all applicable laws and regulations. This plan shall be submitted to MoDOT for Approval. Vehicle back-up alarms shall be muffled during nighttime operations. Noise barriers shall be built early in the construction sequence, if feasible, and the monitoring of vibrations and effects to adjacent facilities due to construction activities shall be required.

### **5.7.3 Special Notices for Mitigation of Noise and Vibration**

As part of the environmental mitigation, the Contractor shall provide construction noise, dust, lighting and vibration notification information to and coordination with the St. Louis Zoo. Information to the St. Louis Zoo shall include all construction activities that make any additional level of noise or vibration in the area between Skinker and the St. Louis Science Center overpass.



As part of the environmental mitigation, the Contractor shall provide construction noise and vibration notification information to and coordination with the Central Institute for the Deaf. Information to the Central Institute for the Deaf shall include all construction activities that make any additional level of noise or vibration in the area between the St. Louis Science Center overpass and Boyle.

## 5.8 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
Section 402 NPDES permit and associated erosion control plans		Before any land disturbance	5.4
Hydraulic study		Before construction	5.5
Sound abatement design	✓	Before sound abatement construction	5.7.1
Construction noise and vibration mitigation plan	✓	No later than NTP2	5.7.2



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## **6 THIRD PARTY AGREEMENTS**

### **6.1 City of Frontenac**

The Contractor shall meet the requirements of the Municipal Agreement with the City of Frontenac.

### **6.2 City of Ladue**

The Contractor shall meet the requirements of the Municipal Agreement with the City of Ladue.

### **6.3 City of Brentwood**

The Contractor shall meet the requirements of the Municipal Agreement with the City of Brentwood.

### **6.4 City of Richmond Heights**

The Contractor shall meet the requirements of the Municipal Agreement with the City of Richmond Heights.

### **6.5 City of St. Louis – Board of Public Service**

The Contractor shall meet the requirements of the Municipal Agreement with the City of St. Louis.

### **6.6 County of St. Louis**

The Contractor shall meet the requirements of the County Agreement with the County of St. Louis.

### **6.7 Bi-State Development Agency (Metro)**

The Contractor shall meet the requirements of the Cooperative Agreement with Bi-State Development Agency.

### **6.8 Washington University School of Medicine and Barnes Jewish Hospital**

The Contractor shall meet the requirements of the Cooperative Agreement with Washington University School of Medicine and Barnes Jewish Hospital.

### **6.9 St. Louis Zoo**

The Contractor shall meet the requirements of the Cooperative Agreement with the St. Louis Zoo.



## **6.10 St. Louis Science Center**

The Contractor shall obtain approval from the Science Center for any Work that will impact the Science Center pedestrian bridge over I-64.



## 7 UTILITIES

The Contractor shall conduct all Utility Work in accordance with the Contract Documents and the Utility Agreements. Except as otherwise provided in a Municipal Agreement or a Utility Agreement, Betterments are not included within the Contractor's Work. This section applies to existing and proposed underground and overhead Utilities, except storm water and sanitary facilities, traffic signals, street lighting, variable message signs, video and video detection systems, and Intelligent Transportation Systems (ITS).

### 7.1 Contractor's Utility Work

#### 7.1.1 Utility Relocations Included in Contractor's Work

The following Relocations shall be included in the Contractor's Work:

- LightCore (formerly Digital Teleport Inc): Design and construction of all Relocation Work.
- Missouri American Water Company: Design and construction of all water service line adjustments and connections.
- City of Saint Louis Water: Design and construction of all Relocation Work including adjustments and connections of service lines. Work to connect Relocated water mains to active water mains is excluded from the Contractor's Work.
- Ameren UE: Design and construction for conduit systems on bridge structures.

The following is a list of locations and requirements for new Ameren UE conduit systems on bridge structures that are included in the Contractor's Work. Conduit systems on bridge structures complete in place shall include, but not be limited to: all conduit, expansion joints, bridge attachment hardware and manholes. Conduit shall be terminated in a 17.5'x 6' manhole located 50 feet from the bridge abutment. All conduits between bridge abutment and manhole shall be concrete encased.

- Clayton Road: 10–5" conduits and 1–2" conduit, 11-lb/ft maximum weight
- McKnight Road: 10–5" conduits and 1-2" conduit, 11-lb/ft maximum weight
- Big Bend Boulevard: 10–5" conduits and 1-2" conduit, 11-lb/ft maximum weight
- Hampton Avenue: 10–5" conduits and 1-2" conduit, 11-lb/ft maximum weight
- Taylor Avenue: 10–5" conduits and 1-2" conduit, 11-lb/ft maximum weight



- Newstead Avenue: 10–5” conduits and 1-2” conduit, 11-lb/ft maximum weight
- Tower Grove Avenue: 10–5” conduits and 1-2” conduit, 11-lb/ft maximum weight
- Boyle Avenue: 10–5” conduits and 1-2” conduit, 11-lb/ft maximum weight
- Hanley Road: 10-5” conduits and 1-2” conduit, 11-lb/ft maximum weight

### **7.1.2 Other Utility Work Included in Contractor’s Work**

In addition to the Relocations that are included in the Contractor’s Work, the Contractor’s obligations with each impacted Utility, regardless of who is performing the Relocation, shall constitute part of the Contractor’s Work:

- Performance of all tasks, obligations, and duties identified to be completed by MoDOT, the Commission or the Contractor in the Utility Agreements, except those that by their nature can only be provided by MoDOT or the Commission.
- Performance of all Incidental Utility Work. The Contractor shall make all arrangements and perform all Utility Work necessary in order to accomplish the Incidental Utility Work, including, but not limited to, locating existing Utilities, identifying conflicts, performing any necessary coordination with Utility Owners and property owners, furnishing design, performing construction, and obtaining and complying with all applicable legal requirements and required Governmental Approvals.
- Making all arrangements and performing all Utility Work necessary to abandon each Utility requiring Abandonment, including, but not limited to, design, construction, and obtaining consent from the affected Utility Owner and any affected landowner(s), as well as any necessary Governmental Approvals.
- Identification and verification of all existing Utilities impacted by the Project, whether or not the existing Utility was indicated in the Verified Utility Information or in the UIS. This may include potholing, if necessary.
- Coordination and schedule verification with all Utility Owners as necessary for all Utility Work.
- Performing Traffic Control for all Utility Work
- Providing survey coordinates on the Utility Relocation Plans and in the field for construction of the Relocations (staking).
- Perform all clearing and grubbing required for all Utility Relocation Work performed by the Contractor or the Utility Owners, including tree removals and replacements.
- Providing all coordination, including all necessary cost estimates and billing information necessary to address requested Betterments.



- Identification, verification, and Approval that the design and construction of all affected and existing Utilities are compatible with the remainder of the Project.
- Preparation and negotiation of Work Orders and applicable Work Order exhibits and other required materials except for those that by their nature can only be provided by the Utility Owner, regardless of who is performing and/or paying for the Utility Work.

### **7.1.3 Utility Relocations that are anticipated to be added to Contractor's Work through the Work Order Process**

The following Relocations are anticipated to be added to Contractor's Work through the Work Order Process because the Utility Owners are responsible for the cost of the Work:

- Charter Communications: Bridge attachment at McKnight Road Overpass.
- AT&T: Bridge Attachments at Hanley Road, Taylor Avenue, and McKnight Road Overpasses.

The Contractor shall be entitled to a Change Order pursuant to Book 1, Section 13 when the Relocation Work described in this Section is added to the Work.

### **7.1.4 Utility Relocations that are Excluded from Contractor's Work**

The following Relocations are anticipated to be performed by the Utility Owners and are therefore excluded from the Contractor's Work:

- Missouri American Water Company: Design and construction of all water mains.
- City of St. Louis Water: Work to connect relocated water mains to active water mains.
- All Ameren UE Relocation Work, excluding conduit systems on bridge structures.
- All Laclede Gas Relocation Work
- All Charter Communication Relocation Work
- All AT&T (formerly SBC) Relocation Work
- All T-Mobile Relocation Work
- All XO Communication Work

The following Relocations will be performed by the Utility Owners. The Contractor is required to avoid impacting these Relocations with its Work. Any additional Relocation Work as a result of the Contractor's Work will be at the Contractor's expense.



- Cingular Wireless relocation of electronics building located at approximately left station 1008+00, Route 64. Relocation will be as shown on Drawing UIS-17-01.dgn, Book 4. Relocation will be completed by March 1, 2007.
- Missouri American Water relocation of 24-inch water main south of I-64 between Clayton Road and Ramp 2 of South Forty Drive from station 842+75, 97' right to 895+83, 96' right, as shown on Drawing UIS-05-78.dgn, Book 4. This portion of the water main Relocation will be completed by June 1, 2007. The remaining Relocation of the water main will not be an early Relocation but will be completed by the Utility Owner in accordance with the MUA. Contractor shall coordinate with Missouri American Water on the storage and staging of materials for the Relocation of the water main.

### **7.1.5 Shutdowns and Temporary Diversions and Relocations**

The Contractor's proposals for shutdowns and temporary diversions, if approved by the Utility Owner, shall be included in the Work Order.

All Utilities shall remain fully operational during all phases of construction except as specifically allowed and approved by the Utility Owner to be removed from operation.

## **7.2 Identification of Utilities**

### **7.2.1 MoDOT-Supplied Information**

MoDOT has conducted a subsurface utility engineering (SUE) investigation of Utility locations. The results of the investigation are shown in the Certified SUE Plans and the Verified Utility Information included in Book 4. Certified SUE Plans are the utility survey drawings produced by a subsurface utility engineering consultant contracted by MoDOT to locate all known utilities in the project limits. Utility locations included in the Certified SUE Plans are identified as either Accuracy Level A or B. Verified Utility Information shall be considered to have an Accuracy Level A.

#### **7.2.1.1 Reasonable Accuracy**

An underground Utility whose Relocation is included in the Contractor's Work shall be deemed indicated with "reasonable accuracy", for Accuracy Levels A and B, if:

1. The Utility's actual centerline location is within 5 feet for Accuracy Level A and Accuracy Level B of the horizontal centerline location indicated in the existing Certified SUE Plans and Verified Utility Information.
2. The Utility's actual centerline top elevation is within 1 foot of the centerline top elevation indicated in the existing Certified SUE Plans and Verified Utility Information for Accuracy Level A.
3. One of the following applies for Accuracy Levels A and B, with regard to any difference, whether larger or smaller, between the Utility's actual inside diameter, excluding appurtenances (the "actual size") and the inside diameter indicated for such Utility in the Certified SUE Plans and Verified Utility Information (the "stated size"):



- A. The Utility's stated size is 12 inches or less, and the Utility's actual size is 24 inches or more.
- B. The Utility's stated size is greater than 12 inches but less than or equal to 36 inches, and the Utility's actual size does not differ from the stated size by more than 50 percent of the stated size.
- C. The Utility's stated size is greater than 36 inches but less than or equal to 72 inches, and the Utility's actual size does not differ from the stated size by more than 25 percent of the stated size.
- D. The Utility's stated size is greater than 72 inches, and the Utility's actual size does not differ from the stated size by more than 15 percent of the stated size.

For example, if the stated size of a Utility pipeline is 36 inches, but the pipeline's actual size is 48 inches and its centerline is actually located four feet away from the horizontal centerline location shown in the Certified SUE Plans. Without regard to vertical location, such pipeline shall be deemed indicated with reasonable accuracy and the Contractor shall not be entitled to a Change Order for any increased costs resulting from the increased size or differing location of the pipeline. As a further example, if the stated size of a Utility pipeline listed in Book 4 is 72 inches, but the pipeline's actual size is 48 inches and its centerline is actually located four feet away from the horizontal centerline location shown in the Certified SUE Plans (without regard to vertical location), then such pipeline shall be deemed not indicated with reasonable accuracy, and MoDOT shall have the right to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Utility Work to be furnished or performed by the Contractor which is directly attributable to the reduced size of the pipeline (but not its differing location).

## **7.2.2 Contractor's Investigations**

### **7.2.2.1 Utility Tracking Report**

The Contractor shall maintain the Utility Tracking Report, which shall contain at least the following information:

- The name of the Utility Owner and a unique identification number for tracking
- A brief description of the Utility by size and type
- The location of the Utility, based upon Project control datum or by station and offset
- The proposed treatment of the Utility and the date such treatment was Approved by MoDOT
- Once a Work Order has been executed, the party responsible for performance of such Utility Work
- The nature of the Utility Owner's existing right of occupancy of the ROW for such Utility
- The scheduled start and completion dates of construction of the Utility Work



- The actual start and completion dates of construction of the Utility Work
- The status of construction for the Utility Work, including percentage complete
- Other information as requested by MoDOT

The report shall be sort-able so that data can be reported by the following parameters: the Utility identification number, the Utility Owner, the scheduled start-of-construction date, and the scheduled completion date.

#### **7.2.2.2 Utility No-Conflict Closeout Form**

Once the Contractor has determined that a Utility shown on the Contractor's Utility Tracking Report is not a conflict, the Contractor shall provide a Utility No-Conflict Closeout Form to the respective Utility Owner to review and sign. A copy shall be submitted to MoDOT.

### **7.3 Utility Agreements**

#### **7.3.1 Master Utility Agreements (MUAs)**

##### **7.3.1.1 General**

MUAs establish a general framework for addressing the Utility issues within the Project affecting a Utility Owner. All Utility Work shall be performed in accordance with all applicable terms and conditions of the Contract Documents, including the MUAs. For example, MoDOT may agree with the Utility Owner in a MUA that if the Contractor does the Utility Work, it will only be able to use Subcontractors that have been pre-approved by the Utility Owners.

MoDOT has completed or will attempt to complete a MUA with each Utility Owner whose facilities are or may be affected by the Project and are shown on the Utility Tracking Report. A sample standard form of the MUA is provided in Book 5. MoDOT may agree with individual Utility Owners to modify the standard MUA terms and conditions, whether such MUA are provided in the RFP or are agreed to subsequent to the Proposal Due Date.

MoDOT may enter into MUA with Utility Owners whose facilities are affected by the Project after the Proposal Due Date. MoDOT will ensure that the terms and conditions of any such MUA are substantially the same terms and conditions of the sample standard form. However, MoDOT may agree with individual Utility Owners to modify the standard MUA terms and conditions. Such execution shall not entitle the Contractor to a Change Order unless the MUA has been materially changed from the sample standard form resulting in an increase of costs to the Contractor.

MoDOT intends to enter into MUA with all Utility Owners of newly discovered Utilities. For those MUAs entered into after the Proposal Due Date relating to newly discovered Utilities, the provisions of this Section shall apply.

##### **7.3.1.2 Work Order Process**

Pursuant to the MUA, when the Contractor has achieved a level of design to determine Utility conflict(s), the Contractor shall coordinate with the respective Utility



Owner and MoDOT to develop a proposed resolution and pertinent information required for the Utility Design Sheet (UDS). MoDOT, the Contractor, and the Utility Owners will then enter into Work Orders to define, negotiate, and order the performance by the responsible party of the Utility Work at each specific UDS location. The Work Orders will also describe applicable terms and conditions for such Utility Work. In MoDOT's election, any Work Order may also function as a Change Order.

If MoDOT elects to have a Work Order also function as a Change Order in accordance with Book 1, MoDOT will modify the Work Order Form accordingly to reflect such dual function. MoDOT will assume responsibilities for negotiating with Utility Owners to resolve issues between MoDOT and the Utility Owners relating to the determination of legal responsibility for costs. The Contractor shall prepare and negotiate the appropriate portions of the Work Order with the Utility Owner regardless of who is doing the Utility Work or who is paying for it. The Utility Owner shall have no voice in the terms and conditions of the Change Order portion of the Work Order. The Contractor shall prepare and negotiate all exhibits to the Work Orders and other required materials except for those provided by the Utility Owner. The Contractor shall make any changes in the Work Order form or exhibits required by MoDOT. If Approved by MoDOT, the Contractor may prepare one Work Order for a group of Utility Relocations.

MoDOT will cooperate with the Contractor in the Work Order process, including attendance at negotiation sessions and obtaining any necessary legal review by MoDOT's counsel; however, MoDOT will not be required to incur any other costs associated with the Work Order process.

Each Work Order shall include Contractor-generated Project design plans (used to identify the conflict) and any applicable design details. MoDOT Utility permits, ROW documents, and/or Utility easement documents for the construction of an affected Utility at a particular location(s) shall also be incorporated into the Work Order.

Once a Work Order has been fully executed, no modifications to the Utility Work may be made without processing a revised Work Order. The Contractor shall coordinate the submittal of all Work Orders. The Contractor shall not submit more than 15 Work Orders per week to MoDOT for review. Excess submittals may, in MoDOT's sole discretion, either (a) be deemed submitted the following week, or weeks, as necessary (a "deferral"), or (b) be reviewed by MoDOT as if submittals were not excess in number. MoDOT will notify Contractor of its election as to the treatment of excess submittals. A failure by MoDOT to give such notice within five Working Days after receipt of the excess submittals shall be treated as a deferral.

A Work Order will only amend a MUA for purposes of the Contract when a Change Order or Directive Letter has been issued. With the exception of Work responsibility allocations, if there is a conflict between the terms of any Work Order that is not acting as a Change Order and the terms of the Contract Documents, the Contract Documents shall prevail between MoDOT and the Contractor; however, Work responsibility allocations set forth in executed Work Orders shall prevail over the Contract Documents.



The provisions of Section 3 with regard to the Contractor's obligations to provide quality management shall prevail over any contrary provision in the Work Order.

Utility Work included within the scope of the Contractor's Work may be deleted from the Work by execution of a Work Order or a separate Change Order providing for the Utility Owner or its contractors to furnish or perform such Utility Work. Also, if requested by a Utility Owner and Approved by MoDOT, Utility Work not included within the scope of the Contractor's Work may be added to the Utility Work by execution of a Work Order or a separate Change Order.

### **7.3.1.3 Design Approval – Design by Contractor**

For Contractor furnished Utility design Work the Contractor shall, before beginning construction, submit its design to the Utility Owner for review and approval for each Utility Relocation Plan. The Contractor shall also submit each design to MoDOT for its advance review and comment. The Contractor shall furnish the Utility Relocation Plans for all the Utility Work necessary for the Project as stated in the Utility Agreements. The foregoing obligation includes temporary Utility Relocations and all necessary Relocations of Service Lines connected to such Utilities, regardless of the ownership of such Service Lines or of the property served by such Service Lines.

In each instance where the Contractor performs the design of the Utility Work concerning a Utility Owner's facilities, the Contractor shall be responsible for obtaining written specifications, current at the Proposal Due Date, from the Utility Owner and for verifying that they are consistent and compatible with the Contractor's overall Project design.

In the event of a conflict between the Utility Owner's design standards and the standards or requirements of the Contract Documents, the most stringent standards or requirements will govern. The Contractor shall obtain Utility Owner approval of the Utility Relocation Plans prior to commencement of construction. The Contractor shall document the Utility Owner's approval by obtaining a Design Approval Letter (included in Book 5) from the Utility Owner, and formally submitting a copy to MoDOT. Upon approval by the Utility Owner, the Contractor shall attach the Utility Relocation Plans to the Work Order. All subsequent changes to designs will require written Utility Owner approval and shall be shown on the As-Built Documents upon completion of the Work.

### **7.3.1.4 Design Approval – Design by Utility Owner**

The Contractor shall obtain Utility Relocation Plans from the Utility Owner for all Utility Work that the Utility Owner is responsible for designing. The Contractor shall review these plans for compliance with the design requirements within the Contract Documents and provide comments to the Utility Owner as appropriate. As a minimum, the Utility Relocation Plan information must meet the standard of quality necessary for the Utility Owner to construct the Utility Relocation. The Contractor shall provide all information necessary for the Utility Owners to create Utility Relocation Plans, including, construction staking and survey information, profile and/or cross section information, and potholing for confirmation of conflicts and coordinates. The Contractor shall confirm that there are no conflicts when the Contractor determines that the location of a Utility does not conflict with the design of



the Project. The Contractor shall evidence its review and certification that the design complies with the design requirements within the Contract Documents by issuing a Design Approval Letter to the Utility Owner and forwarding a copy to MoDOT.

### **7.3.1.5 Construction Inspection Approval – Construction by Contractor**

In each instance where the Contractor performs the construction of the Utility Work, the Contractor shall be responsible for obtaining written standards and specifications, current at the time of the Utility Work, from the Utility Owner and for verifying that they are consistent and compatible with the Contractor's overall Project design. In case of conflict, the most stringent standard or requirement will govern.

The Contractor shall be responsible for restoring infrastructure damaged due to the Utility Work performed by the Contractor.

Each Utility Owner, through its representative, will have the right to inspect the construction performed on its Utilities by the Contractor. The Contractor is not responsible for reimbursing Utility Owners for their costs of inspecting construction performed by the Contractor. The Contractor shall not unreasonably refuse such Utility Owner inspection requests and shall coordinate the schedule and scope of such inspections with the Utility Owner.

### **7.3.1.6 Construction Inspection Approval – Construction by Utility Owner**

The Contractor shall inspect all Utility Work performed by Utility Owners and/or their Subcontractors in order to verify compatibility with construction. In order to evidence its approval, the Contractor shall provide a Construction Inspection Approval Letter (included in Book 5) to the Utility Owner with a copy to MoDOT. The Contractor shall immediately notify MoDOT in writing regarding any noncompliance.

## **7.3.2 Other Agreements**

For Utility Owners that have not entered into MUAs, MoDOT will enter into either a Memorandum of Agreement (MOA) or a Standard Agreement. The MOA will include a Work Order process, coordination requirements, a defined time that the Utility Owner will require for notice of a Relocation, and the amount of time that the Utility Owner requires to perform the Relocation, including design. The Contractor shall comply with all of the terms and conditions of the MOAs. A Standard Utility Agreement will be used in instances of early Utility Relocation work and will include a completion date for each Relocation.

## **7.4 Utility Owners Without Utility Agreements**

### **7.4.1 Permits**

For Utility Owners that have not entered into a MUA, MOA, or a Standard Utility Agreement, MoDOT will issue a permit to the Utility Owner. The Contractor shall comply with all terms and conditions in the permit. The permit will include the following provisions:

- The Utility Owner is required to complete a UIS for each Utility location within the Project limits. The UIS shall include the amount of advanced



notice the Utility Owner requires to begin Relocation Work and the estimated amount of time needed for the Utility design and construction work.

- Once the Contractor has completed a level of design in which to determine actual impacts to Utility Owner's facilities, the Contractor is required to contact the Utility Owner within 5 days. Upon notification, the Utility Company shall make itself available within 5 days to meet with the Contractor to complete the UDS.
- With the completion of the UDS, the Utility Owner and the Contractor will either complete a Utility No-Conflict Close Out Form or enter into a Work Order to define and negotiate the performance of the Utility Relocation work. The Utility Owner shall be available to complete the Work Order within 14 days following the completion of the UDS.
- Once a Work Order is executed, the Utility Owner shall commence with the Utility Design. When complete, the Utility Owner shall submit the Utility Design to the Contractor for review and approval. The Contractor will issue a Design Approval Letter to the Utility Company and MoDOT as evidence of its review and approval of the Utility Design.
- After receipt of the Design Approval Letter, the Utility Owner shall commence construction of the Utility Design according to the schedule agreed upon in the Work Order. Upon completion, the Utility Company will notify the Contractor and the Contractor will review the work. If the Contractor finds the construction acceptable the Contractor will issue a Construction Inspection Approval Letter to the Utility Company and MoDOT as evidence of its review and approval.

## **7.5 Utility Permits and Easements**

MoDOT will obtain MoDOT Utility permits for the Utility Owner.

When the Contractor is responsible for performance of the construction of the Utility Work, the Contractor shall coordinate with the Utility Owner to obtain non-MoDOT permits and/or temporary construction easements or agreements. Separate permits may be required for Work on streets under local entity jurisdictions. In the event the Contractor determines that a Utility Owner does not have the required permits, the Contractor shall immediately notify MoDOT in writing. The Contractor shall comply with such Utility permits and temporary construction easements or agreements.

## **7.6 Utilities Adjacent to and on Structures**

Underground Utilities shall not be installed within 10 feet of bridges and/or structural foundations, unless otherwise Approved by MoDOT. All pressurized mains within 50 feet of a spread footing for a bridge and/or structural foundation shall be cased unless otherwise Approved by MoDOT.

The Contractor shall identify, maintain, and coordinate all utility relocations and/or placements on structures. Pipes carrying water, wastewater, natural gas, propane, petroleum products or byproducts, chemicals, or other volatile, flammable, or



hazardous materials shall not be relocated and/or placed on structures. If required on a bridge structure, the placement location shall hide the utility from view and not impede future bridge inspection and maintenance. Specifically, the hanging of utility conduits shall not be permitted under deck overhangs or on bridge rail.

## **7.7 Coordination and Cooperation (whether or not there is an agreement)**

### **7.7.1 Coordination with Utility Owners**

The Contractor shall be responsible for coordination of all Activities and coordination with the Utility Owners and MoDOT in order to accomplish all Utility Work. In the discharge of its coordination responsibilities, the Contractor shall:

- Keep Utility Owners fully informed of schedules with regard to Utility Work. Contractor shall provide to the Utility Owners, as soon as practicable following NTP1, an estimated schedule for their respective Utility Work and shall notify the Utility Owners of any significant changes to the schedule as soon as practicable;
- Keep Utility Owners fully informed of changes that affect their Utilities;
- Consider, to the extent practicable, Utility Owners' needs for the allocation of resources to perform their respective utility work in a timely manner;
- Keep Utility Owners involved in making decisions that affect their Utilities so Utility Owners are able to provide uninterrupted service to their customers, or to be subject to the least interruption practicable as approved by the Utility Owner; and
- Avoid multiple Relocations of Utilities.

### **7.7.2 Utility Meetings**

#### **7.7.2.1 Between MoDOT, Utility Owners and/or the Contractor**

The Contractor shall be available to meet at the request of MoDOT as necessary to discuss and resolve matters relating to the Utility Work. If the meeting is with MoDOT only, the Contractor shall provide MoDOT notification within at least two Days prior to such meeting. If the notice involves the Utility Owner(s), the notice must be at least four Days prior to the meeting, unless other time limits have been agreed to between MoDOT and the Utility Owner in a Utility Agreement. Attendance at such meetings may be by teleconference.



### **7.7.2.2 Notices Regarding Utility Owner Performance**

The Contractor shall be responsible for verifying progress of the Utility Owner's work and for notifying MoDOT should the Contractor have cause to believe that the Utility Owner will not meet the specified time frame(s) for any of the following: construction; review of the Contractor's plans; comment, review, and approval for Work Orders; or inspection. The Contractor shall provide such written notice to MoDOT immediately after discovery.

### **7.7.2.3 Minutes**

The Contractor shall produce minutes of all meetings with Utility Owners and/or MoDOT, and shall distribute copies of the minutes to the Utility Owner and MoDOT within seven Days after each meeting date.

### **7.7.3 Review Schedules**

Estimated schedules for reviews are as follows: (a) 14 Days for Utility Owner or Contractor to review and approve or provide comments on the Utility Relocation Plans developed by the other party, and (b) seven Days for Utility Owner or Contractor to re-review any Utility Relocation Plans that are revised by the other party, and (c) 14 Days for MoDOT and Utility Owner to review and approve or provide comment on the Work Orders. Failure to timely respond to a Work Order or a Utility Relocation Plan submittal does not constitute an approval.

For Utility Work performed by the Utility Owner, a reasonable schedule required for each Activity shall be negotiated between the Utility Owner, the Contractor and MoDOT and shall be reflected in the Work Order. The times noted in the Work Order for Utility Work shall prevail over the estimated times noted in this Section 7 or in the applicable MUA.

In developing its Project schedule, the Contractor shall allow for appropriate time for the performance of Utility Work assigned to the Utility Owners and/or the Contractor pursuant to the Work Orders.

## **7.8 Damage to Utilities by Contractor**

The Contractor shall be responsible for any and all damage caused by the Contractor's Subcontractors, employees or agents to the property, facilities, structures, or persons of the Utility Owner. The Contractor shall immediately notify the affected Utility Owners of any Utilities damaged by the Contractor during the Contractor's performance of the Work. The Contractor shall be responsible for all costs and/or schedule impact associated with said damage.

Promptly after the Contractor's discovery of such damage or the Contractor's receipt of notice of any such damage from the Utility Owner or from any other source: (a) the Contractor shall repair the damage to the Utility Owner's satisfaction, or (b) at the Utility Owner's election, the Utility Owner may make such repairs at the Contractor's expense. If the Contractor fails to make any payment to a Utility Owner required within 60 Days after receipt of the Utility Owner's invoice, MoDOT may make such payment if required pursuant to the applicable MUA or otherwise at MoDOT's sole



discretion. If the Contractor's failure to pay is due to a reasonable dispute, then MoDOT may not make such payment until at least 60 Days after the final resolution of such dispute has occurred without payment by the Contractor. If MoDOT makes any payment, the Contractor shall reimburse MoDOT for such payment within 10 Days after receipt of MoDOT's invoice, or, in MoDOT's discretion, MoDOT may deduct the amount of reimbursement due from the next payment (or payments, if necessary) due to Contractor under the Contract.

## **7.9 Failure of Utility Owner to Cooperate**

The Contractor shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. The Contractor shall notify MoDOT immediately if the Contractor becomes aware that a Utility Owner is not cooperating in providing needed work and/or Work approvals. After such notice, the Contractor shall continue to diligently pursue the Utility Owner's cooperation and assist MoDOT as requested with regard to the problem. Any assistance provided by MoDOT, including legal action as described in this Section 7.8, will not relieve the Contractor of its sole and primary responsibility for the satisfactory completion of all Utility Work and compliance with all other requirements.

In addition to and without limiting its rights pursuant to the preceding paragraph, MoDOT may, in its sole discretion, decide to take legal action against an uncooperative Utility Owner. The Contractor shall cooperate as requested by MoDOT in connection with such lawsuits, including having the Contractor's staff and consultants act as witnesses in such lawsuits and providing information to MoDOT's counsel.

## **7.10 Partnering and Dispute Resolution**

Any disputes that arise between MoDOT and the Contractor shall be subject to the Dispute Resolution provisions set forth in Book 1; however, if the dispute involves a Utility Owner, the Dispute Resolution provisions set forth in Book 1 shall be modified in accordance with this section to include participation by the Utility Owners, if the Utility Owners agree to such provisions, or as modified in the applicable MUA(s) with the Utility Owner(s).

The Contractor and MoDOT agree that the Utility Owner(s) shall be invited to participate in all partnering activities related to the Utility Work of the affected Utility Owner(s). If any dispute arises between the Contractor and MoDOT that involves a Utility Owner(s) and the dispute is not resolved during the partnering process, the Dispute Resolution Board (DRB) procedures set forth in Book 1 shall be modified to allow the affected Utility Owner(s) to select one member to participate on the DRB for the issues affecting the Utility Owner(s), such member to be Approved by MoDOT and the Contractor. Regardless of how many Utility Owners are involved in the dispute, the Utility Owners will only have one member on the DRB. The Utility Owners' DRB member shall have the experience and qualifications required in Book 1 for the DRB members and shall comply with all of the requirements applicable to DRB members therein. If a dispute involves an affected Utility Owner(s), the chairperson of the DRB will act as chairperson for the DRB procedures, but will not



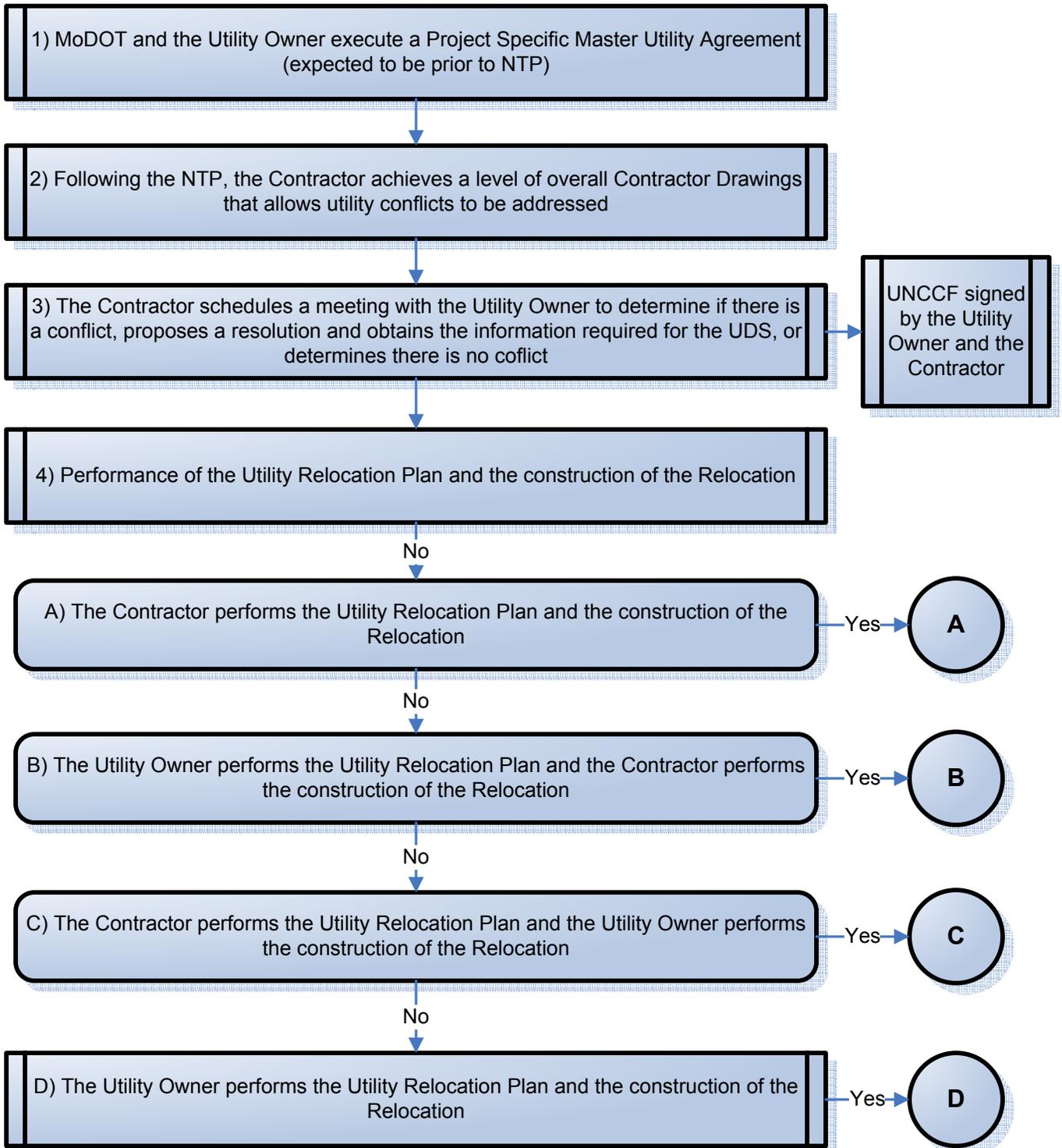
participate in any deliberations or decisions. The Contractor, MoDOT and the Utility Owners may agree to a modified dispute resolution process either in the MUA or in a separate agreement.

## 7.11 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

Deliverable	For Approval	Schedule	Reference Section
Utility Tracking Report		Weekly or as otherwise directed by MoDOT	7.2.2.1
Utility No-Conflict Close Out Form			7.2.2.2
Utility Design Sheet (UDS)	✓	Two Days before the initial Work Order meeting	7.3.1.2
Work Order	✓	MoDOT will respond with comments within 10 Working Days of receipt	7.3.1.2
Design Approval Letter	✓	Submit Design Approval Letter within seven Days of submittal of Utility Design completion for each Utility Work Order	7.3.1.3 7.3.1.4
Construction Inspection Approval Letters	✓	Submit Construction Inspection Approval Letter within seven Days of Utility Work completion for each Utility Work Order	7.3.1.5 7.3.1.6

**EXHIBIT A**  
Utility Work Procedure Flow Chart

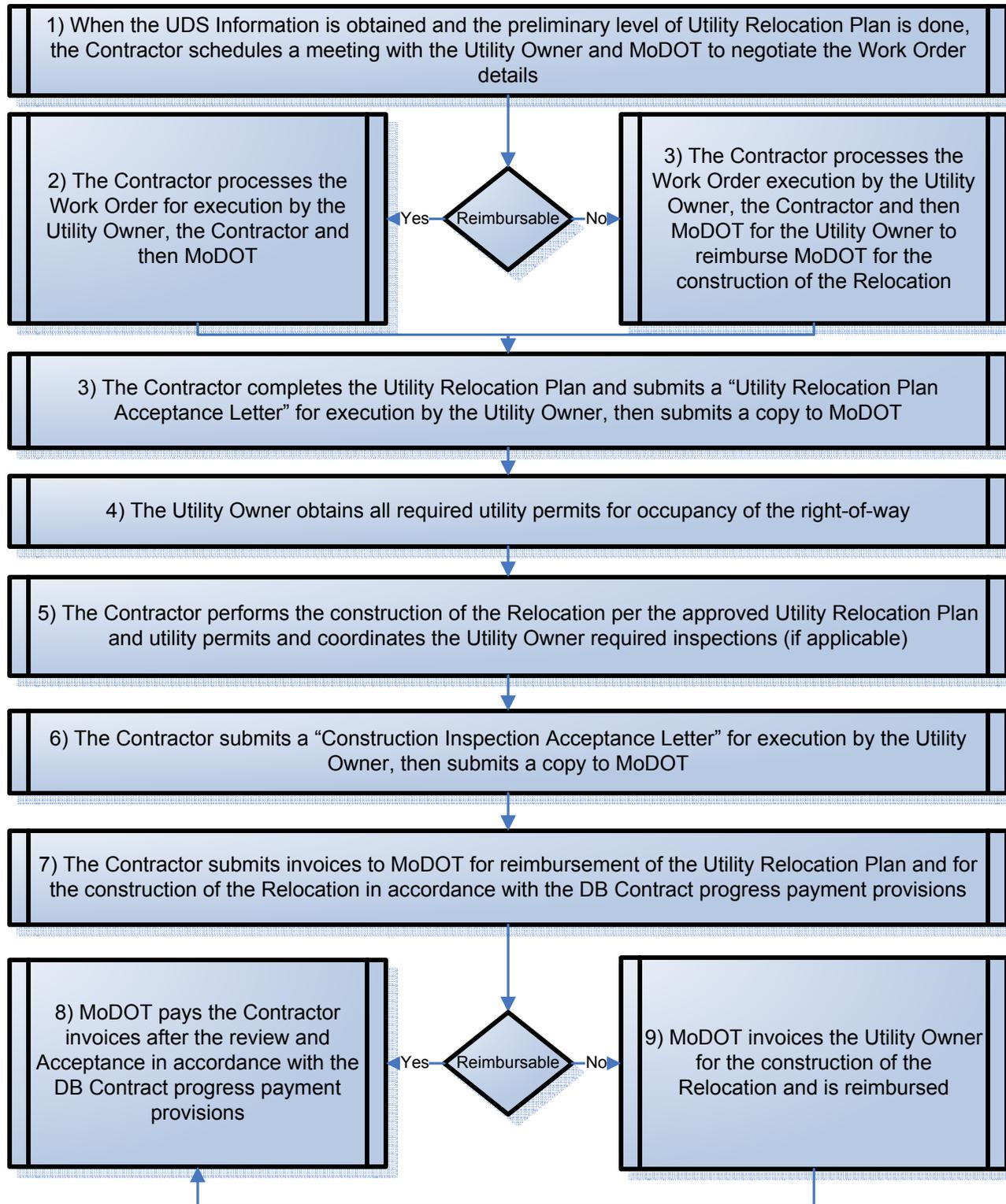


MoDOT = Missouri Department of Transportation  
 NTP = Notice to Proceed  
 UDS = Utility Design Sheet  
 UNCCF = Utility No-Conflict Closeout Form

**EXHIBIT A**  
Utility Work Procedure Flow Chart



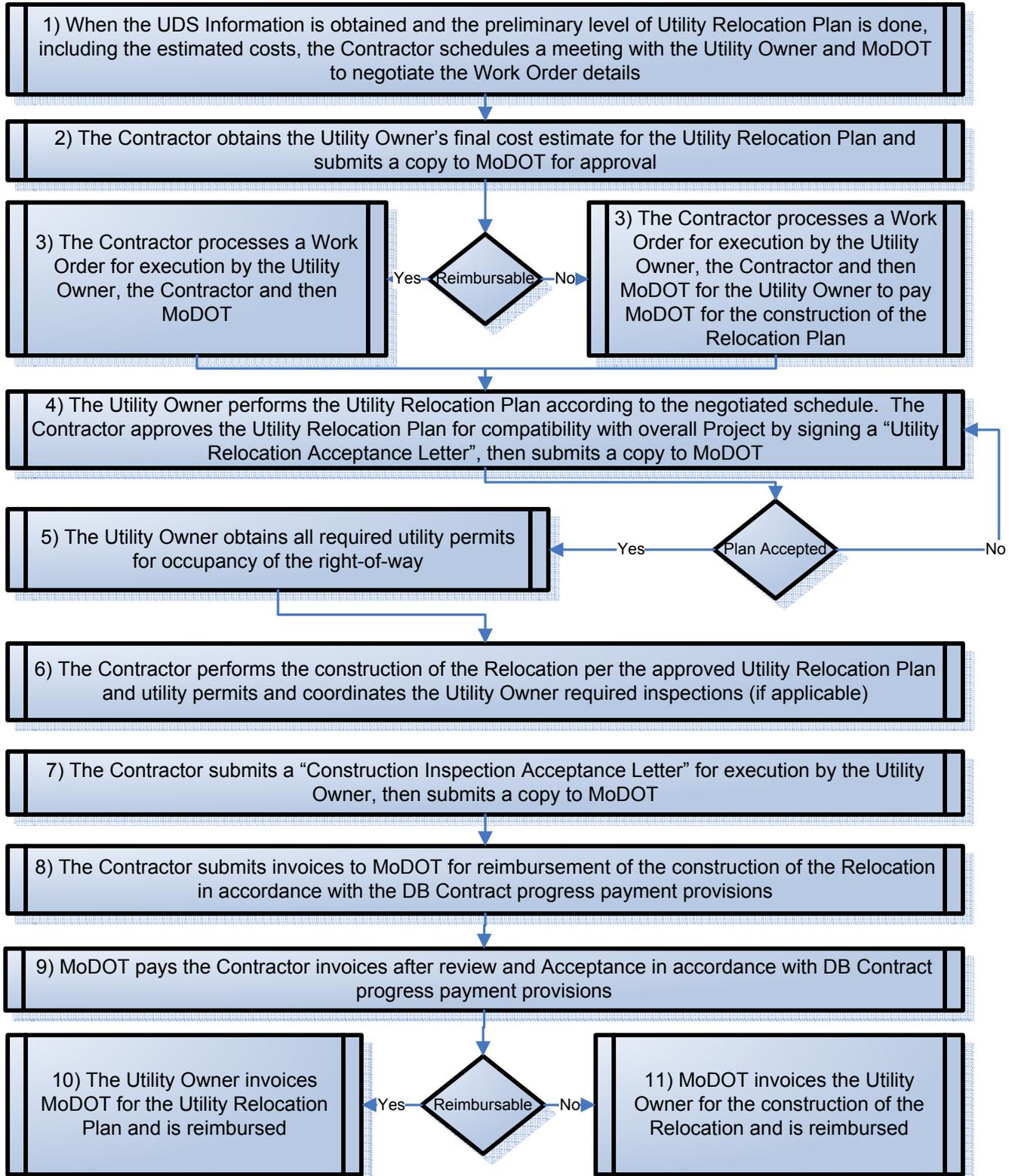
**THE CONTRACTOR PERFORMS THE UTILITY RELOCATION PLAN AND THE CONSTRUCTION OF THE RELOCATION**



**EXHIBIT A**  
Utility Work Procedure Flow Chart

**B**

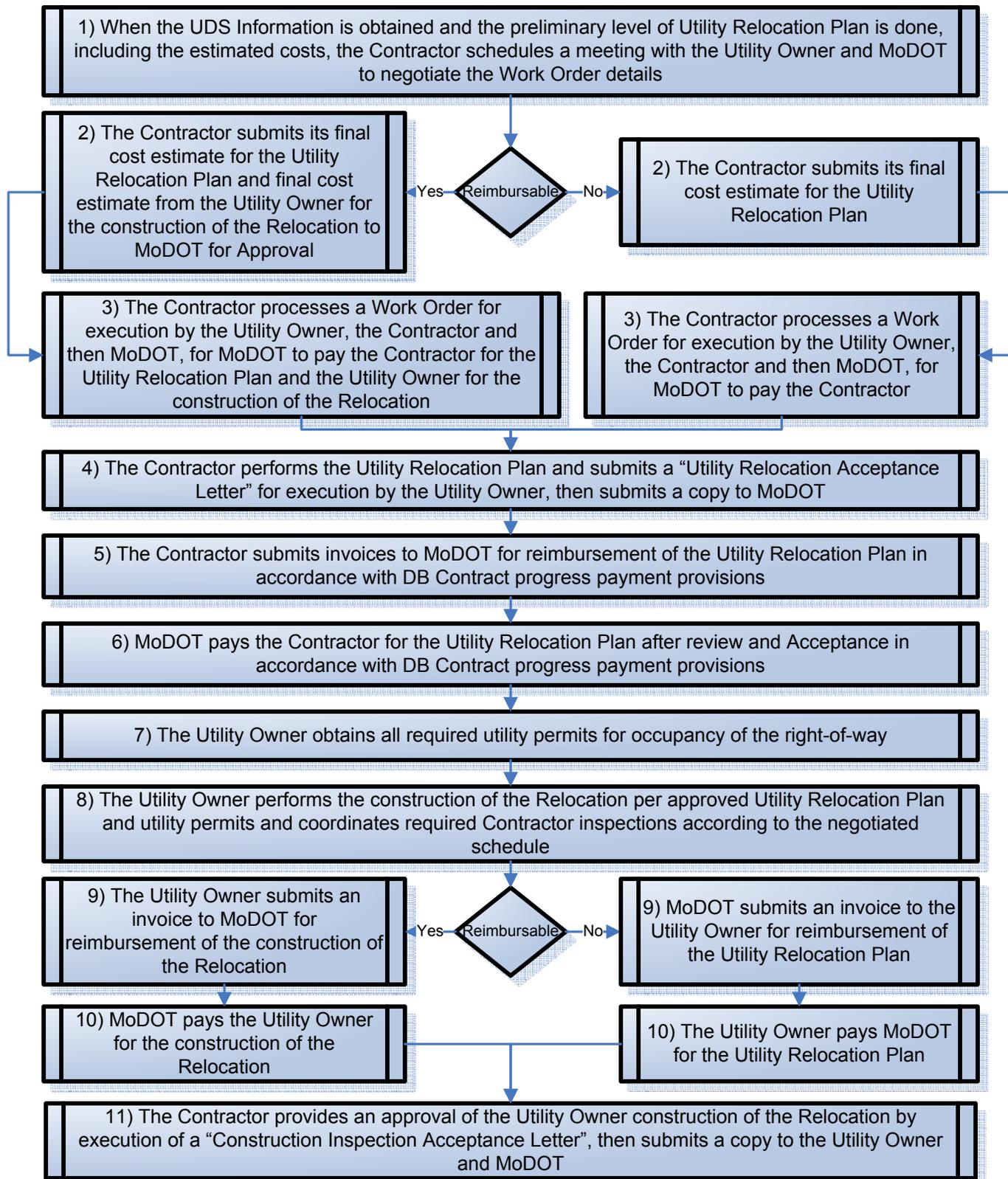
**THE UTILITY OWNER PERFORMS THE UTILITY RELOCATION PLAN AND THE CONTRACTOR PERFORMS THE CONSTRUCTION OF THE RELOCATION**



**EXHIBIT A**  
Utility Work Procedure Flow Chart



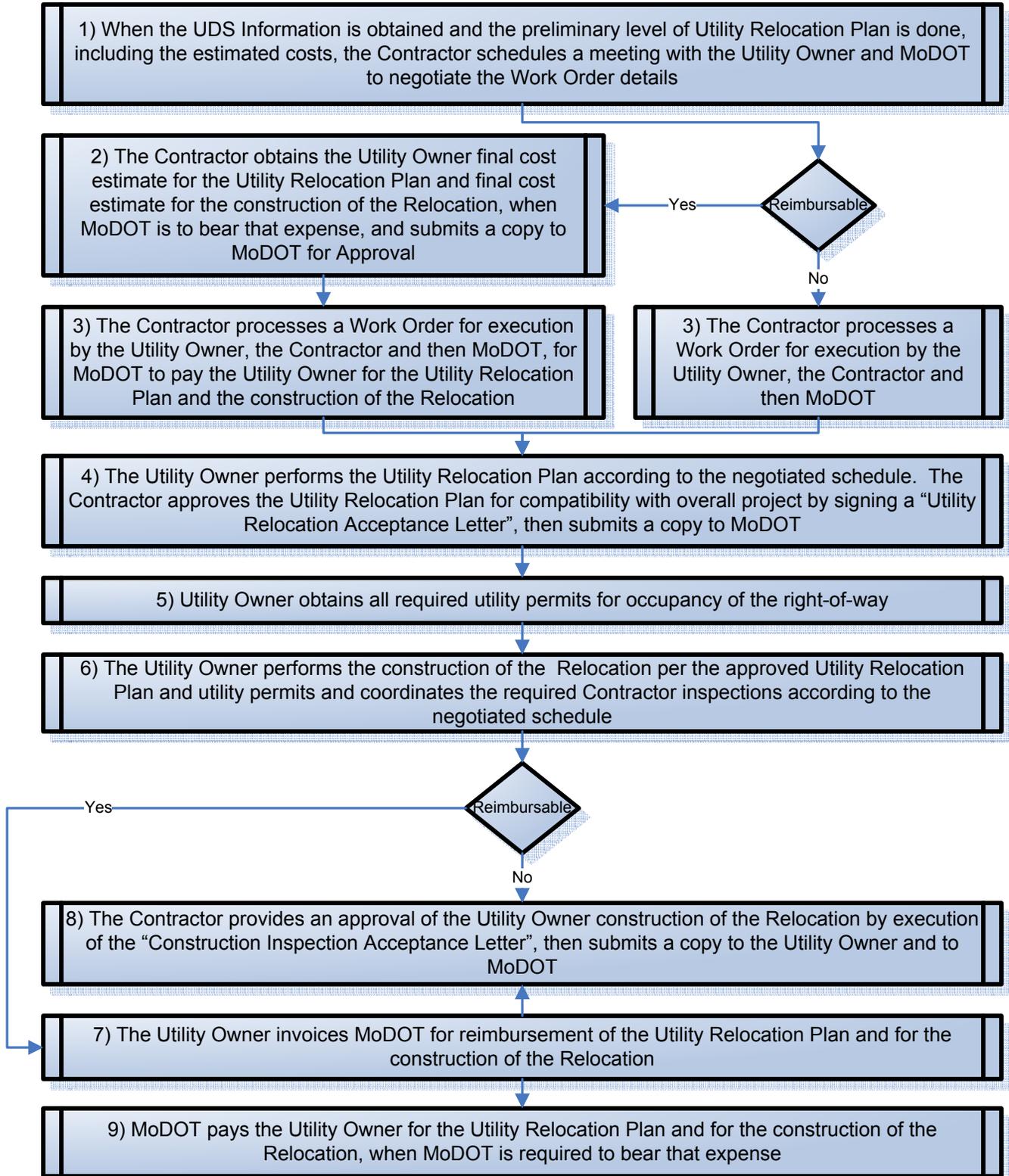
**THE CONTRACTOR PERFORMS THE UTILITY RELOCATION PLAN AND THE UTILITY OWNER PERFORMS THE CONSTRUCTION OF THE RELOCATION**



**EXHIBIT A**  
Utility Work Procedure Flow Chart

**D**

**THE UTILITY OWNER PERFORMS THE UTILITY RELOCATION PLAN AND THE CONSTRUCTION OF THE RELOCATION**





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## **8 RIGHT OF WAY**

### **8.1 Administrative Requirements**

MoDOT will retain possession of each parcel and all improvements, if any, made thereon by the Contractor. The Contractor's access and use of the Right of Way (ROW) arises solely from the permission granted by MoDOT under the Contract.

### **8.2 Status of Right of Way**

MoDOT will acquire all permanent ROW for the Project, including Permanent Easements (PEs) and Utility Easements (UEs).

The Contractor will be allowed access to each parcel acquired as identified in the ROW Schedule. As additional properties are acquired, MoDOT will provide the Contractor with monthly updates to the ROW Schedule, written notice of parcel access, and any applicable restrictions that may apply. The Contractor shall not access any parcel on which access has not been provided.

### **8.3 Acquisition and Relocation Requirements**

Contractor shall comply with all provisions of 23 CFR and 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition Act hereinafter, "The Act," as amended, February 3, 2005.

#### **8.3.1 Temporary Easements**

The Contractor, at its sole cost and expense, shall be responsible for acquiring all Temporary Construction Easements (TCEs) necessary to meet the requirements of the Contract Documents.

Contractor may purchase a TCE without an appraisal up to \$10,000.00, so long as the taking presents a non-complex appraisal problem, which does not present issues, such as cost to cure, damage to the remainder, or change of highest and best use. The appraisal waivers shall be performed only by a real estate professional with extensive knowledge and experience of real estate values and sales history in the market area. Should a TCE be required and the anticipated cost exceeds \$10,000.00, but less than \$25,000.00, a payment estimate shall be performed in the form provided in MoDOT's Appraisal Manual. If the TCE is anticipated to exceed \$25,000.00, an appraisal must be performed by a state certified appraiser and an offer made in accordance with Chapters 6 and 7 of MoDOT's Right of Way Manual. The appraisal must also be reviewed by a certified real estate appraiser and the just compensation offered, Approved by MoDOT's Right of Way Manager.

In cases where the TCE causes relocation of personal property in excess of \$1,000.00, the Contractor must provide MoDOT's Right of Way Manager with a relocation proposal for the property to ensure compliance with The Act.



After each TCE is acquired, the Contractor shall submit a complete parcel acquisition file, which includes, but is not limited to, copies of just compensation agreements, fully executed easement documents and/or agreements, the negotiator's signed diary, and a statement signed by the property owner acknowledging receipt of payment in full. Temporary easement acquisition files shall be maintained by Contractor throughout the project and shall be subject to review by MoDOT or FHWA upon request. All temporary easement files shall be submitted to MoDOT at Final Acceptance.

If a TCE is to be acquired from a property that MoDOT has an unsettled condemnation case, the contractor shall provide to MoDOT's Right of Way Manager a copy of all plans and offers pertaining to the easement so that they may be provided to MoDOT's legal counsel in the condemnation case.

### **8.3.2 Request for Additional Right of Way and Permanent Easements**

Should the Contractor determine that additional ROW or permanent easements are necessary or desirable, the Contractor shall request acquisition authority from the Project Director in order to comply with federal law. To request acquisition authority the Contractor shall provide the following to the Project Director:

- Right of Way plan sheets identifying the property, takings and remainders.
- Any necessary environmental clearances for each additional ROW parcel.

Requests for additional ROW or permanent easements shall be submitted to MoDOT for Approval. Once MoDOT has received a complete request with no deficiencies, MoDOT will grant acquisition authority and commence acquisition. MoDOT shall provide a ROW clearance statement and access to the additional ROW shall be granted upon written notification from MoDOT to the Contractor. Cost responsibilities associated with acquiring additional ROW shall be as defined in the contract documents.

### **8.3.3 Condemnation**

If the Contractor cannot reach an agreement with a property owner for a TCE acquisition, the Contractor may request in writing that MoDOT acquire the easement or easements through condemnation proceedings. The Contractor shall submit to MoDOT for Approval, a condemnation document submittal checklist in accordance with the instructions contained in the MoDOT Right of Way Manual.

The Contractor shall provide all right of way and easement staking needs for hearings and viewings and will provide an engineer to attend and answer questions related to the project and the right of way or easement. The Contractor shall not enter any properties until notified in writing that legal possession has been obtained. The Contractor may be required to provide personnel for pre-trial and court hearing testimony for each condemnation case.

### **8.3.4 Permission to Enter Property**

The Contractor shall secure property owner permission, fully executed rights of entry or easements prior to entering any property outside the ROW, for surveying, environmental, and appraisal purposes. Contractor shall retain all such documents for



MoDOT review.

## 8.4 Driveways and Access

The Contractor shall replace all driveways and approaches on affected parcels “in kind,” by using the same materials that comprise the existing surfaces and improvements. Access to properties must be maintained at all times.

## 8.5 Temporary Fencing

The Contractor shall provide temporary chain link fencing along temporary or permanent easement lines or ROW lines for residential parcels during construction. The fencing shall be sufficient to impede pedestrian and domestic animal movements into areas of construction or traffic.

## 8.6 Demolition

The Contractor shall be responsible for demolishing, removing and disposing of all existing buildings from the ROW and permanent easements as shown in the ROW Schedule. Removal of buildings shall include all attached structures, existing rubbish, trash and contents in and adjacent to the building on each parcel.

The Contractor shall follow all applicable state and local laws and regulations.

The Contractor shall notify the Missouri Department of Natural Resources 10 working days before the demolition of any building structure.

The contractor shall use third party air quality monitoring.

## 8.7 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
Request for additional ROW	✓	As needed	8.3.2
Condemnation document submittal checklist	✓	Concurrent with the request to MoDOT for property condemnation	8.3.3



## **9 SURVEY**

### **Project Survey Coordination**

The Contractor shall designate a Missouri professional land surveyor as the person in responsible charge of all Contractor survey Activities on the Project. The Contractor's professional land surveyor shall be required to sign and seal all survey documentation in accordance with state law.

### **Contractor Supplied Survey Data**

Except as provided by MoDOT, the Contractor shall provide all surveys required for completion of the Work.

### **Preservation of Survey Control Monuments**

The Contractor shall preserve all survey control monuments included in Book 4. The Contractor shall notify MoDOT as soon as it becomes known that a monument is in a position that will interfere with new construction or with Contractor operations. The monument position shall be accurately preserved prior to disturbing any such monument.

If a marker is disturbed, or cannot be preserved in place, the Contractor shall set the new marker in accordance with the requirements of the Governmental Person.



## 10 GEOTECHNICAL

The Contractor shall determine the need for geotechnical information and conduct investigations as necessary to complete the analyses, design, and construction.

### 10.1 Geotechnical Report

The Contractor shall prepare and submit a Geotechnical Report. The Geotechnical Report shall include a detailed method statement describing the general philosophy and methods of design and construction and the rationale for selection of the proposed construction methods for all geotechnical and foundation aspects of the Project. The method statement shall indicate how material and design details are chosen to match selected construction methods and construction details and the soil, rock, and groundwater environment for the site.

The Geotechnical Report shall define the engineering and design approach that will be followed in order to develop technically and environmentally acceptable and durable foundations, cut and fill slopes, retaining structures, and geotechnical designs for the Project.

The Geotechnical Report shall be prepared and signed and sealed by a Professional Engineer registered in the State of Missouri.

### 10.2 Geotechnical Data

The Contractor shall form its own interpretation of the existing geotechnical data. MoDOT neither assumes nor implies any other warranty regarding the data provided, other than the information was obtained at locations and depths indicated and to the accuracy of the data at the time of testing.

The additional investigations to be performed by the Contractor shall supplement the data provided by MoDOT.

### 10.3 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

Deliverable	For Approval	Schedule	Reference Section
Geotechnical Report		Before Construction of Area	10.1



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## **11 SIGNING, PAVEMENT MARKING, AND LIGHTING**

### **11.1 Signing**

The Contractor's design shall address modifications to permanent signing outside the Project limits that are made inaccurate, ineffective, confusing or unnecessary by the Project.

Permanent signage shall not be allowed to obstruct the view of the name on the bridge.

The Contractor shall install all new sign panels.

### **11.2 Permanent Pavement Marking**

The permanent pavement marking system on MoDOT owned roadways shall be according to MoDOT's Standard Specifications and Standard Plans as follows:

- Lane lines shall be 6 inch wide Type 2 Preformed Pavement Marking Tape installed in a groove.
- Edge lines shall be 6 inch wide Epoxy Pavement Marking Material over rumble strip.
- Gore lines shall be 12 inch wide Epoxy Pavement Marking Material over rumble strip.
- Arrows, crosswalks, stop bars, words, symbols, or other intersection marking shall be Type 2 Preformed Pavement Marking Tape installed in a groove.

On all other roadways within the Project, the Contractor shall match the existing permanent pavement marking systems.

### **11.3 Permanent Lighting**

Basic lighting shall be provided at all I-64 interchanges from Spodee Road to Bellevue inclusive, and on I-170 from Eager Road to Galleria Parkway.

1. The average illumination of the traveled way including ramp terminals shall provide an average maintained intensity of not less than 0.6 foot-candles, and a minimum intensity of not less than 0.2 foot-candles.

Continuous lighting shall be provided on I-64 within the St. Louis City limits, and on all cross streets where continuous lighting is currently used.

1. The average illumination of the I-64 traveled way and ramp connections shall provide an average maintained intensity of not less than 0.6 foot-candles, and a minimum intensity of not less than 0.2 foot-candles.
2. The average illumination of cross streets shall provide an average maintained



intensity of not less than 0.4 foot-candles, and a minimum intensity of not less than 0.2 foot-candles.

Lighting shall be provided under all bridges over 75 feet wide.

The average illumination in pedestrian tunnels shall provide an average maintained intensity of not less than 0.5 foot-candles. Pedestrian level lighting shall be provided for sidewalks on bridges.

The Contractor shall install efficient lighting and equipment to optimize the use of light on the roadway surface while minimizing stray light trespassing on adjacent properties.



## **12 DRAINAGE AND SEWERS**

The Project shall include all Work for the design and construction of all new or modified storm drainage, sanitary, and combined sewers and facilities both permanent and temporary to convey proposed design discharges. The Project shall also include all Work for the design and construction of permanent and temporary erosion control measures.

### **12.1 Location and Ownership of Drainage and Sewer Facilities**

The Contractor shall verify the location and ownership of all storm drainage and sewer facilities within the limits of the project.

### **12.2 Storm Drainage**

Storm drainage shall include all sewers, culverts, channels and appurtenant structures that provide the facility for removing and transporting runoff.

All storm drainage facilities identified as owned and/or maintained by MoDOT and are affected as part of this Project shall be designed by the Contractor in accordance with the following publications: All FHWA Hydraulic Design Series (HDS) publications, all FHWA Hydraulic Engineering Circular (HEC) publications, all USGS Water Resources Investigations Reports relative to Urban Basins in Missouri. For interstate facilities Sections 9-02.2(1), 9-02.5(4) and 9-02.6 of MoDOT's Project Development Manual shall be used.

All storm drainage facilities identified by the Contractor as owned and/or maintained by Governmental Persons shall be designed in accordance with the appropriate procedures and requirements of that Governmental Person. The Contractor shall obtain all Governmental Approvals from the appropriate authority for the design and construction of all new facilities, modifications and/or connections to the existing storm drainage system that are affected as part of the Project.

#### **12.2.1 MoDOT Storm Drainage Facilities to be Used in Place**

All existing MoDOT facilities within the Project that are identified by the Contractor to be used in place as a part of a new or modified storm drainage system shall be cleared of debris in order to sustain the proposed design discharges. The Contractor shall furnish a report, prior to Work in that area, detailing the condition of the used in place facility and the rationale for using it in place. The report shall contain, at a minimum, textual, photographic and video documentation as to the structural and hydraulic condition of that facility.

#### **12.2.2 MoDOT Storm Drainage Facilities to be Left in Place**

All MoDOT storm drainage facilities within the Project that are identified by the Contractor to be left in place and are not part of a new or modified storm drainage system shall be cleared of debris in order to sustain the existing discharges. The



Contractor shall furnish a report, prior to Work in that area, detailing the condition of the left in place facility. The report shall contain, at a minimum, textual, photographic and video documentation as to the structural and hydraulic condition of that facility.

### **12.3 Combined Sewers**

Combined sewers include all sewers and appurtenant structures that provide for the conveyance of both surface runoff and wastewater. The Contractor shall obtain Governmental Approvals from Metropolitan Sewer District (MSD) for the design and construction of all new combined sewers and modifications, and/or connections to the existing MSD combined sewer system that are affected as part of this Project.

### **12.4 Sanitary Sewers**

Sanitary sewers shall include all sewers and appurtenant structures that provide for the conveyance of wastewater. The Contractor shall obtain Governmental Approvals from MSD for the design and construction of all new sanitary sewers and modifications, and/or connections to the existing MSD sanitary sewer system that are affected as part of this Project.

### **12.5 Coordination with Other Agencies**

The Contractor shall coordinate all sewer and drainage issues with affected regulatory agencies that have jurisdiction over the drainage facility. The Contractor shall invite MoDOT to all meetings with affected regulatory agencies.



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## **13 ROADWAYS AND PAVEMENTS**

### **13.1 Traffic Analysis and Interstate Access**

Book 4 provides the year 2020 forecasted design year traffic volumes for the Project.

The Contractor shall be responsible for obtaining Approval from MoDOT and FHWA for any desired modifications to the Access Justification Report (AJR) provided in Book 5.

### **13.2 Interstates**

Design of the Project shall be in accordance with AASHTO. The contractor is responsible for obtaining Approval from MoDOT and FHWA on any design exceptions.

### **13.3 Local Roadways**

Reconstructed local roadways and sidewalks shall be at least as wide as existing. Sidewalks along Tamm Avenue, Hampton Avenue, and Kingshighway shall be at least six feet wide.

The Contractor shall construct connecting roads, driveways, or curb cuts to provide access to property parcels where existing accesses have been disturbed or modified.

### **13.4 Non-Vehicular Facilities**

Bellevue Avenue and Tower Grove Avenue are designated bike routes. Designated bike lanes shall be provided on Bellevue Avenue and Tower Grove Avenue. These bike lanes shall be at least four feet wide in each direction and signed and marked as a bike lane.

#### **Multi-use path in Forest Park**

Any disturbed or re-constructed sections of the Forest Park multi-use path shall be replaced to match the width and pavement type of the existing path.

#### **Pedestrian Connections**

All pedestrian connections shall meet ADA requirements.

The following pedestrian connections shall be provided and shall be separate from other vehicular and pedestrian connections:

- Across I-64, east of the Kingshighway Boulevard interchange, from the sidewalk on Chouteau Avenue or from the sidewalk on Gibson Street on the south side of I-64 to the sidewalk at the intersection of Clayton Road and Euclid Avenue on the north side of I-64. The Contractor shall provide at least a ten-foot wide connection.



- Across I-64, between the eastern limit of Aviation Field and the western limit of St. Louis University High School, from the sidewalk along Oakland Avenue on the south side of I-64 to the Forest Park trail located east of Aviation Field that travels along the south side of Police stables and Science Center Planetarium on the north side of I-64. The Contractor shall provide at least a ten-foot wide connection with at least twelve-foot vertical clearance for horse-mounted users. If the Contractor uses the existing tunnel in place, they shall provide lines of sight so the tunnel entrance and its approaches can be seen from the Oakland Avenue sidewalk and the Forest Park trail. Oakland Avenue or the Forest Park trail shall be visible by users from within the tunnel. The tunnel and its connections shall meet ADA requirements. If the existing tunnel is not used in place, it shall be removed or the Contractor can propose an alternative disposal measure to MoDOT for acceptance.
- Across I-64, east of the Hampton Boulevard interchange, from the sidewalk at the intersection of Oakland Avenue and Highlander Drive on the south side of I-64 to the Forest Park sidewalk located between Wilken Place and Aviation Field on the north side of I-64. The Contractor shall provide at least a ten-foot wide connection.
- Across I-170, connecting an existing sidewalk on the east side of I-170 to an existing sidewalk on the west side of I-170 that is on Brentwood Boulevard or has a connection to Brentwood Boulevard. The connection can be anywhere from one hundred feet south of the limits of Galleria Parkway on the north to Red Bud Avenue on the south. The Contractor shall provide at least a ten-foot wide connection.

### **13.5 Pavement Selection**

Any pavement reconstruction on arterials or local streets shall match the existing pavement type.

### **13.6 Barrier at State Right of Way Line**

The Contractor shall provide a continuous method of access and pedestrian control at least 60 inches high at or near the right of way line or the access-control line.

### **13.7 Deliverables**

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
AJR Modifications	✓	Prior to issuance of applicable Released for Construction Documents	13.1
Design Exceptions	✓	Prior to issuance of applicable Released for Construction Documents	13.2



## 14 SIGNALS AND INTELLIGENT TRANSPORTATION SYSTEMS

### 14.1 Design Requirements

The Contractor shall prepare traffic signal and Intelligent Transportation System (ITS) designs and perform construction for the Project. The Contractor shall conform to the AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals.

The Contractor shall install and connect power service for the Project for temporary and permanent traffic signals, traffic management equipment, lighting, and ITS equipment. Prior to installation, the Contractor shall design power service and perform power service requests for the Project for approval by AmerenUE. The Contractor shall also submit power service requests to MoDOT. The Contractor shall coordinate with AmerenUE to determine electric power requirements for the Project. All power cables shall be in exclusive conduits.

### 14.2 Temporary and Permanent Traffic Signalization

The Contractor shall keep the existing signalized intersections functional, including maintaining any existing communication links between the signal controllers and other equipment. If signals must be shut down, the Contractor shall provide temporary signals or appropriate traffic control.

The Contractor shall perform signal warrants using the Manual of Uniform Traffic Control Devices (MUTCD) and provide signals at intersections if signal warrants #1 or #2 are satisfied using year 2020 forecasted traffic volumes.

The Contractor shall design and test all permanent signal controllers to communicate with MoDOT's Eagle ACTRA central signal system software in the Transportation Management Center (TMC).

The Contractor shall connect permanent signals for the Project to existing adjacent signal systems as follows. The Contractor shall install fiber optic networks and all equipment necessary to make the systems operational.

- I-64/Lindbergh Boulevard (US 67) interchange – If new signals are warranted, then the new signals shall connect into the existing fiber optic signal system along Lindbergh Boulevard owned by MoDOT. The connection shall create an operational link between the new signals and the existing signals at Clayton Road/Lindbergh Boulevard intersection and Conway Road/Lindbergh Boulevard intersection.
- I-64/Clayton Road interchange near Warson Road – The Contractor shall connect the Clayton Road interchange signals to the St. Louis County signal at Clayton Road/Warson Road intersection.
- I-64/Brentwood Boulevard – The Contractor shall connect the Brentwood



Boulevard interchange signals into the existing fiber optic signal system along Brentwood Boulevard owned by St. Louis County. The connection shall create an operational link between the interchange signals and the existing signals at Eager Road/Brentwood Boulevard intersection and St. Louis Galleria/Brentwood Boulevard intersection.

- I-170/Galleria Parkway interchange – The Contractor shall connect the Galleria Parkway interchange signals to the St. Louis County signal at Galleria Parkway/Brentwood Boulevard intersection.
- I-170/Eager Road interchange – The Contractor shall connect the Eager Road interchange signal to the existing fiber optic signal system along Eager Road owned by St. Louis County. The connection shall create an operational link between the interchange signal and the existing signals at Eager Road/Brentwood Boulevard intersection and Eager Road/Brentwood Promenade Court intersection.
- I-64/Hanley Road interchange – The Contractor shall connect the Hanley Road interchange signals into the existing fiber optic signal system along Hanley Road owned by St. Louis County. The connection shall create an operational link between the interchange signals and the existing signals at Hanley Road/Clayton Road intersection, Hanley Road/Eager Road intersection and Hanley Road/Dale Avenue intersection.
- I-64/Big Bend Boulevard interchange – If new signals are warranted, then the new signals shall connect into the existing fiber optic signal system along Big Bend Boulevard owned by St. Louis County. The connection shall create an operational link between the interchange signals and the existing signals at Big Bend Boulevard/Wise Avenue intersection and Big Bend Boulevard/Dale Avenue intersection.
- I-64/McCausland Avenue interchange – The Contractor shall connect the McCausland Avenue interchange signals into the existing fiber optic signal system along McCausland Avenue owned by the City of St. Louis. The connection shall create an operational link between the interchange signals and the existing signals at McCausland Avenue/Clayton Avenue/Oakland Avenue intersection and McCausland Avenue/Dale Avenue intersection.
- I-64/Hampton Avenue interchange – If new signals are warranted, then the new signals shall connect to the existing signal at the Hampton Avenue/Oakland Avenue intersection and connect into the existing fiber optic signal system along Hampton Avenue owned by the City of St. Louis. If new signals are warranted along Oakland Avenue, then the new signals shall connect to the existing signals at Hampton Avenue/Oakland Avenue intersection and at Oakland Avenue/Highlander Drive intersection.
- I-64/Kingshighway Boulevard interchange – If new signals are warranted, then the new signals shall connect into the existing fiber optic signal system along Kingshighway Boulevard owned by the City of St. Louis. The connection shall create an operational link between the interchange signals and the existing signals at Kingshighway Boulevard/Hospital Plaza intersection and Kingshighway Boulevard/Oakland Avenue intersection.



- I-64/Tower Grove Avenue/Boyle Avenue interchange – If new signals are warranted, then the new signals shall connect into the existing fiber optic signal system along Manchester Avenue/Chouteau Avenue owned by MoDOT.

For signals that connect to existing fiber optic networks owned by MoDOT or St. Louis County, existing interconnection equipment is located within the existing intersection signal cabinets. For signals that connect to existing fiber optic networks owned by the City of St. Louis, interconnection equipment shall be located independently and separate from signal cabinets.

For each phase defined in the Maintenance of Traffic Plan, the Contractor shall develop signal timing plans for the Project and roadways designated as detours and submit the plans for Approval. After Approval, the Contractor shall implement, test and adjust signal timings to prevailing conditions or as directed by MoDOT. During each phase, the Contractor shall be responsible for adjusting signal timings to prevailing conditions or as directed by MoDOT. The Contractor shall provide accessible pedestrian signals for signalized intersections with pedestrian crossings within the Project. The Contractor shall provide full video detection for signalized intersections within the Project. The Contractor shall not use bridges to support signal equipment unless the signalized intersection occurs beneath a bridge. The Contractor shall install signal heads aligned over the center of each travel lane to encourage motorist positive lane control.

### 14.3 Intelligent Transportation Systems

Communication between the TMC and the cameras, dynamic message signs, and other MoDOT field equipment shall be via the fiber optic network. The communication shall be via Ethernet. The Contractor shall make ITS equipment operational with computers in the TMC and MoDOT's Gateway Guide ATMS software. MoDOT will configure Wide Area Network communications equipment and be responsible for wide area network operations. MoDOT will furnish the following ITS equipment for the Contractor to install and make functional: networking switches, dynamic message signs excluding sign supports, closed circuit television cameras excluding poles, device servers and video encoders. The Contractor shall submit Notice for MoDOT furnished equipment. MoDOT will provide equipment no later than 90 days after Notice is received. The Contractor shall be responsible for storage and maintenance of MoDOT furnished equipment.

The Contractor shall keep the existing dynamic message sign, the closed circuit television camera and the Traffic.com equipment functional. The Contractor shall remove three nonfunctional traffic detectors owned by MoDOT. The Contractor shall relocate existing devices as necessary so that they can continue to perform their intended function. The Contractor shall aim devices, test functionality and adjust operating parameters. The following table describes the location of existing ITS devices.



<b>Existing ITS Devices</b>		
<b>Type</b>	<b>I-64 Location</b>	<b>Owner</b>
RTMS detector	West of Spoede bridge	Traffic.com
Dynamic message sign	Between Spoede and Lindbergh interchanges	MoDOT
RTMS detector	West of Clayton/Warson interchange	Traffic.com
RTMS detector	Between Clayton/Warson and McKnight interchanges	Traffic.com
RTMS detector	Just east of McKnight bridge	MoDOT
RTMS detector	Between McKnight and McCutcheon bridges	Traffic.com
Camera	Between Brentwood and I-170 interchanges	MoDOT
RTMS detector	Between I-170 and Hanley bridge	Traffic.com
RTMS detector	West of Big Bend bridge	MoDOT
RTMS detector	West of Bellevue bridge	Traffic.com
RTMS detector	Between Tamm and Hampton bridges	Traffic.com
RTMS detector	West of Newstead bridge	MoDOT

### **14.3.1 Communication System**

The Contractor shall provide and install an underground fiber optic network in an exclusive conduit bank for the Project along I-64 and I-170. The Contractor shall provide and install conduit banks for the Project consisting of two (2) two-inch diameter High Density Polyethylene (HDPE) conduits, one carrying a three-compartment textile innerduct, 24-fiber distribution cable and a 72-fiber trunk cable. The other parallel conduit shall be empty. The Contractor shall connect permanent signalized intersections within the Project to the new underground fiber optic network. The Contractor shall provide and install fiber optic networks and all equipment necessary to make the systems functional. The Contractor shall provide and install fiber optic cable that is loose tube, single mode dielectric cable. The Contractor shall splice all optical fibers, including spares, only in equipment cabinets to provide continuous runs between cabinets. The cables shall be constructed with twelve fibers per tube.

In every pullbox that is not at an equipment cabinet, the Contractor shall store 20 feet of slack fiber optic cable for every cable that passes through the pullbox. At cabinet locations, where cable runs from the pullbox directly to an equipment cabinet, the Contractor shall store 30 feet of slack fiber optic cable in the pullbox.

The Contractor shall provide and install warning tape in all trenches containing



conduit. The Contractor shall provide and install locator wire in all underground non-metallic conduits and into each pullbox or base.

The Contractor shall not splice flexible non-metallic ducts. All runs shall be continuous. The Contractor shall not install conductors carrying AC power in the same wiring harness as conductors carrying control or communication signals.

The Contractor shall furnish and install equipment cabinets for the Project. All cabinets shall have locks built into the latching mechanism and the Contractor shall provide a padlock for each cabinet. The built-in cabinet lock shall be keyed to match the lock in MoDOT's other traffic equipment cabinets. The Contractor shall provide and wire all equipment cabinets for three-wire 240/120-volt AC service. The Contractor shall provide and identify all cabinet doors with cabinet identification labels displaying the cabinet identifier. The Contractor shall submit labeling system and cabinet wiring diagrams.

### 14.3.2 Video System

The Contractor shall install a permanent video surveillance system for the Project on I-64 and I-170. The system shall enable the MoDOT staff at the Transportation Management Center to see any part of the I-64 or I-170 roadway, including all lanes and shoulders, as well as the adjacent portions of the streets and highways that exchange traffic with the interstates.

The Contractor shall install video systems consisting of dome cameras installed on poles. The Contractor shall restrict the camera's field of view, if necessary, so that a user cannot use the cameras to look at private property or other inappropriate views. The Contractor shall submit Notice to highlight situations in which there is a conflict between the need to protect privacy and the need to know about traffic situations. The Contractor shall adjust camera installations to solve the conflict or as directed by MoDOT.

The location and height of the camera pole shall be such that the camera can be serviced from a bucket truck with a 70-foot boom.

### 14.3.3 Dynamic Message Signs

The Contractor shall install six new dynamic message signs and relocate one existing sign. Signs shall be located approximately one mile in advance of the desired diversion point. The Contractor shall submit dynamic message sign locations for Approval. The approximate locations for each sign is shown below:

Signed Diversion Candidate	I-64 Sign Location
WB I-64 to I-270	Between Lindbergh and Ballas
EB I-64 to Lindbergh	Between I-270 and Lindbergh
WB I-64 to Lindbergh	Between Clayton/Warson and Lindbergh



Signed Diversion Candidate	I-64 Sign Location
EB I-64 to I-170	Between Clayton/Warson and McKnight
WB I-64 to I-170	Between Bellevue and I-170
EB I-64 to Hampton or Kingshighway	Between Bellevue and Hampton
WB I-64 to Kingshighway or Hampton	Between Sarah and Kingshighway

The Contractor shall provide and install sign power that passes through an equipment cabinet mounted on the sign structure, and it shall be possible to disconnect the sign from all power using breakers in that cabinet. Cables coming from below ground to the cabinet mounted on the sign structure shall run through the structure. The cables going from the cabinet to the sign shall also run through the structure.

#### **14.4 Deliverables**

At a minimum, the Contractor shall submit the following to MoDOT:

Deliverable	For Approval	Schedule	Reference Section
Power Service Requests	✓	30 days prior to installation	14.1
Signal Timing Plans	✓	30 days prior to implementation	14.2
Notice for MoDOT furnished ITS equipment		90 days prior to installation	14.3
Cabinet Labeling System		Project Completion	14.3.1
Cabinet Wiring Diagrams		Project Completion	14.3.1
Notice of Video System Conflict		No later than 7 days after installation	14.3.2
Dynamic Message Sign Locations	✓	30 days prior to installation	14.3.3



## 15 STRUCTURES

Designs shall be in accordance with applicable state and federal regulations. The design truck shall be HS-25 for bridges designed using AASHTO Standard Specifications for Highway Bridges or HL-93 for bridges designed using AASHTO LRFD Bridge Design Specifications.

The Contractor shall request a bridge number for each bridge or any retaining wall that exceeds 5 feet in height. All correspondence relative to a specific bridge shall contain the bridge number in the subject line.

The Contractor shall load rate new and rehabilitated bridges. The load ratings shall be in accordance with the "Load Rating for Design Build Bridges" memorandum. A report for each structure shall be supplied detailing the ratings for all axle configurations identified by the memorandum. The Contractor shall use VIRTIS software to rate each structure. The input and output shall be supplied to MoDOT in electronic format. New bridges shall not require load posting. Inventory ratings shall, at the minimum, be equivalent to the design truck.

### 15.1 Governmental Approvals

The Contractor shall obtain approval from the Science Center for any Work that will impact the Science Center pedestrian bridge over I-64.

The Contractor shall obtain approval from Bi-State Development Agency (Metro) for any Work that will impact the MetroLink structure under I-64 west of Hanley Road.

### 15.2 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
VIRTIS rating of each bridge		Before construction of bridge	15



## 16 URBAN DESIGN

The Contractor shall incorporate into the project urban design elements and landscaping in keeping with the 'streamline moderne' Art Deco style.

### 16.1 Urban Design Elements

The Contractor shall submit a final Urban Design Concept. The plan shall show the location of all urban design elements and the materials to be used and shall meet the following criteria:

- Pedestrian areas on bridges shall have pedestrian level light fixtures.
- All sound walls shall have patterns on both sides.
- All exposed vertical concrete surfaces shall have a sacrificial graffiti coating.

### 16.2 Landscaping

The Contractor shall inventory the existing trees along the corridor. Existing trees and under-story vegetation in good condition shall remain in place when possible.

The Contractor shall submit a Landscaping Plan that shows the proposed location of all landscaping and shall meet the following criteria:

- Existing canopy and ornamental trees shall be replaced one for one in shrub or mulch beds as close to the removal location as possible. New canopy trees shall have a caliper of at least 2½ inches. New ornamental trees shall have a caliper of at least 2 inches.
- Landscape plantings shall seek to restore visual buffer areas through the use of evergreen and deciduous material and locating plantings to achieve the greatest level of visual screening.
- Lawn areas shall be sod in areas adjacent to pedestrian facilities. All other disturbed areas not designated for mulch shall be seeded.

### 16.3 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

Deliverable	For Approval	Comments
Urban Design Concept		Before construction of any walls or bridges but no later than Final Design Documents
Existing Tree Inventory		Before any trees are removed
Landscaping Plan		Before installation of landscaping but no later than Final Design Documents



## 17 MAINTENANCE OF TRAFFIC

The Contractor shall conduct all Work necessary to meet the requirements associated with Maintenance of Traffic (MOT), including provisions for the safe and efficient movement of people, goods and services through and around the project while minimizing impacts to local residents, business and commuters. The Contractor shall provide the greatest regional traffic mobility and least impact to motorists while completing the project in the least amount of time. Contractor shall describe the MOT plan with reasonable, measurable tasks and milestones.

The Contractor shall not close all I-64 mainline lanes to traffic for the entire duration of the Project.

The Contractor shall coordinate and cooperate with other regional construction projects.

The final MOT Plan shall be submitted at least 30 Days prior to beginning the first phase or stage of construction. The final MOT plan shall include all elements of the draft MOT Plan and the following additional elements:

- Approach to developing detailed Traffic Control Plans (TCP).
- Access management plan and access maintenance plan for all impacted parcels. Access to all parcels within the Project limits shall be maintained or the Contractor shall provide alternative access.

The final MOT Plan shall be updated by the Contractor throughout the Project as needed.

### 17.1 Traffic Control Plans

The Contractor shall develop and submit Traffic Control Plans for each stage of construction that shows the Contractor's proposed construction staging and proposed traffic control devices consistent with the MOT Plan. The TCP shall be submitted to MoDOT prior to construction of the Work shown in the TCP. Major revisions to a TCP shall also be submitted to MoDOT. The TCPs shall include, at a minimum, the following elements:

- A detailed diagram which shows the location of all traffic control devices.
- An access maintenance plan for all properties requiring access during construction. The plan shall also indicate the areas where equipment will be stored and vehicles parked if within the Project limits.
- A plan for maintaining and controlling pedestrian, bicycle, and other non-vehicular traffic.

#### 17.1.1 Bicycle and Pedestrian Impacts

The Contractor shall minimize bicycle and pedestrian impacts to the regional bicycle



and pedestrian systems within the project area. If impacts occur to the following locations, the Contractor shall provide alternate access and signed detours. The signed bicycle and pedestrian detours shall be shown on the TCP.

- Pedestrian bridge east of Kingshighway
- Pedestrian bridge north of I-64 across I-170
- The Forest Park trail system from the Clayton Road/Skinker Boulevard interchange to the Kingshighway Boulevard interchange
- Tamm Avenue overpass
- The St. Louis Regional Bicycle Facilities on Bellevue Avenue and Tower Grove Avenue
- The existing bike/pedestrian trail along Clayton Road south of the Clayton Road/Warson Road interchange
- South Outer 40 east of the Clayton Road/Warson Road interchange
- The trail crossing under I-64 along the Metro light rail transit right of way west of the Hanley Road interchange

### **17.1.2 Detour Requirements**

The Contractor shall provide alternate access and signed detours for closures. The signed detours shall be shown on the TCP.

- The Contractor shall use state owned roadways and state right of way for detours.
- The Contractor shall obtain approval from local roadway owners to use non-state owned roadways for detours.
- The Contractor shall sign detours for Forest Park attractions and zoo access during Hampton Avenue interchange and Tamm Avenue reconstruction.

### **17.2 Construction Requirements**

- The Contractor shall provide a paved surface for all detours.
- The Contractor's placement of construction equipment, materials and vehicles shall comply with AASHTO.



### 17.3 Deliverables

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
Final Maintenance of Traffic Plan		30 Days prior to start of Construction	17
Traffic Control Plans		Prior to Implementation	17.1



## **18 MAINTENANCE DURING CONSTRUCTION**

The Contractor shall be responsible for Project maintenance starting on the day the Contractor mobilizes on any portion of the Right of Way on the Project or on NTP2, whichever occurs first.

Provisions for local traffic, including safe and uninterrupted flow of bicycle and pedestrian traffic, shall be maintained by the Contractor at all times during construction.

The Contractor shall maintain the roadbed substantially free of ruts, holes, and detrimental surface deformations. The Contractor shall control the height of vegetation for traffic safety, and shall provide and maintain a safe condition for all approaches and intersections.

The Contractor shall maintain the Project until Final Acceptance. MoDOT will assume maintenance responsibilities for individual Project Segments that have been accepted by MoDOT,

The contractor will not be required to perform snow removal for lanes open to traffic.

### **18.1 Maintenance Plan**

The Contractor shall develop and submit to MoDOT a maintenance plan. The plan shall define the Contractor's complete strategy for the implementation, coordination, scheduling, and monitoring of maintenance Activities during the Project. The plan shall be updated annually to reflect changes in the Contractor's construction Activities.

The maintenance plan shall be submitted to MoDOT for Approval at least 15 Days prior to the first occurrence of Contractor mobilization on any portion of the Right of Way on the Project, or 75 Days following NTP1, whichever occurs first.

### **18.2 Maintenance Responsibilities of the Contractor**

The Contractor shall perform all required maintenance Activities including, but not limited to:

- Patching and repair of pavements and shoulders
- Patching and repair of all structures
- Repair of shoulder drop-offs
- Snow and ice removal for lanes closed to traffic
- Maintenance of delineators, signing and pavement markings
- Drainage maintenance
- Repair or replacement of damaged safety devices and fence



- Vegetation control
- Litter control
- Graffiti removal
- Pest control for buildings acquired within the MoDOT Right of Way

The Contractor shall maintain properties and provide reasonable safety and security measures to preserve the acquired Right of Way or easements. The Contractor shall prevent, minimize, or correct problems such as mowing grass, vandalism, trespassing, rodent infestation, weed control, illegal dumping or disposal of rubble, and other debris on all areas of the Project, which are still under the Contractor's maintenance responsibility.

Once the Contractor permission to enter has been acquired for the use of Right of Way and easements, in accordance with Section 8, the Contractor shall manage and minimize losses to the property.

### **18.3 Limits of Maintenance Responsibilities**

The longitudinal limits of the Contractor's maintenance responsibilities on the Project shall extend from existing concrete pavement match point on I-64 from 0.89 miles west of Spoede Road to the fill face of the I-64 Vandeventer Overpass, and on I-170 from Eager Road to the south fill face of the I-170 bridge over Clayton Road. The lateral limits of Contractor's maintenance responsibility shall be the Right of Way, temporary easements, and permanent easements for I-64 and I-170 mainline, ramps, viaducts, crossroads, outer roads, and service roads within the Project Site. Any other area disturbed by Contractor Activities, outside of these limits, shall be the sole maintenance responsibility of the Contractor.

### **18.4 Deliverables**

At a minimum, the Contractor shall submit the following to MoDOT:

<b>Deliverable</b>	<b>For Approval</b>	<b>Schedule</b>	<b>Reference Section</b>
Maintenance Plan	✓	At least 15 Days prior to the first occurrence of Contractor mobilization on any portion of the ROW or 75 days following NTP1, whichever occurs first	18.1



**FINAL REQUEST FOR PROPOSALS  
for The New I-64 Design-Build Project**

**BOOK 3 — APPLICABLE  
STANDARDS**

Project Number J6I0978  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017





## **APPLICABLE STANDARDS**

The following standards, data, or reports are Contract Documents.

Availability Legend:

- IS = Industry standard, not provided by MoDOT

<b>Originator</b>	<b>Title</b>	<b>Availability</b>
AASHTO	All Standards/Manuals	IS
ADA	ADA Accessibility Guidelines	IS
ASTM	Standards	IS
Electronics Industries Alliance (EIA)	Standards	IS
FHWA	All Standards/Manuals	IS
Illuminating Engineering Society of North America	Roadway Lighting, ANSI Approved RP-8-00	IS
ISO	ISO 9000	IS
ISO	ISO 9001	IS
National Electrical Manufacturers Association (NEMA)	Standards	IS
National Fire Protection Agency (NFPA)	Life Safety Code	IS
National Fire Protection Agency (NFPA)	National Electric Code	IS
National Transportation Communications for ITS Protocol Standards (NTCIP)	Standards	IS
Telecommunications Industries Association (TIA)	All standards and publications	IS
Transportation Research Board	Highway Capacity Manual	IS
plus Additional Applicable Standards as submitted in the Proposal		



**FORM A  
MAJOR PARTICIPANT INFORMATION**

Proposer:

Company Name:		Year Established:	
Company Address:		Federal Tax ID:	
Company Phone:		Organization:	<input type="checkbox"/> Corporation
Company Fax:			<input type="checkbox"/> Joint Venture
Contact Name:			<input type="checkbox"/> Partnership
Contact Phone:			<input type="checkbox"/> Other
Contact E-mail:		State of Incorporation: (if applicable)	

Under penalty of perjury, I certify that:

- I am the company's Official Representative;
- The company prequalified to perform work as a consultant or contractor for MoDOT;
- To the best of my knowledge and belief, following reasonable inquiry, the information submitted in this Proposal is true and correct.

[To be signed by authorized signatory or signatories of the Proposer and each Major Participant]

[Proposer or Major Participant's Name]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM A**  
**MAJOR PARTICIPANT INFORMATION**

---

Proposer:

**INCUMBENCY CERTIFICATE:**

The undersigned hereby certifies that he/she is the duly elected and acting \_\_\_\_\_ Secretary of \_\_\_\_\_ ("Company"), and that, as such, he/she is authorized to execute this Incumbency Certificate on behalf of the Company, and further certifies that the persons named below are duly elected, qualified, and acting officers of the Company, holding on the date hereof the offices set forth opposite their names.

<u>NAME</u>	<u>OFFICE</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IN WITNESS WHEREOF, the undersigned has executed this Incumbency Certificate:

[Proposer or Major Participant's Name]

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

\_\_\_\_\_  
Typed or Printed Name

**Secretary**  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM B**  
**KEY PERSONNEL SUMMARY**

Proposer:

Key Personnel	Name (Last, First)	Employer's Firm Name	Years of Experience	% Assigned to Project		On Site (yes /no)
				During Design Phase	During Construction Phase	
Project Manager						
Quality Manager						
Design Manager						
Public Information Manager						
Maintenance of Traffic Manager						
Roadway Design Manager						
Structural Design Manager						
Construction Manager						
(Proposer may define additional Key Personnel)						

Attach any resumes not included in the Statement of Qualifications.



**FORM C**  
**ADDITIONAL APPLICABLE STANDARDS**

Proposer:

The Proposers shall propose the Additional Applicable Standards to be used (add rows as needed):

Item	Type of Standard/Manual	Additional Applicable Standard(s) to be Used, Date or Version	Exceptions/Additions/Clarifications			MoDOT Response FOR MODOT USE ONLY
			Section	Attachment	Previously Used by (State)	
1	Construction Specifications and General Provisions			1-1		
				1-2		
				1-3		
2	Special Provisions					
3	Standard Drawings					
4	Roadway Design					
5	Pavement Design					
6	Bridge Design					
7	Geotechnical Design					



**FORM C**  
**ADDITIONAL APPLICABLE STANDARDS**

Proposer:

The Proposers shall propose the Additional Applicable Standards to be used (add rows as needed):

Item	Type of Standard/Manual	Additional Applicable Standard(s) to be Used, Date or Version	Exceptions/Additions/Clarifications			MoDOT Response FOR MODOT USE ONLY
			Section	Attachment	Previously Used by (State)	
8	Lighting Design					
9	Drainage Design					
10	Signal Design					
11	Signing and Marking Design					
12	Temporary Traffic Control Devices					
13	Construction Manual(s)					
14	Materials Manual(s)					



**FORM C**  
**ADDITIONAL APPLICABLE STANDARDS**

Proposer:

The Proposers shall propose the Additional Applicable Standards to be used (add rows as needed):

Item	Type of Standard/Manual	Additional Applicable Standard(s) to be Used, Date or Version	Exceptions/Additions/Clarifications			MoDOT Response FOR MODOT USE ONLY
			Section	Attachment	Previously Used by (State)	
15	Testing Manual(s)					
	(list as many standards as needed)					

The Proposers may use as many sheets as necessary to communicate the information requested in this Form.

The Proposers shall provide copies of all Additional Applicable Standards, except those created by MoDOT. A red-lined version of any exceptions, additions, or clarifications of the Additional Applicable Standards shall be submitted as an attachment.



**FORM D  
COMPLETION DEADLINES**

Proposer:

Number	Useable Segment	Completion Deadline (MM/DD/YYYY)
1	(describe up to 6 Segments)	
2		
3		
4		
5		
6		
<b>Project</b>	<b>Project Completion</b>	
	<b>Final Acceptance</b> (90 Days after Project Completion)	



**FORM E**  
**DESIGN EXCEPTION FORM**

Proposer:

Item	Applicable Standard as listed in Book 3		Existing Standard (verbatim from Applicable Standard)	Proposed Revision	MoDOT Response FOR MODOT USE ONLY	FHWA Response FOR FHWA USE ONLY
	Originator	Title				



**FORM F**  
**ITEMS TO BE USED IN PLACE OR REHABILITATED**

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Proposer:

All elements of the Work will be new, except for the following specific elements:

Element	Description of rehabilitation Work or rationale for using in place



**FORM G  
COMPLETION DEADLINES PART II**

Proposer:

**A. COMMITMENT TO LANE CLOSURE DURATION DEADLINES:**

The information in the following table shall be consistent with the proposed MOT phasing maps.

Number	Lane Closure Description Location/Limits	Direction	Number of Lanes Open during Closure	Lane Closure Duration Deadline (Maximum Days)
1	(Proposers describe lane closures for any number of segments for mainline, cross streets, and/or ramps)			
2				

**B. COMMITMENT TO NIGHTTIME LANE CLOSURE DEADLINES:**

Work during night hours will begin no earlier than X:XX pm and end no later than X:XX am.

**C. COMMITMENT TO NIGHTTIME LANE CLOSURE DEADLINE WORK ACTIVITIES:**

Excluding construction activities performed within the Lane Closure Duration Deadlines above, only the following specific types of construction activities will be performed at night, during the hours shown in item B above:

1. text
2. text
3. text
4. (Proposers to describe any number of activities)



**FORM H**  
**COMMITMENTS TO MINIMUM NOTIFICATIONS**

Proposer:

Activity	Minimum Notification Time
I-64 mainline closures affecting peak period travel	
Total interchange closures	
Ramp closures affecting peak period travel	
Lane closures on arterials with I-64 access affecting peak period travel	
Lane closures on local streets without I-64 access affecting peak period travel	
Bridge demolitions	
Construction Noise and Vibration Mitigation Plan notification items (specify radius around work area that notification is provided)	
(Proposers may add additional activities)	

NOTE: Peak Period is defined at 5:30 a.m. to 9:30 a.m. and 3:00 p.m. to 6:30 p.m., Monday through Friday, excluding holidays.



## FORM I PROPOSAL LETTER

---

Proposer:

[Proposal Date]

Ms. Lesley Hoffarth, P.E.  
The New I-64 Project Director  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017

The undersigned (“Proposer”) submits this proposal in response to that certain Request for Proposals (the “RFP”) issued jointly by the Missouri Department of Transportation (“MoDOT”), referred to herein as “MoDOT”, dated [Month DD, 2006] to solicit proposals for a Design-Build Contractor (“Contractor”) to enter into a Contract (the “Contract”) to develop The New I-64 Design-Build Project (the “Project”) as more specifically described in the documents provided with the RFP (the “RFP Documents”).

If selected by MoDOT, Proposer agrees: (a) to negotiate the terms of the Contract Documents with MoDOT in good faith and in accordance with the requirements of the RFP, if applicable, and (b) to enter into and perform its obligations as set forth in the Contract Documents, including compliance with all commitments contained in this proposal.

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

- Part 1 – General Information
- Part 2 – DBE Plan
- Part 3 – Applicable Standards
- Part 4 – Technical Elements
- Part 5 – Administrative Elements
- Part 6 – Price Proposal

Proposer acknowledges receipt, understanding, and full consideration of Addenda shown on Form N.

Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, and is satisfied that such provisions provide sufficient detail regarding the Work (as defined in the RFP) to be performed and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this proposal, including a thorough review of all of the RFP Documents; and that it has notified MoDOT of any deficiencies in or omissions from any RFP Documents or other documents provided by MoDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the Statement of Qualifications previously delivered to MoDOT are true and correct as of the date hereof, except as otherwise specified in the enclosed



**FORM I  
PROPOSAL LETTER**

---

Proposer:

proposal forms. Proposer agrees that such Statement of Qualifications, except as modified by the enclosed proposal forms, is incorporated in such forms as if fully set forth therein.

Proposer agrees that MoDOT will not be responsible for any errors or omissions in this proposal.

[To be signed by authorized signatory or signatories of the Proposer, use appropriate signature block(s)]

Sample signature block for corporation or limited liability company:

[Proposer's Name]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Sample signature block for partnership or joint venture:

[Proposer's Name]

By: [General Partner or Member's Name]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM I**  
**PROPOSAL LETTER**

---

Proposer:

Sample signature block for attorney in fact:

[Proposer's Name]

For: [Name]

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

\_\_\_\_\_  
Typed or Printed Name

**Attorney in Fact**  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Proposer's Business Address:

[Name]

[Street Address]

[City, State, ZIP]

[Country]

Proposer's State or Country of Incorporation: [State or Country]



**FORM J**  
**NON-COLLUSION AFFIDAVIT**

---

Proposer:

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

- A. The undersigned, being first duly sworn, deposes and says that (he/she) is the [Title] \_\_\_\_\_ of [Company Name] \_\_\_\_\_, which entity is a [shareholder, partner, joint venture member or other] \_\_\_\_\_ of [Proposer's Name] \_\_\_\_\_, a [corporation, partnership, limited liability company, joint venture, or other] \_\_\_\_\_, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.
- B. The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the proposal, or of that of any other Proposer, or to secure any advantage against MoDOT of anyone interested in the proposed Contract; all statements contained in the proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices, any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, proposal depository or any member, partner, joint venturer, or agent thereof to effectuate a collusive or sham proposal.
- C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other proposal, until after Award of the Contract or rejection of all proposals and cancellation of the RFP.



**FORM J**  
**NON-COLLUSION AFFIDAVIT**

---

Proposer:

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

[Proposer's Name]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_ S.S

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Notary Public  
in and for said County and State

\_\_\_\_\_  
My commission expires



**FORM K**  
**BUY AMERICA CERTIFICATION**

---

Proposer:

The undersigned certifies that only domestic steel and iron will be used for the construction portion of the Project.

To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes, which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1 percent of the Contract Price.

[To be signed by authorized signatory or signatories of the Proposer]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM L**  
**DEBARMENT, SUSPENSION, INELIGIBILITY,**  
**AND VOLUNTARY EXCLUSION CERTIFICATION**  
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

---

Proposer:

The undersigned, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, or manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency.
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years.
- Does not have a proposed debarment pending.
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past 3 years.
- Has not within the past 3 years had one or more public transactions (federal, state or local) terminated for cause or default.

If there are any exceptions to this certification, insert the exceptions in the following space.

[Insert exceptions, if any]

Exceptions will not necessarily result in denial of Award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

[To be signed by authorized signatory or signatories of the Proposer and each Major Participant]

[Proposer or Major Participant's Name]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM M**  
**USE OF CONTRACT FUNDS FOR LOBBYING**

---

Proposer:

The undersigned certifies, to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

[To be signed by authorized signatory or signatories of the Proposer]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM N  
EQUAL EMPLOYMENT OPPORTUNITY  
COMPLIANCE CERTIFICATION**

---

Proposer:

The undersigned certifies that:

- A. (It/He/She) [has/has not]\_\_\_\_\_ developed affirmative action programs on file at each establishment pursuant to 41 CFR § 60-4 and
- B. (It/He/She) [has/has not]\_\_\_\_\_ participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, (it/he/she) has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

[To be signed by authorized signatory or signatories of the Proposer and each Major Participant except as excluded below]

[Proposer or Major Participant's Name]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**NOTE:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers and proposed subcontractors only in connection with contracts and subcontracts, which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

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



## FORM O ESCROW AGREEMENT

---

Proposer:

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into as of this [Month DD, 2006] \_\_\_\_\_ by and among the Missouri Department of Transportation ("MoDOT"), [Proposer] \_\_\_\_\_, ("Proposer"), and [Bank Name] ("Escrow Agent") with reference to the following facts:

- A. MoDOT has issued a Request for Proposals (the "RFP") for development of The New I-64 Design-Build Project (the "Project").
- B. Proposer has submitted to MoDOT a proposal (the "Proposal") in response to the RFP.
- C. As part of the Proposal, Proposer is submitting one copy of all information regarding the assumptions made in calculating the prices submitted to MoDOT with the Proposal, as required under Section 6.13 of the ITP of the RFP, in [number] \_\_\_\_\_ separately sealed and labeled boxes ("EPDs").
- D. MoDOT and Proposer wish to employ the services of Escrow Agent to act as the escrow holder with regard to the EPDs for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Deposit. Proposer hereby deposits with Escrow Agent the EPDs. Escrow Agent hereby acknowledges receipt of such EPDs, and such EPDs shall be held in escrow under the terms and conditions of this Agreement.
2. Holding of EPDs. Escrow Agent shall hold the EPDs in escrow in a designated area on the premises of Escrow Holder on a confidential basis. The EPDs shall be stored in an area that is locked at all times. No third party, including the employees of Escrow Agent, shall be allowed access to any of the EPDs, provided that employees of Escrow Agent shall have access to the locked area for other purposes.
3. Release of EPDs. Escrow Agent shall release the EPDs as follows:
  - a) Escrow Agent shall release the EPDs to Proposer, and Proposer shall pick up the EPDs at Proposer's expense, upon delivery by MoDOT of a letter from The New I-64 Design-Build Project Director certifying that MoDOT has determined not to enter into a contract with Proposer.
  - b) Escrow Agent shall release the EPDs to MoDOT at such time as MoDOT and the selected Proposer are ready to start Contract negotiations (or upon MoDOT's selection of a Proposer if negotiations are not commenced) upon delivery of mutual instructions to Escrow Agent by MoDOT and Proposer.
4. Representation and Warranty. Proposer represents and warrants to MoDOT that, prior to delivery of the EPDs to Escrow Agent, the EPDs were personally examined by an authorized representative of Proposer and that they meet the requirements of the RFP and are sufficient to



**FORM O**  
**ESCROW AGREEMENT**

---

Proposer:

enable a complete understanding and interpretation of how Proposer arrived at its proposal prices.

5. Rights of Escrow Agent. If conflicting demands are made or notices served upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:
  - a) withhold and stop all further proceedings in, and performance of this escrow;
  - b) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves;
  - c) deliver all EPDs with seals intact to another location to be selected by MoDOT within 30 days after Escrow Agent delivers notice thereof to MoDOT.
6. Fees. Proposer shall be responsible for any escrow fees.
7. Notices. All notices, which may be or are required to be given or made by either party hereto to the other, shall be in writing. Such notices shall be either personally delivered or sent by registered mail, postage prepaid, to:

If to the Proposer:

[Proposer Contact]  
[Proposer Name]  
[Proposer Street Address]  
[Proposer City, State ZIP]

If to MoDOT:

Lesley Hoffarth, P.E.  
The New I-64 Project Director  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017

If to the Escrow Agent:

[Bank Contact, to be determined by the Proposer]  
[Bank Name]  
[Bank Street Address]  
[Bank City, State ZIP]

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

1. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.



**FORM O**  
**ESCROW AGREEMENT**

---

Proposer:

2. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.
3. Governing Law. The laws of the State of Missouri shall govern this Agreement.
4. Attorney's Fees. If either MoDOT or Proposer commences or engages in any action by or against the other party directly or indirectly arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in the action and in preparation for said action and any subsequent appeal. All parties agree to indemnify and hold Escrow Agent harmless from and against all costs, expenses, and attorneys' fees in connection with any such action.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

[To be signed by authorized signatory or signatories of the Proposer]

[PROPOSER]

MISSOURI HIGHWAY AND  
TRANSPORTATION COMMISSION

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

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**FORM O**  
**ESCROW AGREEMENT**

---

Proposer:

The Escrow Agent hereby accepts the escrow provided for in this Agreement, only to the extent of the escrow provisions.

[Bank Name]

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM P**  
**RECEIPT OF ADDENDA**

---

Proposer:

Addendum Number:		Dated:	

The undersigned acknowledges receipt of the addenda to the RFP as indicated above.

[To be signed by authorized signatory or signatories of the Proposer]

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

Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**FORM Q**  
**PRICE ALLOCATION FORM**

Proposer:

Proposer's WBS ID	ITEM	PRICE		COMMENTS
		Level IV	Level III	
	<b>Project Management</b>		\$ -	
	Project Administration	\$ -		
	DBE and Workforce Diversity	\$ -		
	Partnering	\$ -		
	Mobilization	\$ -		
	Co-Location	\$ -		
	Bonds and Insurance	\$ -		
	<b>Quality Management</b>		\$ -	
	(by Task)	\$ -		
	(by Task)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Public Information</b>		\$ -	
	(by Task)	\$ -		
	(by Task)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Design</b>		\$ -	
	Released for Construction Documents	\$ -		
	Final Design Documents	\$ -		
	Design Services during Construction	\$ -		
	As-Built Documents	\$ -		
	<b>Environmental Management</b>		\$ -	
	Erosion Control	\$ -		
	Construction Noise and Vibration Mitigation	\$ -		
	Other Environmental	\$ -		
	<b>Utilities</b>		\$ -	
	Ameren UE	\$ -		
	Lightcore	\$ -		
	Missouri American Water	\$ -		
	City of St. Louis Water	\$ -		
	Other Utility Work	\$ -		
	<b>Geotechnical and Earthwork</b>		\$ -	
	(by Area)	\$ -		
	(by Area)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Signing, Marking, and Lighting</b>		\$ -	
	(by Area)	\$ -		
	(by Area)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Drainage and Sewers</b>		\$ -	
	(by Area)	\$ -		
	(by Area)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Roadways and Pavement</b>		\$ -	
	(by Area)	\$ -		
	(by Area)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Signals and ITS</b>		\$ -	
	(by Area)	\$ -		
	(by Area)	\$ -		
	(Proposer to add rows as needed)	\$ -		



**FORM Q**  
**PRICE ALLOCATION FORM**

Proposer:

Proposer's WBS ID	ITEM	PRICE		COMMENTS
		Level IV	Level III	
	<b>Bridges and Other Structures</b>		\$ -	
	(list each bridge, west to east)	\$ -		
	(list each bridge, west to east)	\$ -		
	(list each bridge, west to east)	\$ -		
	(list each bridge, west to east)	\$ -		
	(list each bridge, west to east)	\$ -		
	(list each bridge, west to east)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	Other Structures	\$ -		
	<b>Walls</b>		\$ -	
	Retaining Walls	\$ -		
	Sound Walls	\$ -		
	<b>Landscaping</b>		\$ -	
	(by Area)	\$ -		
	(by Area)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Maintenance of Traffic</b>		\$ -	
	(by Area)	\$ -		
	(by Area)	\$ -		
	(Proposer to add rows as needed)	\$ -		
	<b>Maintenance during Construction</b>		\$ -	
	2007 Maintenance	\$ -		
	2008 Maintenance	\$ -		
	2009 Maintenance	\$ -		
	2010 Maintenance	\$ -		
<b>TOTAL PRICE:</b>		\$ -	must equal the Fixed Price	



**FORM R  
PROPOSAL BOND**

---

Proposer:

BOND NUMBER: \_\_\_\_\_

WHEREAS, [Proposer] \_\_\_\_\_, a [corporation, partnership, limited liability company, joint venture, or other] \_\_\_\_\_, ("Principal") is herewith submitting its proposal to the Missouri Department of Transportation ("MoDOT") referred to herein as "Obligee," in response to Obligee's Request for Proposals ("RFP") for furnishing Work for The New I-64 Design-Build Project (the "Project"); and

WHEREAS, Principal is required to furnish this bond as a condition of Obligee's acceptance of the proposal.

NOW, THEREFORE, Principal and [Name of Surety] \_\_\_\_\_, a \_\_\_\_\_ ("Surety"), an authorized surety insurer in the State of Missouri, are hereby held and firmly bound unto the Obligee in the sum of \$8,000,000 (the "Bonded Sum"), for the payment of which Principal and Surety jointly and severally firmly bind themselves, and their successors, and assigns.

The condition of this obligation is such that, if the Principal satisfies the conditions for release set forth in the RFP, then this obligation shall be null and void; but if the Principal is Awarded the Contract but fails to execute and deliver to MoDOT the Contract together with all required documents, or if the Principal is selected for negotiation and fails to negotiate in good faith as set forth in the RFP, the Principal and the Surety hereby agree to pay to Obligee the Bonded Sum, as liquidated damages and not as a penalty, within ten days after such failure.

If suit is brought on this bond by Obligee and judgment is recovered, Principal and Surety shall pay all costs incurred by Obligee in bringing such suit, including without limitation reasonable attorney's fees as determined by the court.

Surety agrees that its obligations shall not be impaired by any extension(s) of the time for acceptance of the Proposal that Principal may grant to Obligee, in accordance with the RFP or otherwise, and waives any notice of such extension(s).



**FORM R  
PROPOSAL BOND**

---

Proposer:

[To be signed by authorized signatory or signatories of the Proposer and the Surety]

[PROPOSER]

[SURETY]

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

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

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**FORM S**  
**OPINION OF COUNSEL**

---

[To be submitted on letterhead of Independent Law Firm or in-house counsel. Counsel must be licensed to practice in Missouri]

[Date]

Ms. Lesley Hoffarth, P.E.  
The New I-64 Project Director  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, Missouri 63017

RE: Request for Proposals ("RFP") for The New I-64 Design-Build Project (the "Project")  
Contract No. \_\_\_\_\_ ("Contract")  
\_\_\_\_\_ (the "Proposer")

Ms. Hoffarth:

[Describe relationship to Proposer and its joint venture members, general partners, and any other entities whose approval is required in order to authorize delivery of the proposal.] This letter is provided to you pursuant to Section 6.0 of the Instructions to Proposers contained in the RFP.

In giving this opinion, we have examined \_\_\_\_\_. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process, as we have deemed necessary or advisable. [If certificate used/obtained from Proposer, such certificate should also run in favor of MoDOT and should be attached to opinion]

In making this response we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [Opinion regarding organization/formation and existence of Proposer (if partnership/joint venture, add: and each of its joint venture members and general partners) and that Proposer has corporate power to own its properties and assets, to carry on its business, to enter into the Contract and to perform its obligations under the Contract]
2. [Opinion regarding good standing and qualification to do business in State of Missouri for Proposer]
3. [Opinion that Contract has been duly authorized by all necessary corporate action on the part of the Proposer and the Contract has been duly executed and delivered by Proposer]



**FORM S**  
**OPINION OF COUNSEL**

---

4. [Opinion that the Contract constitutes a legal, valid and binding obligation of the Proposer enforceable against the Proposer in accordance with its terms; if partnership/joint venture, add: and its joint venture members/general partners]
5. [Opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Contract; and that the Contract does not conflict with any agreements to which Proposer is a party [if partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Proposer is bound [if partnership/joint venture, add: and its joint venture members/general partners are bound]
6. [Opinion that execution, delivery and performance of all obligations by Proposer under the Contract does not conflict with, and is authorized by, the articles of incorporation and bylaws of Proposer [if partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership]; if joint venture, replace articles of incorporation and bylaws with joint venture agreement; if limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation]
7. [Opinion that execution and delivery by the Proposer of the Contract do not, and the Proposer's performance of its obligations under the Contract will not, violate any current statute, rule or regulation applicable to the Proposer or to transactions of the type contemplated by the Contract]

[Insert appropriate signature lines]



**FINAL REQUEST FOR PROPOSALS  
for The New I-64 Design-Build Project**

**St. Louis County and St. Louis City  
Missouri**

Project Number J6I0978  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017





May 15, 2006

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## **CONTENTS of RFP**

ITP	Instructions to Proposers
Book 1	Design-Build Contract
Book 2	Performance Requirements
Book 3	Applicable Standards
Book 4	Contract Drawings, Data, and Reports
Book 5	Informational Documents

## **DOCUMENT HISTORY**

<b>Version</b>	<b>Issued</b>	<b>Comments</b>
Draft	02/27/2006	
Final	05/15/2006	



**FINAL REQUEST FOR PROPOSALS  
for The New I-64 Design-Build Project**

**INSTRUCTIONS TO PROPOSERS**

Project Number J6I0978  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017





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## 1 INTRODUCTION

The Missouri Department of Transportation (MoDOT) issues this Request for Proposals (RFP) to solicit competitive proposals for a design-build contractor (Contractor) to enter into a Contract to provide design-build services for The New I-64 Design-Build Project from west of Spoeede Road in St. Louis County to west of Sarah Street in the city of St. Louis and I-170 from south of Brentwood Boulevard to Eager Road while meeting the commitments of the Final Environmental Impact Statement/Section 4(f) Evaluation and its Record of Decision. The improvements include actions to reconstruct or rehabilitate deteriorated pavement; reconstruct or rehabilitate structurally deficient and functionally obsolete bridges; improve traffic operations, geometrics, and safety; and to add mainline capacity between Spoeede Road and I-170. Major improvements will be made to interchanges along I-64 and its connections to I-170.

MoDOT will use a two-phase procurement process to select a design-build contractor to deliver The New I-64 Project. This Request for Proposals (RFP) is issued as the second phase of the procurement process. Each short listed Submitter that submits a Proposal in response to the RFP is referred to herein as a Proposer. MoDOT will award a Design-Build Contract (if any) for the Project to the Proposer offering the best value, to be determined as described in this RFP. Proposals will only be considered from those proposers (Proposers) that were notified in writing by MoDOT that they were short listed under MoDOT's Request for Qualifications issued on November 4, 2005.

This RFP includes the following documents (RFP Documents):

- Instructions to Proposers (ITP)
- Book 1 – Design-Build Contract
- Book 2 – Performance Requirements
- Book 3 – Applicable Standards
- Book 4 – Contract Drawings, Data, and Reports
- Book 5 – Informational Documents

The Contract Documents include Books 1 through 4. The Proposal will also be a Contract Document to the extent set forth in Book 1 Section 1.3.

### 1.1 Procurement Objectives

MoDOT is committed to partnering with the highway design and construction industry to deliver The New I-64 Project successfully by developing a design-build procurement process that allows Proposers the maximum flexibility to achieve or exceed the Project goals. MoDOT is committed to developing a new model for design-build delivery. The successful Proposer for The New I-64 Project will fully understand the Project goals and the design-build procurement process to deliver a Proposal that provides to MoDOT and the citizens of Missouri outstanding



transportation solutions within the available budget. The procurement process will begin with a very flexible RFP and will rely upon the Proposers and a multi-phased discussion process to develop the majority of technical requirements (Additional Applicable Standards) and innovative solutions including the Project definition, schedule, approach to managing traffic, approach to public information and approach to Disadvantage Business Enterprise and Workforce Utilization. The general phases of the procurement process are:

- Industry Review – MoDOT intends to discuss with the Proposers the big picture items including the procurement process, schedule for the procurement process, process to define Additional Applicable Standards and the Proposal evaluation process. MoDOT encourages the Proposers to propose/discuss as many Additional Applicable Standards and their details as practicable and provide comments as to whether or not the Book 2 Performance Specifications provide the Proposers with adequate detail.
- Technical Concepts Proposal Discussions – MoDOT will hold a series of one-on-one confidential meetings with each Proposer where the Proposer may present Technical Proposal concepts, Additional Applicable Standards and design exceptions, if any, to MoDOT and FHWA. The parties will conduct discussions regarding whether the Proposer's Technical Concepts Proposal is consistent with the desires of MoDOT and the Additional Applicable Standards and design exceptions, if any, are acceptable.
- Initial Technical Proposal Discussions – MoDOT intends to negotiate with each Proposer the details of their Initial Technical Proposal including the proposed innovative solutions and the Additional Applicable Standards (which standards are acceptable, conditions that need to be addressed in order to make the standards acceptable or which standards are unacceptable). MoDOT intends for the Technical Proposals to achieve or exceed the Project goals to the greatest extent possible.
- Final Technical Proposal/Price Allocation Discussions – MoDOT intends to negotiate with the apparent successful Proposer final contractual details including the use of the unsuccessful Proposer's solutions, if any, clean-up of any contractual issues and ensuring the enforceability of the Additional Applicable Standards.

MoDOT encourages confidential discussions with the Proposers throughout the procurement process.

## **1.2 Project Goals**

MoDOT has developed the following prioritized goals for the Project. The goals describe the minimum outcomes that MoDOT desires for the Project.

1. Deliver the project within the program budget of \$535 million
  - MoDOT has established a Fixed Price for the Design-Build Contract to insure that the selected Proposer's Fixed Price will be equal to the available Project budget of \$410 million.



2. Complete the Project no later than October 1, 2010
  - The procurement process provides the Proposers with the flexibility to develop the Project schedule including a Project Completion Deadline as early as practicable, but no later than October 1, 2010.
3. Maximize the mobility and capacity improvements in the corridor when construction is complete
  - The procurement process provides the Proposers with the flexibility to develop the Project definition while meeting the commitments in the Final Environmental Impact Statement/Section 4(f) Evaluation and its Record of Decision. MoDOT's objective is to have the Proposers develop scope solutions that stretch the available Project budget providing the maximum improvements throughout the Project.
4. Minimize and mitigate construction impacts to customers through construction staging and communication efforts
  - The procurement process provides the Proposers with the flexibility to develop the plan to manage traffic during construction that provides the greatest regional traffic mobility while completing the Project in the least amount of time. The procurement process also provides the Proposers the flexibility to develop a public communications plan that describes how the Project communications team will strategically stay ahead of Project communications opportunities with results that exceed public expectation.
5. Provide a quality product that produces a long lasting transportation facility
  - MoDOT has recently begun incorporating practical design into its transportation improvement projects. Practical design challenges traditional standards to develop efficient solutions to solve today's project needs. MoDOT's goal of practical design is to build "good" projects, not "great" projects, to achieve a great system. Innovation and creativity are necessary to accomplish practical design. The procurement process provides the Proposers with the flexibility to determine the technical standards and requirements ("new ways of doing business") to be used for the Project furthering the practical design goal of safer roadways, of great value, in a faster manner.
6. Demonstrate a quality construction and communication effort that creates a new model for doing a design-build project
  - The procurement process challenges the industry to come up with the most creative and innovative approaches to meet or exceed the goals for The New I-64 Project and WOW the public.

### **1.3 Draft RFP and Industry Review**

MoDOT will issue a Draft RFP to the Proposers for their review and shortly after will initiate confidential "one-on-one" meetings with the Proposers. The purpose of the industry review discussions is to improve the Proposers' understanding of the Project goals and RFP and to improve the RFP based upon industry questions and



comments. It is MoDOT's desire that its commitment to confidential discussions will create an atmosphere that encourages open discussions between the Proposers and MoDOT. MoDOT's small core Project team plans on attending the industry review meetings, along with technical experts attending for specific topical discussions. MoDOT intends to request the Proposers to establish the agenda for the industry review meetings. However, for the initial meeting, MoDOT will provide the agenda and review ground rules for the discussions. Items MoDOT desires to discuss during industry review are:

- a) Does the procurement process, as described in the ITP, maximize the opportunities to meet or exceed the Project goals? Do the Proposers have suggestions on how the process could be improved to increase the likelihood of exceeding the Project goals?
- b) Does the schedule for the procurement process provide the appropriate amount of time to maximize the opportunities to meet or exceed the Project goals? Do the Proposers have suggestions on how the procurement schedule could be modified to increase the likelihood of exceeding the Project goals?
- c) The procurement process provides the Proposers with the opportunity to define all Additional Applicable Standards for the Project as long as they comply with the national standards identified in Book 3, Applicable Standards, of the RFP. MoDOT encourages the Proposers to identify and present their proposed technical requirements that increase the opportunities to meet or exceed the Project goals during the industry review discussions including design requirements, construction specifications, special provisions, standard drawings, materials and testing requirements, and maintenance requirements as described in Section 3.5. Industry review discussions will assist MoDOT's understanding of the proposed technical requirements and allow MoDOT to provide feedback to the Proposers on the acceptability of the proposed requirements. **The procurement process provides the opportunity of having two Proposals that have different technical requirements (Additional Applicable Standards). MoDOT's desire is to encourage new ways of doing business to increase the opportunities to meet or exceed the Project goals.**
- d) Do the requirements in Book 2, Performance Requirements, provide the necessary level of definition to support the Project goals or is it beneficial for MoDOT to provide additional detail on what is required? While MoDOT's goal is to encourage flexibility for the Proposers, MoDOT desires to obtain feedback from the Proposers on which performance requirements, if any, the Proposers prefer MoDOT to provide additional definition.

## 1.4 Final RFP and Technical Concepts Proposal

MoDOT will issue a Final RFP as modified by the questions and comments received during industry review. MoDOT will then hold a series of confidential meetings with each Proposer where the Proposer may present technical concepts, Additional Applicable Standards and design exceptions, if any, to MoDOT and FHWA. MoDOT



is requesting a Technical Concepts Proposal and confidential meetings in order to receive, from both Proposers, the highest quality Initial Technical Proposal possible.

**During the discussions, absolutely no information will be shared from one Proposer's Proposal to the other Proposer including technical solutions, Additional Applicable Standards or design exceptions, if any.** The purpose of the confidential meetings will be to:

- a) Provide verbal feedback to the Proposer on whether the Proposer's technical solutions achieve or exceed the Project goals to the greatest extent possible and to discuss possible improvements that can be made by the Proposer including Project definition changes, moving focus from one technical area to another and changes within a technical area.
- b) Provide verbal or written feedback to the Proposer regarding Additional Applicable Standards and design exceptions, if any.. MoDOT's feedback will indicate if the AAS or design exception is acceptable, acceptable with conditions, or unacceptable.

## 1.5 Initial Technical Proposal

After the series of Technical Concepts Proposal meetings have occurred, the Proposers will submit a detailed Initial Technical Proposal, incorporating discussions that occurred during the previous phase. After receipt of the Initial Technical Proposals, MoDOT may hold confidential discussions with each Proposer and will provide comments to each Proposer in writing.

## 1.6 Final Technical Proposal and Price Allocation

MoDOT will request the Proposers to submit their Final Technical Proposal and Price Allocation. MoDOT will evaluate the Proposals and determine the apparent successful Proposer. MoDOT intends to meet with the apparent successful Proposer and to negotiate into its Proposal ideas from the unsuccessful Proposer's Proposal that improve its Proposal, if any, and to clean-up any contractual issues and insure the enforceability of the Additional Applicable Standards.

## 2 RFP PROCESS

### 2.1 Draft RFP and Industry Review

Subsequent to the issuance of the Draft RFP, MoDOT will begin holding industry review meetings at MoDOT's District 6 office. The first meeting will be held one week after the Draft RFP is issued. MoDOT intends to meet bi-weekly with each Proposer, but will discuss meeting frequencies at the first meeting with each Proposer. The opportunities for meeting frequencies and durations will be the same for each Proposer.

- **Initial Industry Review Meeting:** MoDOT will set the agenda for the first



industry review meeting with each Proposer.

- **Subsequent Industry Review Meetings:** After the initial industry review meeting with each Proposer, the Proposers will set the agenda for each meeting.

The Proposers may begin submitting Additional Applicable Standards during the Industry Review phase as they are developed using Form C - Additional Applicable Standards. MoDOT will review the Additional Applicable Standards and verbally communicate with the Proposer if the standards are acceptable, not acceptable, or acceptable with conditions.

## 2.2 Final RFP and Technical Concepts Proposal

MoDOT will make modifications to the RFP based on comments received during industry review as it deems appropriate and will issue the Final RFP. After release of the Final RFP, MoDOT will initiate confidential discussions with each Proposer (Technical Concepts Proposal meetings). The number of technical concept meetings will be determined by MoDOT based upon Proposer input. The meetings will be held at the Proposer's place of business in the St. Louis area. The Proposers will establish the agenda for the meetings. **During the confidential discussions MoDOT will not share any information discussed with one Proposer with the other Proposer.**

The Proposers may request clarifications to the Final RFP informally during the Technical Concepts Proposal meetings, or formally in writing. MoDOT may provide responses to informal requests verbally during the confidential technical concepts meetings or may request that the Proposer's request for clarification be submitted formally in writing. Formal requests for clarification shall be addressed to the Project Director and MoDOT will respond to the formal requests on the Project website and will not identify which Proposer requested the clarification. MoDOT reserves the right to amend the Final RFP via addendum as a result of any request for clarification.

MoDOT will provide verbal feedback regarding the Proposer's Technical Concepts Proposal during the technical concepts meetings. The discussions will include possible weaknesses and deficiencies, and other aspects of the Proposal that could be altered or explained to enhance materially the Proposal's potential for award, including possible Project definition changes, moving scope items from one technical area to another and necessary revisions within technical areas.

MoDOT will also provide feedback regarding the acceptability of the Proposer's proposed Additional Applicable Standards, including construction specifications, special provisions, design requirements (by discipline), standard drawings, materials and testing requirements, and maintenance requirements.

The Proposers may request deviations from the Applicable Standards defined in Book 3 as design exceptions. Design exceptions shall be submitted as early in the procurement process as possible, but no later than the Initial Technical Proposal,



using Form E – Design Exceptions.

## **2.3 Initial Technical Proposal**

The series of discussions held during the Technical Concepts Proposal phase will culminate with the formal submission of the Initial Technical Proposals. The Proposers' Initial Technical Proposals shall not include a Price Allocation.

MoDOT will review the Initial Technical Proposals, but will not formally evaluate the proposals. MoDOT will summarize the review of the Initial Technical Proposals by providing comments to each Proposer in writing. After receipt of the Initial Technical Proposals, MoDOT may request confidential discussions be held with each Proposer.

As part of the Initial Technical Proposals, a compiled package of all Additional Applicable Standards and design exceptions, if any, shall be included. MoDOT will review the standards and design exceptions, if any, and provide written feedback of their acceptability.

## **2.4 Final Technical Proposal and Price Allocation**

Proposers shall submit their Final Technical Proposals and Price Allocation. The Final Technical Proposals shall incorporate changes to their Initial Proposals as a result of MoDOT written comments and possible discussions with MoDOT. The Final Technical Proposals and Price Allocation will be evaluated as described in Section 3.

MoDOT will make the apparent best value selection and pay the Stipend to the unsuccessful Proposer. After payment of the Stipend to the unsuccessful Proposer, MoDOT will provide the unsuccessful Proposer's Final Technical Proposal (excluding Price Allocation and confidential information) to the successful Proposer and will negotiate inclusion of any technical solutions that improve its proposal, if any. MoDOT will also negotiate enforceability of the proposed Additional Applicable Standards and any necessary design-build modifications, details and/or clarifications to the Additional Applicable Standards.

## **2.5 Contract Award**

MoDOT will award the Contract to the Proposer with the apparent best value after the final Contract has been successfully negotiated. If no final agreement is reached between MoDOT and the Proposer with the apparent best value proposal, MoDOT reserves the right to pay the stipend to the apparent successful Proposer and to negotiate a Contract with the unsuccessful Proposer.

## **2.6 Procurement Schedule**

Deadlines for submitting RFP questions and Proposal are shown below. This schedule is subject to revision by addenda to this RFP.



<b>Item</b>	<b>Schedule</b>
Issue Draft RFP	February 27, 2006
Industry Review	March – April 2006
Issue Final RFP	May 15, 2006
Technical Concepts Proposal	mid-May – mid July 2006
Last Day for Proposer Clarifications	June 26, 2006
MoDOT Posts Final Responses to Proposer's Requests for Clarification and Final RFP Addendum	July 10, 2006
Initial Technical Proposals Due	August 11, 2006
Negotiations	mid-August to mid-September 2006
Final Technical Proposal and Price Allocation Due	October 20, 2006
Discussions with Apparent Best Value Proposer	mid-November to mid-December 2006
Commission Approval	December 13, 2006
Execute Contract and Issue NTP1	December 20, 2006

### **3 PROPOSAL CONTENTS AND EVALUATION PROCESS**

#### **3.1 Organization of Proposal**

The Proposal shall be organized as follows:

- Part 1 – General Information
  - Major Participants
  - Key Personnel
- Part 2 – DBE Performance Plan
- Part 3 – Additional Applicable Standards
- Part 4 – Technical Elements
  - Completion Schedule
  - Project Definition



- Maintenance of Traffic
- Public Information
- DBE Commitments and Socially/Economically Disadvantaged Workforce Utilization
- Part 5 – Administrative Elements
- Part 6 – Price Allocation

The Initial Technical Proposal shall include Parts 1, 3, and 4. The Final Technical Proposal shall include Parts 2 thru 5, and changes to Part 1 if any. The Price Allocation shall include Part 6 only.

## **3.2 Evaluation Process**

When the Final Technical Proposals and Price Allocations are received, the Price Allocations will be separated from the Technical Proposals and will not be opened until completion of the Technical Proposal evaluations.

The Proposals will be reviewed for the Proposal's conformance to the RFP instructions regarding organization and format, the responsiveness of the Proposer to the requirements set forth in the RFP and compliance with the pass/fail criteria. Those Proposals determined to be non-responsive to this RFP may be excluded from further consideration and the Proposer will be so advised. Proposers submitting non-responsive Proposals are not eligible for payment of the Stipend.

## **3.3 Contents and Evaluation of Part 1 – General Information**

### **3.3.1 Major Participants**

Proposers shall submit any changes to Major Participants from the information provided in their Statements of Qualifications

#### Submittal Requirements:

- Narrative describing the rationale for any changes to Major Participants.
- Form A – Major Participant Information shall be submitted for Major Participants that were not identified in the Statement of Qualifications.
  - If the Proposer has submitted a request to change Major Participants prior to submittal of its Proposal and MoDOT has provided an Approval letter for the requested change, the Proposer is only required to submit the MoDOT Approval letter with its Proposal.

### **3.3.2 Key Personnel**

Each Proposer shall define Key Personnel and a corresponding organizational chart that demonstrates the Proposer's knowledge of the Project and approach to meeting the Project goals. Each Proposer shall describe the organization style of the team



and indicate how the qualifications of each Key Personnel increase the Proposer's ability to meet or exceed the Project goals.

Key Personnel identified in the Proposal shall not be removed, replaced, or added without written Approval of MoDOT. Written request must document the proposed change and demonstrate that the change shall be equal to or better than the Key Personnel submitted in the Proposal.

Proposers shall define the following eight positions as Key Personnel.

- **Project Manager** – The Project Manager is responsible for all aspects of the Project, including, but not limited to, overall design, construction, quality management, contract administration, and public information. The Project Manager shall have at least ten years of recent experience managing the design and construction of major urban freeway systems. The Project Manager shall be assigned to the Project full time and on Site for the duration of the Project.
- **Quality Manager** – The Quality Manager's responsibilities include, but are not limited to, creation and execution of the Submitter's quality program, quality personnel, assurance activities independent of production, enforcement of quality procedures, and documentation of quality records including public information, environmental compliance and DBE/labor compliance. The Quality Manager shall report directly to the Proposer's executive management team. The Quality Manager shall have at least ten years of recent experience developing, implementing, and overseeing quality programs.
- **Design Manager** – The Design Manager is responsible for ensuring the Project design is completed and all design requirements are met. The Design Manager shall be assigned to the Project full time, on site, when design activities are being performed. The Design Manager shall have at least ten years of recent experience managing the design of major urban highways and shall be a registered professional engineer in the State of Missouri.
- **Public Information Manager** – The Public Information Manager is responsible for developing and implementing a Public Information Plan. The Public Information Manager shall have at least seven years of recent experience coordinating public information on public projects. At least three years of recent experience is required communicating traffic coping techniques during the construction phase of major public projects. The Public Information Manager shall be assigned to the Project full time, on Site. At a minimum, the Public Information Manager shall have an undergraduate degree in Communications, Journalism, or appropriate field of study.
- **Maintenance of Traffic Manager** – The Maintenance of Traffic Manager is responsible for the management of work zones within the Project limits as well as any off site areas that may be affected by the Project. The



Maintenance of Traffic Manager shall not be assigned any other duties or responsibilities and must be full time, on site. At least seven years of recent experience of managing work zones during construction is required.

- Roadway Design Manager – The Roadway Design Manager is responsible for the development of the roadway plans and other associated roadway features. The Roadway Design Manager shall be on site during roadway design activities and be available during construction activities. The Roadway Design Manager shall have at least five years of recent experience in design of major urban freeways and shall be a registered professional engineer in the State of Missouri.
- Structural Design Manager – The Structural Design Manager is responsible for ensuring that the bridge and Structural design is completed and design requirements are met. The Structural Design Manager shall be on site during structural design activities and be available during construction activities. The Structural Design Manager shall have at least seven years of recent experience in the design of highway structures and shall be a registered professional engineer in the State of Missouri.
- Construction Manager – The Construction Manager shall be responsible for the overall structure and roadway construction for the Project. The Construction Manager shall be on site and shall be assigned to the Project full time. The Construction Manager shall have at least seven years of recent experience in highway construction and testing.

Submittal Requirements:

- Narrative describing any changes to Key Personnel identified in the Statement of Qualifications and a description comparing the qualifications of the new individual(s) to the individual originally submitted.
  - If the Proposer has submitted a request to change Key Personnel prior to submittal of its Proposal and MoDOT has provided an Approval letter for the requested change, the Proposer is only required to submit the MoDOT Approval letter with its Proposal.
- Organizational Chart
- Form B – Key Personnel Summary
- Resumes for new Key Personnel and changed Key Personnel, if any. The Proposers do not need to re-submit resumes that were included in their Statement of Qualifications.

Evaluation Criteria:

All elements in Part 1 will be evaluated on a pass/fail basis.

### **3.4 Contents and Evaluation of Part 2 – DBE Performance Plan**

The Proposer shall submit a draft DBE Performance Plan that is in conformance with



the requirements of Book 1, Exhibit D.

Submittal Requirements:

- Draft DBE Performance Plan

Evaluation Criteria:

Part 2 will be evaluated on a pass/fail basis.

### **3.5 Contents and Evaluation of Part 3 – Additional Applicable Standards**

MoDOT understands that, at times, MoDOT manuals, specifications and standards do not allow for maximum flexibility. The Proposers shall meet MoDOT, AASHTO, and FHWA requirements unless alternative requirements are proposed and accepted by MoDOT. The Proposers are encouraged to propose alternative technical requirements and Additional Applicable Standards for the Project that strive to meet or exceed the Project goals. The proposed manuals, specifications and standards, shall be limited to those already reviewed by FHWA, for example, standards from state departments of transportation. All Additional Applicable Standards accepted by MoDOT will be incorporated into Book 3 of the Contract Documents.

The Proposers shall provide the Additional Applicable Standards that include construction specifications, special provisions, design requirements (by discipline), standard drawings, materials and testing requirements, and manuals proposed for the Project.

The Proposers shall also identify their specific approach to the following items:

- For mechanically stabilized earth walls, the Proposer shall define the wall systems to be used and their associated application criteria.
- Describe the corrosion protection measures for structures for reinforcing steel and concrete subject to chloride exposure, such as decks, under joints and within splash zones to be incorporated and shall include the definition of splash zone if utilized.
- The application limits and material requirements for structures for protective coatings such as graffiti protection to be used.
- The specifications for the application of proposed coatings for bridge superstructure, signs, message boards, steel piling and miscellaneous steel.
- A list of structures that will incorporate a bridge approach slab and include the standard details of the approach slabs.
- The types of expansion devices to be used on bridges. If longitudinal joints are to be utilized, the Proposer shall show how they are located with respect to traffic.
- Describe the conditions that need to occur for bridge traffic barriers to be



used. Describe the type and heights of bridge traffic barriers.

- Describe the conditions that need to occur for pedestrian railing to be used on bridges. Describe the type of pedestrian railings to be used including materials, grid spacing, height, and method for corrosion protection.
- The roadway design shall include the Proposer's method used to determine super elevation rates.
- Specify what materials will be used for drainage pipes in various applications (i.e. under mainlines, under local roads, on bridges, etc.).
- For highway signing the Proposer shall define how they will interpret the 'guidance' recommendations in MUTCD.
- For highway lighting, the Proposer shall provide their approach to minimizing light pollution to adjacent properties.
- The Proposer shall provide a draft Urban Design Concept showing how a "streamline moderne" Art Deco style will be incorporated into the Project.

Submittal Requirements:

- Form C – Additional Applicable Standards including identifying the state transportation department where the standards have been used if proposing non-MoDOT standards or rationale for choosing the proposed standards if the standards have not been used by any state transportation department prior to this Project.
- A narrative describing the approach to the specific items listed in this section.
- Draft Urban Design Concept for the Project.

Evaluation Criteria:

Part 3 will be evaluated on a pass/fail basis. The Additional Applicable Standards will be evaluated to insure that the Proposer has adequately defined all technical requirements necessary for successful Project completion. The Additional Applicable Standards will be evaluated for thoroughness of requirements (have all technical areas been addressed), completeness of the requirements (has the necessary detail been provided), enforceability (are the requirements written in enforceable contract language), and acceptability.

## **3.6 Contents and Evaluation of Part 4 – Technical Elements**

### **3.6.1 Completion Schedule (15 Points)**

The Request for Proposals was developed to afford the Proposers the most flexibility in the planning and execution of the Work. The Proposers may define Segment Completion Deadlines for up to six usable sections of the Project. The Project Completion Date must be identified and can be no later than October 1, 2010.

Submittal Requirements:



- Form D – Completion Deadlines Part I

Evaluation Criteria:

The Completion Deadlines will be evaluated to determine the ability to meet or exceed the Project goals. MoDOT will evaluate the proposed deadlines based upon quantitative and qualitative benefits including:

- Reducing road user costs by minimizing adverse travel.
- MoDOT project management cost savings as a result of a shorter project completion schedule.
- Public goodwill achieved by completing the project quickly and efficiently.
- Minimizing business access disruptions.
- The Proposer's commitment to the completion of useable Project sections that increase regional mobility, provide major regional arterial connectivity and opening them to traffic as soon as practicable.

### 3.6.2 Project Definition (45 Points)

**Geometrics:** The Proposers shall define the geometric features of the Project. The features defined shall include the termini of the Project, number of mainline lanes, lane widths, ramp widths, shoulder widths, and interchange types with lane configurations. The Proposers shall define the location of the interchanges and crossings including vehicular and non-vehicular traffic.

The Proposers shall determine the capacity and level of service for the lane configurations proposed. The Proposers may request deviations from the Applicable Standards defined in Book 3 as design exceptions.

In the event the Proposer's Project definition requires additional right of way not provided by MoDOT in the RFP or requires approvals including New Environmental Approvals the following will apply:

- The Proposer will have full responsibility for obtaining any approvals including New Environmental Approvals. If any required approval is not subsequently granted with the result that the Proposer must change its design, the Proposer will not be eligible for a Change Order that increases the Contract Price or extends the Completion Deadlines.
- The Proposer will have full responsibility for obtaining and paying for any additional right of way not provided by MoDOT and if any such right of way is purchased by the Contractor after NTP1 the Contractor shall follow all applicable requirements set forth in Book 2 Section 8. If any additional right of way required by the Proposer's Project definition is not subsequently obtained by the Proposer, the Proposer must change its design and the Proposer will not be eligible for a Change Order that increases the Contract Price or extends the Completion Deadlines.



**Pavements:** The Proposers shall identify the anticipated design life of all pavements on the Project, including reconstructed and rehabilitated areas. The Proposers shall provide the pavement design for mainline lanes including auxiliary lanes, shoulders and ramps for both reconstructed areas and rehabilitated areas, and their locations. The Proposers shall describe the pavement design method they used to develop the pavement selections.

**Structures:** The Proposers shall provide a list of all structures to be rehabilitated or reconstructed along with their associated details in the proposal. Additionally, for existing structures to be rehabilitated and used in place, the Proposers shall identify their estimated remaining serviceable life.

Submittal Requirements.

- Provide a graphic plot of the Project's plan view at a 200:1 scale showing the following items:
  - The termini of the Project
  - The number of mainline lanes
  - The lane widths, ramp widths, shoulder widths for mainline lanes
  - The interchange types with lane configurations
  - The location of the Project elements that it proposes to use in place or rehabilitate
  - The location of the proposed pavement types
  - The type and height of median barrier to be used along the mainline
- Provide a traffic analysis based on nationally accepted traffic evaluation methodology using the year 2020 forecasts provided by MoDOT. A graphic or table that shows the estimated maximum capacity (passenger cars/hour), density (passenger cars/hour/lane) and level of service for the mainline and interchanges.
- Form E – Design Exceptions, if needed
- Form F – Items to be Used in Place or Rehabilitated
- For pavements the Proposers shall provide:
  - The pavement design method, including all of the design inputs that were used to arrive at the pavement selections including a narrative on how the inputs were determined.
  - For each proposed pavement type for reconstructed and rehabilitated areas on mainline lanes, including auxiliary lanes, shoulders and ramps, the Proposers shall provide pavement design outputs as follows:
    - Design life
    - Rehabilitation cycles for the design life provided
    - Pavement typical sections



- Pavement and base thickness
  - Distress predictions including rutting and fatigue cracking for asphalt pavements and faulting and slab cracking for concrete pavements
  - Minimum friction number (FN) and the maximum International Roughness Index (IRI) measurement that will be obtained on the final wearing surface.
- For new and rehabilitated bridges, the Proposers shall provide a narrative describing the proposed construction. Include as much information as possible relating to each structure type or rehabilitation proposed. The information to be provided shall, at a minimum, include the following:
    - Deck thickness
    - Superstructure continuity / Integral abutment construction
    - Redundancy / Fracture Critical Members
    - Typical cross sections for each structure type selected
    - Foundation types and bearing materials
    - Proposed wearing surface or the allowance for future wearing surface
    - Provision for future maintenance of traffic during reconstruction
    - Rehabilitation methods

Evaluation Criteria:

The Project definition will be evaluated to determine its ability to meet or exceed the Project goals. MoDOT will evaluate the proposed project definition based upon quantitative and qualitative benefits including:

- Geometrics:
  - A Project definition that stretches the available Project budget by providing the maximum improvements throughout the Project, improving safety to the greatest extent possible.
  - A Project definition that provides maximum mobility and capacity improvements in the corridor when construction is complete by providing the highest level of service and capacity for mainline lanes and ramps.
  - A Project definition that provides improved driver expectancy through efficient accessibility and predictable interchange configurations.
- Pavements:
  - A pavement design proposal that provides for a long pavement life with minimal rehabilitation cycles. MoDOT will also evaluate the proposal for skid resistance, greater smoothness, and lower structural distresses.



- Structures:
  - MoDOT will evaluate the structure types based upon the predicted least maintenance cost for MoDOT and ease of re-decking, inspection and maintenance.

### **3.6.3 Maintenance of Traffic (20 Points)**

The Proposer shall submit a draft Maintenance of Traffic (MOT) Plan. The draft MOT plan shall include a construction phasing plan with a map and narrative. Within each section identified in the Proposer's schedule, develop phases for the purpose of planning and executing the Work. A phase is a specific sequence of the construction Work within a geographic area; for example, Work where a major traffic movement is redirected and left in place until the Work is complete.

The phasing map shall be color coded for each section and phase. At a minimum for each phase of construction, show on the phasing map the following elements:

- Interstate sections, mainline closures, and planned detour routes if any
- Ramps, access closures, and planned detour routes if any
- Crossroads with interstate access, closures, and planned detour routes if any
- Crossroads without interstate access, closures, and planned detour routes if any
- Major traffic alignment shifts within each phase
- Commitments such as phase durations or completion dates

The narrative portion of the draft MOT Plan shall address the following:

- Regional mobility strategy and description of where motorists will travel region-wide, including all modes of transportation.
- Projected level of service narrative that estimates the traffic impacts on a daily, morning peak hour and evening peak hour basis on the regional roadway system including the traffic analysis methodology, tools and assumptions used.
- Show the minimum lane widths, shoulder widths and design speed to be used on all the types of roadways and ramps during construction.
- Describe your plan to coordinate with cities, counties, and other transportation providers in developing and implementing your MOT Plan.
- The draft MOT Plan should describe an emergency access plan for emergency vehicles and public/semi-public facilities such as hospitals, fire stations, police stations, schools, etc. The Proposer shall provide a description of their emergency access approach and commitments. The Proposer shall also detail how to maintain access to the ten hospitals in the corridor.
- Describe your approach and commitments to incident management during



construction.

- Describe the approach and rationale for using proposed and existing Intelligent Transportation System elements.

Submittal Requirements:

- Draft Maintenance of Traffic Plan
- Construction phasing maps at a scale of 1" = 300' or 1" = 200'
- Form G – Completion Deadlines Part II

Evaluation Criteria:

The Maintenance of Traffic element will be evaluated to determine its ability to meet or exceed the Project goals. MoDOT will evaluate the proposed MOT plan based upon quantitative and qualitative benefits including:

- Safe geometric characteristics of the interstate mainline, interchange ramps and cross roads during the construction period.
- Minimum duration of closures.
- Greatest level of service on regional roads.
- Maintaining emergency access to the greatest extent practicable.
- Minimizing impact to peak demand travel.
- Level of incident management service.

### **3.6.4 Public Information (10 Points)**

MoDOT's mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri. MoDOT is aiming high in this area and is looking for proposals that will provide a WOW effect to the public.

Communication about the Project will be divided between the Contractor and MoDOT. The Contractor will be responsible for communicating the Project's progress, maintenance of traffic issues and daily coping information to the public. MoDOT will be responsible for communicating the big picture and Project vision information. The end result should be a communication effort that has the public amazed at the amount of information, and the timeliness and accuracy of Project information provided to them throughout the duration of the Project.

The Contractor shall be responsive to the public's concerns and make every effort to be proactive in providing information so potential problems can be averted. Advance notice and ongoing communication will ease the public's concerns and garner support for the Project.

A team approach between the Contractor's Public Information Manager and MoDOT's I-64 Community Relations Manager is critical to the success of the Project. MoDOT expects to develop and foster a team environment with ongoing coordination



between the two staffs to provide the best information to the public. MoDOT anticipates that the Contractor's Public Information Plan will need to be regularly assessed and adjusted to meet the changes needs and issues of the public.

The Proposers shall submit a draft Public Information Plan (PIP). Within the draft PIP the Proposers shall describe, at a minimum, its approach on the following issues.

- Describe your strategic planning process that will include identification of Stakeholders and the tactics involved.
- Describe your approach to providing construction information, including coping techniques and notification to the public.
  - Describe your communications approach for specific construction issues such as construction noise, business access, hospital access, and the special communication needs of the St. Louis Zoo and Central Institute for the Deaf.
- Describe your approach to be responsive to media requests in general and how you will coordinate that with MoDOT.
  - Describe your approach to crisis communications, including your plan for coordinating this information with MoDOT and your responsiveness to the media.
- The New I-64 Project currently has a web site at the address of [www.thenewi64.org](http://www.thenewi64.org). Describe your approach to how you would use the web site for communication and your approach to who would be responsible for the web site.
- Describe your approach to handling customer inquiries, timely response and your plans to be responsive to customer concerns and needs. How will you ensure callers don't have long wait times? How will you coordinate with MoDOT's Customer Service Center?
- Describe your approach to assessing public opinion and adjusting the PIP accordingly to ensure a WOW response from the public during the Project and upon completion.

**Submittal Requirements:**

- Draft Public Information Plan
- Form H – Commitments to Minimum Notifications

**Evaluation Criteria:**

The Public Information elements will be evaluated to determine its ability to meet or exceed the Project goals. MoDOT will evaluate the proposed PI plan based upon quantitative and qualitative benefits including:

- A strategic approach to Public Information that anticipates issues and



proactively communicates key messages to the appropriate audiences.

- A thorough identification of the stakeholders and how effectively the strategies and tactics will keep them informed.
- Commitments to effective advance notices of construction activities.
- A crisis communications approach that includes a commitment to and speed of communication between the Contractor and MoDOT, a thorough plan for solving problems and the speed of communication to the public and media.
- How customers' inquiries and requests will be met in a timely and personable way.
- How flexible the PIP is to the changing needs of the community and the Project.

### 3.6.5 DBE Commitments and Socially/Economically Disadvantaged Workforce Utilization (10 Points)

**DBE Commitments:** The Proposers shall describe the DBE commitments that have been made as of the Proposal Due Date and shall describe the efforts taken by the Proposer to ensure that the dollars committed to DBEs on the Project are representative of the available design and construction DBEs.

**Workforce Development Plan:** MoDOT has been working with the community and had developed a Workforce Utilization Plan Partnering Agreement. This agreement describes MoDOT's plan to encourage the use of a diverse workforce. Incentives may be available to the Contractor.

The following chart outlines the potential opportunity for minorities, females and economically disadvantaged individuals to be collectively trained, hired, and obtain journey-level status in their respective trade areas. If the number turns out to be greater than 500, the same percentages will apply as the standard for workforce development on this Project:

Type of Incentive	Percent of Workers	Incentive applies to ____ Number of Workers		Incentive per Hour
		If total workers = 300	If total workers = 500	
OJT	20%	60	100	\$3.50
Additional OJT	5%	15	25	\$10.00
Professional Services	5%	15	25	\$10.00
<b>TOTALS:</b>		<b>90</b>	<b>150</b>	

The Proposers shall submit a draft Workforce Development Plan that complies with



Book 1, Section 7.1.4. At a minimum, the draft Plan shall include the following items:

- The identified stakeholders and the strategies and tactics to reach workforce utilization
- Strategies for striving to meet the federal standards of 14.7% minorities and 6.9% women goals
- Strategies for striving to meet the 20% On-the-Job (OJT) training goal for individuals who are minorities, women, and economically disadvantaged individuals
- Strategies for striving to obtain an additional 5% incentive for OJT individuals who are minorities, women, and economically disadvantaged individuals over and above the 20% goal
- Strategies for striving to obtain an additional 5% incentive for professional services individuals who are minorities, women, and economically disadvantaged individuals
- Approach to hiring and retaining graduates of pre-apprentice and apprenticeship training programs who are minorities, women, and economically disadvantaged individuals
- Commitment to providing necessary documentation for trainees to be accepted into the apprentice program
- Approach to maximizing relationships with pre-apprenticeship and apprenticeship programs and hiring agencies
- Approach to incorporating diversity and sensitivity training to reduce and eventually eliminate harassment and other barriers

Submittal Requirements:

- DBE commitments as described in Book 1, Exhibit D
- A draft Workforce Development Plan

Evaluation Criteria:

- DBE Commitments:
  - The Proposer's commitment to meeting the DBE goal, as evidenced by contracts and/or Letters of Subcontractor Intent entered into as of the Proposal Due Date.
  - The Proposer's plan to ensure that the dollars committed to DBEs on the Project are proportionately distributed among the available design and construction DBEs.
- Draft Workforce Development Plan:
  - MoDOT will evaluate the effectiveness of the draft Workforce Development Plan based on:



- The strategies to ensure that the workforce reflects the demographics of the St. Louis metropolitan area.
- The strategies to ensure the items within The New I-64 Workforce Utilization Plan Partnering Agreement are met.

### **3.7 Contents and Evaluation of Part 5 – Administrative Elements**

#### Submittal Requirements:

- Form I – Proposal Letter
- Surety Commitment Letter(s). The Proposer shall provide commitment letter(s) signed by a surety meeting the requirements of Book 1, Section 8, irrevocably and unconditionally committing to execute and deliver payment and performance bonds, each in the amount set forth in Book 1, using the exact language in Book 1, Exhibits F and G, subject only to award of the Contract to the Proposer. An original power of attorney, with an affixed seal or signed in blue ink, evidencing the authority of the surety shall be attached to the surety letter. The irrevocable and unconditional commitment shall be effective for 180 days. If the apparent successful Proposer and MoDOT have not negotiated a final Contract within the 180 days, the Proposer shall provide a new Surety Commitment letter that complies with the conditions of this Section.
- Form J – Non-Collusion Affidavit
- Form K – Buy America Certification
- Form L – Debarment, Suspension, Ineligibility, and Voluntary Exclusion
- Form M – Use of Contract Funds for Lobbying
- Form N – Equal Employment Opportunity
- Authorization Documents:
  - Organizational Documents. The Proposer shall provide a copy of the articles of incorporation and bylaws, the joint venture agreement, partnership agreement, limited liability company operating agreement or equivalent organizational documents for the Proposer and each Major Participant, which documents shall be consistent with the responsibilities to be undertaken by the Proposer and Major Participants under the Contract.
  - Evidence of Good Standing and Qualification to do Business. If the Proposer is a corporation or limited liability company, the Proposer shall provide evidence that the Proposer is in good standing in the state of its incorporation/organization and of current qualification to do business in the State of Missouri. If the Proposer is a joint venture or partnership, the Proposer shall provide the foregoing evidence for each member of the joint venture or each general partner.
  - Authorization to Bind Proposer. The Proposer shall provide evidence



in the form of a certified resolution of its governing body and, if the Proposer is a partnership, joint venture or limited liability company, of the governing bodies of the Proposer's general partners, joint venturers or members, evidencing the capacity of the person(s) signing the Proposal to bind the Proposer should MoDOT elect to accept it without negotiations or BAFOs.

The Proposer shall also provide appropriate evidence regarding the authority of any designated individual(s) to sign the certificates required by this RFP on behalf of the Proposer. Such authorization may take the form of a certified copy of corporate or other resolutions authorizing the same.

- Authorization to Negotiate. The Proposer shall provide appropriate evidence regarding authorization of one or more individuals to participate in the negotiation process described herein and make binding commitments to MoDOT in connection with this RFP. Such authorization may take the form of a certified copy of corporate or other resolutions authorizing the same.
  - Joint and Several Liability. If the Proposer is a joint venture, partnership or limited liability company, the Proposer shall provide a letter from each partner or member of the joint venture or limited liability company stating that the respective partner or member of the joint venture or limited liability company agrees to be held jointly and severally liable for any and all duties and obligations of the Proposer under the Proposal and under any Contract or other agreement arising therefrom. For limited liability companies, this requirement may be met with joint and several member company guarantees securing all Proposer's duties and obligations under the Contract or other agreement arising therefrom.
- Form O - Escrow Agreement, submit three signed original documents.
  - Partnering Facilitators. The Proposer shall submit the names and qualifications of three partnering facilitators, in order of preference.
  - Form P – Receipt of Addenda

Evaluation Criteria:

All elements in Part 1 will be evaluated on a pass/fail basis.

### **3.8 Contents and Evaluation of Part 6 – Price Allocation**

Submittal Requirements:

- Form Q – Price Allocation Form
- Form R – Proposal Bond. The Proposer shall submit a Proposal Bond in the sum and in the form set forth in Form R. The Proposal Bond shall be issued by a fully qualified surety company meeting the requirements set forth in Book 1, Section 8.



Evaluation Criteria:

The Price Allocation will be evaluated on a “pass/fail” basis for reasonableness of allocation of prices to the WBS elements. Failure to achieve a “pass” rating on a “pass/fail” element may result in the Proposal being declared non-responsive and the Proposer being disqualified.

### **3.9 Best Value Determination**

Award of the Project shall be based on a best value determination defined by a Fixed Price-Best Design approach. The Proposer that achieves the highest score on Technical Elements will determine the Best Design. Selection will be based upon the highest scored Technical Elements and will represent the best value to MoDOT.

## **4 SUBMITTAL REQUIREMENTS**

### **4.1 Format**

The Proposal must be formatted for 8.5” x 11” paper. Charts and other graphical information may be formatted for 11” x 17” paper. Use of 11” x 17” format shall be limited. Minimum font size is 11 points. However, 10-point text may be used within graphs or tables.

### **4.2 Due Date and Quantities**

Proposals must be submitted by 2:00 pm, Central Standard Time, on the date shown in Section 2.5. One hard copy of the Proposal is to be delivered to the Project Director. Submitters shall also e-mail one electronic copy of the Proposal, each part or subpart in a single file, to [thenewi64@modot.mo.gov](mailto:thenewi64@modot.mo.gov) by the same due date and time.

One copy of the Escrowed Proposal Documents (EPD), which includes all Parts of the Proposal, and one signed original of Form O – Escrow Agreement shall be delivered to the following location by the due date and time for the Final Technical Proposal and Price Allocation:

Bank Name  
Address  
City, State

### **4.3 Technical Concepts Proposal**

The Technical Concepts Proposal will be submitted verbally to MoDOT during confidential meetings with the Proposers.



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#### **4.4 Initial Technical Proposal**

The Initial Technical Proposal shall include Parts 1, 3 and 4.

#### **4.5 Final Technical Proposal**

The Final Technical Proposal shall include Parts 2 thru 5, and any changes to Part 1 since the Initial Technical Proposal.

#### **4.6 Price Allocation**

The Price Allocation shall include Part 6. The hard copy of the Price Allocation shall be delivered in a sealed envelope, separate from the Final Technical Proposal. The electronic copy of the Price Allocation shall be sent in a separate e-mail from the Final Technical Proposal or delivered to MoDOT on a compact disc.

### **5 GENERAL INFORMATION**

#### **5.1 Stipend**

MoDOT has determined that it is appropriate to award a stipend to the responsible Proposer that provides a fully responsive, but unsuccessful, Proposal. The amount of the stipend shall be \$1.5 million and shall be provided to such Proposer within 15 days after MoDOT determines the apparent successful Proposer.

#### **5.2 Communications**

MoDOT's Project Director, Lesley Hoffarth, is MoDOT's sole contact person for receiving all communications regarding the project. Each Proposer is solely responsible for providing a single contact person.

Inquiries and comments regarding the Project and the procurement must be sent to Ms. Hoffarth as shown below. E-mail is the preferred method of communication for the Project.

Lesley Hoffarth, P.E.  
The New I-64 Project Director  
Missouri Department of Transportation  
1590 Woodlake Drive  
Chesterfield, MO 63017  
[thenewi64@modot.mo.gov](mailto:thenewi64@modot.mo.gov)

During the Project procurement process, commencing with issuance of the RFQ and continuing until award of a contract for the Project (or cancellation of the procurement), no employee, member, or agent of any Submitter shall have ex parte communications regarding this procurement with any member of MoDOT or the



Federal Highway Administration, their advisors, or any of their contractors or consultants involved with the procurement, except for communications expressly permitted by this RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of MoDOT's Project Director. However, communication is allowed with local entities and the general public. The foregoing shall not preclude any Proposer from participating in public meetings, including public meetings of the Commission.

### **5.3 Addenda**

MoDOT reserves the right to revise this RFP at any time before the Final Technical and Price Allocation due date. The Proposer's contact person will be notified via e-mail when addenda are available.

### **5.4 Confidentiality**

Prior to selection of the apparent successful Proposer all documents submitted pursuant to this RFP will be maintained as confidential.

### **5.5 Organizational Conflicts of Interest**

Pursuant to 23 CFR 636.116, consultants and subconsultants who assist MoDOT in the preparation of an RFP document are not allowed to participate on a Proposer's team. Proposer must provide to MoDOT information regarding all potential organizational conflicts of interest in its Proposal, including all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest, as required by 23 CFR 636.116. MoDOT's Project Director will determine whether an organizational conflict of interest exists, and the actions necessary to avoid, neutralize, or mitigate such conflict.

MoDOT may disqualify a Proposer if any of its Major Participants belong to more than one Proposer organization.

### **5.6 Equal Employment Opportunity**

The Proposer will be required to follow Federal Equal Employment Opportunity (EEO) policies.

MoDOT will affirmatively assure that on any Project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

### **5.7 Disadvantaged Business Enterprises**

It is the policy of MoDOT that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, and other small businesses shall have the opportunity to



compete fairly in contracts financed in whole or in part with public funds. Consistent with this policy, MoDOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation assisted contract because of sex, race, religion, or national origin.

A DBE goal of 16% has been established for the Project. MoDOT has implemented the Unified Certification Program and has formed the Missouri Regional Certification Committee (MRCC). DBE firms must be certified with MRCC. The MRCC DBE Directory can be viewed at the following web site:

[http://www.modot.mo.gov/business/contractor\\_resources/External\\_Civil\\_Rights/DBE\\_program.htm](http://www.modot.mo.gov/business/contractor_resources/External_Civil_Rights/DBE_program.htm).

## **5.8 Major Participant**

The term Major Participant is defined as any of the following entities:

- All general partners or joint venture members of the Proposer; all individuals, persons, partnerships, limited liability partnerships, corporations, limited liability companies, business associations, or other legal entities, however organized, directly or indirectly holding a 15% or greater interest in the Proposer.
- The lead engineering/design firm(s).
- Each subcontractor that will perform work valued at 10% or more of the construction work.
- Each subconsultant that will perform 20% or more of the design work.

Major Participants identified in the SOQ may not be removed, replaced, or added without written approval of MoDOT. Written request must document the proposed change and demonstrate that the change will be equal to or better than the Major Participant submitted in the SOQ.

## **5.9 Key Personnel**

Key Personnel identified in the SOQ may not be removed, replaced, or added without written approval of MoDOT. Written request must document the proposed change and demonstrate that the change will be equal to or better than the Key Personnel submitted in the SOQ.

# **6 LEGAL REQUIREMENTS**

## **6.1 Discussions with Proposers**

After release of the Final RFP, the Proposers will submit their initial technical Proposals. MoDOT will have confidential discussions with each Proposer to provide



feedback related whether the Proposer's technical solutions achieve or exceed the Project goals to the greatest extent possible.

**No information will be shared from one Proposer to the other Proposer regarding information received during discussions of each Proposer's technical solutions or Additional Applicable Standards.**

## **6.2 Ownership of Proposals**

All documents submitted by the Proposer in response to this RFP shall become the property of MoDOT and shall not be returned to the Proposer. The concepts and ideas in the information contained in the Proposal and discussed during discussions with each Proposer, including any proprietary, trade secret, or confidential information (exclusive of any patented concepts or trademarks), shall also become the property of MoDOT if: (i) submitted by the successful Proposer, upon award and execution of the Contract; and (ii) if submitted by an unsuccessful Proposer, upon payment of the Stipend.

## **6.3 Legal Effect of Stipend**

MoDOT has received a waiver from FHWA of the prohibition of negotiating ideas from the unsuccessful Proposer with the apparent successful Proposer prior to execution of the Contract.

Acceptance of the stipend by the unsuccessful Proposer entitles MoDOT to use the ideas obtained from the unsuccessful Proposer in its initial and final Proposals and during the discussions with the unsuccessful Proposer. MoDOT will provide to the apparent successful Proposer the unsuccessful Proposer's Initial and Final Technical Proposals. MoDOT will meet with the apparent successful Proposer and negotiate into its Proposal ideas from the unsuccessful Proposer's initial and final Proposal that improve its Proposal, if any.

If a protest is filed pursuant to Section 7 below, MoDOT will not pay a stipend to the unsuccessful Proposer or share the unsuccessful Proposer's ideas until the protest has been resolved, and in accordance with the resolution.

## **6.4 Additional Applicable Standards**

MoDOT has requested the Proposers to identify their Additional Applicable Standards on Form C. During the discussions with each Proposer, MoDOT will either let the Proposer know that the standard is acceptable, inform the Proposer of conditions that must be addressed in order for the standard to be acceptable, or the standard is unacceptable. In the Final Proposal, inclusion of any Additional Applicable Standard that MoDOT has determined unacceptable may result in the Proposal being non-responsive.

If MoDOT has informed the Proposer that their standard description is incomplete and additional details need to be defined, and the Proposer does not present the additional details necessary for acceptance by MoDOT, it does so at its own risk.



MoDOT will have the right to require those additional details be incorporated into the Work throughout the life of the Project at no cost to MoDOT.

If the Additional Applicable Standards listed by the Proposer in Form C have conflicting provisions, MoDOT shall have the right to determine, in its sole discretion, which requirement(s) apply.

For any standards, portions of standards or details that have not been specified by the Proposers, MoDOT's standards, portions of standards and/or details will apply to the Project at no additional cost to MoDOT.

## **6.5 Access Justification Reports**

MoDOT has obtained approvals from FHWA of the access justification report (AJR). The Proposer must obtain, at the Proposer's expense, approval of any modifications or additions to the AJR necessary because of the Proposer's design of the Project.

## **6.6 Approved FHWA Design Exceptions**

MoDOT has obtained approval from FHWA of the design exception. The Proposer must obtain, at the Proposer's expense, approval of any additional design exceptions necessary because of the Proposer's design of the Project.

## **6.7 Proposal Bond**

If the Proposer is awarded the Contract but fails to execute and deliver the Contract to MoDOT, together with all documents required therein and herein, within ten Working Days following the Proposer's receipt of the execution form of the Contract, or if the Proposer is selected for negotiations and fails to negotiate in good faith, then the funds represented by its Proposal Bond shall be released to MoDOT and become and remain the property of MoDOT.

Within five Working Days after delivery to MoDOT of the Contract executed by the Proposer selected by MoDOT, together with all other specified items, or within five Working Days after this RFP has been canceled, MoDOT will return each Proposal Bond, except those which have been forfeited, to the respective Proposer.

## **6.8 Withdrawal of Proposal After Proposal Due Date**

The Proposer understands and agrees that if the Proposer withdraws all or any part of its Proposal within 120 days after the Proposal Due Date without the written consent of MoDOT, the Proposer shall forfeit its Proposal Bond.

## **6.9 Responsive Proposal**

The Proposer shall provide responses to all information requested in this RFP for the Proposal. Failure to provide the requested information may result in MoDOT, at its sole discretion, determining that a Proposal is non-responsive and should be



rejected. A Proposal will be considered non-responsive if it seeks to qualify or change any of the terms and conditions of the Contract, to limit or modify the bonds, insurance or warranties required, or if the Proposal Bond is not provided.

## **6.10 Missouri Open Records (Sunshine) Law**

During the procurement process, all records, documents, drawings, plans, specifications, and other materials submitted by Proposers will be maintained confidential by MoDOT pursuant to the provisions of the Missouri Open Records (Sunshine) Law.

## **6.11 Changes in Proposer's Organization**

If there are any new Major Participants or Key Personnel or other changes (including deletions) in the Proposer's organization from those shown in the Statement of Qualifications (SOQ), the Proposer shall obtain written Approval of the change from MoDOT prior to submitting its Final Technical Proposal. Such requests must be accompanied with the information specified for such entity in the SOQ. If a Major Participant is being deleted, the Proposer must submit such information as may be required by MoDOT to demonstrate that the changed Proposer team, Major Participant, or Key Personnel still meets the SOQ criteria (both pass/fail and qualitative). MoDOT is under no obligation to approve any such changes and may do so in its sole discretion.

## **6.12 Project Rights and Disclaimers**

Notwithstanding anything to the contrary contained in this RFP or the Contract, MoDOT reserves the right, in its sole discretion, to:

- Investigate the qualifications of any Proposer.
- Require confirmation of information furnished by a Proposer.
- Require additional evidence of qualifications to perform the Work.
- Reject any or all of the Proposals.
- Issue a new request for proposals.
- Cancel, modify or withdraw the entire RFP, or any part hereof.
- Issue Addenda, supplements and modifications to this RFP.
- Modify this RFP process.
- Solicit BAFOs from the Proposers.
- Appoint evaluation committees to review Proposals, and seek the assistance of outside technical experts and consultants in Proposal evaluation.
- Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding of the responses to this RFP.
- Seek or obtain data from any source that has the potential to improve the understanding of the responses to this RFP.



- Permit corrections or supplements to data submitted with any response to this RFP.
- Approve or disapprove changes in the Proposer team or Proposal (a substitution of any of the Major Participants will be carefully scrutinized and may result in disqualification of the Proposer).
- Require correction of or waive deficiencies, informalities and minor irregularities in Proposals; or seek clarifications or modifications to a Proposal.
- Disqualify any Proposer that changes its submittal without MoDOT Approval.
- Hold the Proposals and Proposal Bonds under consideration for a maximum of 120 days after the Proposal Due Date until the final Award is made.

This RFP does not commit the Commission to enter into the Contract or any other contract. The Commission assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. Except for payment of the Stipend to certain Proposers, all of such costs shall be borne solely by each Proposer.

In no event shall the Commission be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as a Contract, in form and substance satisfactory to the Commission, has been executed and authorized by the Commission and, then, only to the extent set forth therein.

## **6.13 Escrowed Proposal Documents**

### **6.14 Format of Escrowed Proposal Documents**

The EPDs shall contain information regarding the Proposer's assumptions made in developing Price Allocation. The Proposer shall submit a hard copy of the EPDs in such format as it used in preparing its Proposal.

#### **6.13.1 Review of Escrowed Proposal Documents**

The Proposer shall deliver with its Proposal three signed originals of the Escrow Agreement on Form O. The Proposer shall also deliver the Escrowed Proposal Documents (EPDs) and one signed original of the Escrow Agreement to the Escrow Agent at the address specified in the Escrow Agreement within five Business Days of the due date of the Final Technical Proposal and Price Allocation.

MoDOT and the Proposer shall review the EPDs prior to Contract execution (or Contract negotiations, if applicable) to determine whether they are complete. Such representatives shall also organize the EPDs, labeling each page so that it is obvious that the page is a part of the EPDs and so as to enable a person reviewing the page out of context to determine where it can be found within the EPDs, and shall compile an index listing each document included in the EPDs and briefly describing the document and its location in the EPDs. MoDOT shall have a right to



retain a copy of the index. If, following the initial organization, MoDOT determines that the EPDs are incomplete, MoDOT may require the Proposer to supply data to make the EPDs complete.

Incomplete EPDs may render the Proposal non-responsive. The EPDs will be available for joint review in conjunction with Book 1, Section 22.

### **6.13.2 Return of Escrowed Proposal Documents**

The EPDs will be returned to each unsuccessful Proposer after the Contract is signed with the successful Proposer or if all Proposals are rejected or withdrawn.

### **6.13.3 MoDOT's Acknowledgment**

MoDOT acknowledges that the EPDs and the information contained therein are being provided to MoDOT only because it is an express prerequisite to entering into the Contract and agrees to notify the Contractor if MoDOT is requested to provide information regarding the EPDs under a Missouri Open Records (Sunshine) Law request.

## **7 PROTEST PROCEDURES**

### **7.1 Protests Regarding Request for Proposal Documents**

Any Proposer that is aggrieved in connection with the RFP may protest the terms of the RFP Documents prior to the time for submission of Proposals on the grounds that: (i) a material provision in the RFP Documents is ambiguous; (ii) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement; or (iii) the RFP Documents exceed, in whole or in part, the authority of the Commission. Protests regarding the RFP Documents shall be filed only after the Proposer has informally discussed the nature and basis of the protest with The New I-64 Project Director in an effort to remove the grounds for protest. Written protests regarding the RFP Documents shall completely and succinctly state the grounds for protest and shall include, as a minimum, the following:

- a) The name and address of the protester.
- b) Appropriate identification of the procurement by Project Award number.
- c) A statement of the reasons for the protest.
- d) All available exhibits, evidence, or documents substantiating the protest.

Protests regarding the RFP Documents shall be filed by hand delivery to The New I-64 Project Director, Missouri Department of Transportation, 1590 Woodlake Drive, Chesterfield, MO 63017 within seven Working Days after the protester knows or should have known of the facts giving rise to the basis for the protest. The Proposer is responsible for obtaining proof of delivery.



No evidentiary hearing or oral argument shall be provided, except, in the sole and absolute discretion of the Director of Transportation, a hearing or argument may be permitted if necessary for protection of the public interest or an expressed, legally recognized interest of a Proposer or MoDOT. The Director of Transportation or his designee will issue a written decision regarding the protest after MoDOT receives the detailed statement of protest or any allowed (discretionary) evidentiary hearing or oral argument. Such decision shall be final and conclusive. The Director of Transportation or his designee will deliver the written decision to the protesting Proposer, with a copy to the other Proposers.

If necessary to correct any error, omission, or ambiguity identified by the protest, the Commission will make appropriate revisions to the RFP Documents by issuing Addenda. The failure of a Proposer to raise a ground for a protest regarding the RFP Documents shall preclude consideration of that ground in any protest of a selection unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests. The Commission may extend the Proposal Due Date, if necessary, to include any such protest issues.

## **7.2 Protests Regarding Responsiveness, Best Value Evaluation, or Award**

Protests regarding the Commission's Approval of changes in Proposer's organization or decisions regarding responsiveness, best value evaluation rankings or Award of the Contract must be filed by filing a written notice of protest by hand delivery or courier to the Director of Transportation with a copy to the MoDOT Project Director. The protesting Proposer shall concurrently file a copy of its notice of protest with the other Proposers. The notice of protest shall specifically state the grounds of the protest.

Notice of protest of any decision to accept or disqualify any Proposal on responsiveness grounds must be filed within five calendar days after notification of non-responsiveness.

If a Notice of Protest is filed, the Commission may proceed with BAFOs or negotiations but shall not Award the Contract until the protest is withdrawn or decided, unless the Commission determines that the public interest requires it to proceed with the Award prior to a decision on the protest, or that the protest is so wholly lacking in merit that the protestant is unlikely to succeed in the protest. Such a determination shall be in writing and shall state the facts upon which it is based.

Within seven calendar days of the notice of protest, the protesting Proposer must file with the Director of Transportation, with a copy to the MoDOT Project Director, a detailed statement of the grounds, facts and legal authorities, including all documents and evidentiary statements, in support of the protest. The protesting Proposer shall concurrently deliver a copy of the detailed statement to all other Proposers. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Proposer shall have the burden to prove that the decision of MoDOT was arbitrary and capricious.



Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

Other Proposers may file by hand delivery or courier to the Director of Transportation, with a copy to the MoDOT Project Director, a statement in support of or in opposition to the protest. Such statement must be filed within seven calendar days after the protesting Proposer files its detailed statement of protest. MoDOT will promptly forward copies of any such statements to the protesting Proposer.

Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole and absolute discretion of the Director of Transportation, a hearing or argument may be permitted if necessary for protection of the public interest or an expressed, legally recognized interest of a Proposer or MoDOT. The Director of Transportation or his designee will issue a written decision regarding the protest within 30 calendar days after MoDOT receives the detailed statement of protest or any allowed (discretionary) evidentiary hearing or oral argument. Such decision shall be final and conclusive. The Director of Transportation or his designee will deliver the written decision to the protesting Proposer and copies to the other Proposers.

If the Director of Transportation or his designee concludes that the entity filing the protest has established a basis for protest, MoDOT may withdraw or revise its decisions, rankings, or Award, or take any other appropriate actions, including issuing a new RFP.

## **8 CONTRACT EXECUTION**

Within ten Working Days after delivery by MoDOT to the successful Proposer of the execution form of Contract, the successful Proposer shall deliver to MoDOT the following:

- Signed Contract (four executed duplicate originals), together with evidence of the signatory authority of the signatories thereto. All original signatures shall be in blue ink.
- Approvals of each member or partner of the Proposer of the final form of the Contract.
- Performance Bond in the form shown in Book 1, Exhibit F, issued by the surety listed in the Proposal, or an equivalent surety meeting the requirements stated in Book 1, Section 8, together with evidence of the signatory authority of the signatories thereto.
- Payment Bond in the form shown in Book 1, Exhibit G, issued by the surety listed in the Proposal, or an equivalent surety meeting the requirements stated in Book 1, Section 8, together with evidence of the signatory authority of the signatories thereto.



- Insurance certificates required under Book 1, Section 9.
- Documentation from the Proposer and each Major Participant that clearly depicts entitlement under the laws of the State of Missouri to undertake and perform the Work. Said documentation shall include copies of construction licenses and evidence that the Proposer or its designated design firm is licensed to carry out the design portion of the Work.
- Opinion of counsel for the Contractor, which counsel shall be approved by the Commission (which may be in-house or outside counsel, provided that the enforceability opinion shall be provided by attorneys licensed in the State of Missouri), in substantially the form shown in Form S.