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# WOO-23-17.88 Roundabout



## PROGRESSIVE DESIGN BUILD INSTRUCTIONS TO OFFERORS (ITO) for REQUEST FOR PROPOSALS (RFP) AND SELECTION CRITERIA

PID 117545  
Project (24)3001  
**Addenda 1 2-1-2024**

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# 1 INTRODUCTION AND PROJECT INFORMATION

## 1.1 Introduction

These Instructions to Offeror (ITO) set forth (i) the Project (defined herein) description and Project Goals (defined herein); (ii) the Request for Proposals (RFP) selection process; (iii) certain requirements for the Offeror’s organization; (iv) certain Proposal requirements; and (v) the evaluation process and the post-evaluation selection and execution requirements pertaining to the combination of design and construction elements into a single contract to expedite the construction of special projects pursuant to the authority of Section 5517.011 of the Ohio Revised Code for the Project (ODOT PID 117545) (the “Project”).

Offerors must comply with the terms and conditions of this ITO during the Procurement Process and in their responses to the RFP. Respondents will be evaluated to determine their ability to meet or exceed the Project Goals in Section 1.3 (Project Goals).

Definitions of capitalized terms used but not defined within the ITO are set forth in Exhibit A (Acronyms and Definitions) of the Progressive Design-Build Contract (PDBC). The Offeror is the entity desiring to enter into the PDBC. It is anticipated that the Offeror will include, as part of its team, “Major Participants”, consisting of the Lead Contractor, Lead Designer, and Subcontractors/Subconsultants required to meet the “By Project Award” Project Prequalification requirements in Form D (Prequalifications). The Offeror may also be one of the Major Participants.

### 1.1.1 Progressive Design-Build Requirements

This Section 1.1.1 provides a summary of the Progressive Design-Build requirements. For full details of the process and requirements, including payment structure, see the PDBC.

The Work shall be performed by the Offeror in two primary phases, Preconstruction and Construction. The Department may elect, in its sole discretion, to issue one or more Preconstruction Phase Amendments to manage progression of the Preconstruction Phase. Each Preconstruction Phase Amendment shall replace all prior Preconstruction Phase Amendments. The Parties shall engage in good faith negotiations to finalize any Preconstruction Phase Amendment on a timely basis. The Department anticipates the Preconstruction Phase to consist of the following steps:

Process	Timeline	Action
<b>Pre-Sub-Phase 1A</b>	Upon Execution of the PDBC	Offeror will produce the Sub-Phase 1A Proposal.

Process	Timeline	Action
<b>Sub-Phase 1A (BIM Proof-of-Concept Phase)</b>	Upon Department Approval of the Sub-Phase 1A Proposal and issuance of the Sub-Phase 1A Notice to Proceed (NTP)	Offeror will perform the scope of work identified in the Sub-Phase 1A Proposal. This work will confirm the BIM model can be utilized on the Project. Minimal design work is expected.
<b>Sub-Phase 1B (Project Development Phase)</b>	Upon completion of Sub-Phase 1A and issuance of Sub-Phase 1B NTP	Offeror will continue to progress the Project until a GMP can be agreed upon.

Sub-Phase 1A shall commence upon the Department’s issuance of Sub-Phase 1A Notice to Proceed (NTP) and shall continue until (i) the Sub-Phase 1B Change Order is executed by the Department, or (ii) the Department exercises its right to terminate the PDBC; whichever is earlier to occur. Sub-Phase 1A Work shall be performed under a direct labor times a multiplier compensation arrangement that may not exceed the Maximum Sub-Phase 1A Prime Compensation defined in Exhibit B (Contract Particulars) of the PDBC.

Sub-Phase 1B shall commence upon the Department’s issuance of the Sub-Phase 1B NTP and shall continue until (i) the Phase 1 Work is complete or (ii) the Department exercises its right to terminate the PDBC; whichever is earlier to occur. Sub-Phase 1B Work shall be performed under a direct labor times a multiplier compensation arrangement that may not exceed the Maximum Sub-Phase 1B Prime Compensation (amount to be negotiated prior to completion of Sub-Phase 1A and incorporated into the terms and conditions of the Sub-Phase 1B Change Order).

Phase 2 shall commence upon the execution of a Phase 2 Change Order and the Department’s issuance of Phase 2 NTP and shall continue until the end of the Term.

The Department’s Office of Estimating will separately develop an Engineer’s estimate at the final pricing milestone in accordance with Exhibit G (Opinion of Probably Cost). The Engineer’s estimate will validate the cost(s) and production proposals submitted by the Contractor. The Department’s Office of Estimating will develop the Engineer’s estimate prior to the final pricing agreement in accordance with ORC 5517.01.

**1.2 Project Description**

The Project includes construction of a single-lane roundabout at the intersection of US 23 and SR 105 in Wood County and Sandusky County. Special consideration shall be given to accommodation of large vehicles (Farm Equipment, Construction Equipment, WB-67 Semis) in the design of the roundabout. The Project will require Building Information Modeling (BIM) capabilities and experience on behalf of the selected Offeror. The Substantial Completion Deadline for the Project is October 15, 2025.

NEPA is not expected to be complete at the time of Project award. To ensure an objective

NEPA process, the Department will maintain all NEPA decision-making responsibility. The Department will be responsible for obtaining Environmental Permits. The Offeror will be required to provide support to ODOT in the permit application process.

### 1.3 Project Goals

Project Goals are inclusive of primary goals identified as part of the NEPA and specific contract objectives identified for this Project.

- A. Improve traffic flow;
- B. Improve safety;
- C. Utilization and understanding of BIM technology and how it can improve productivity and quality throughout the design, construction, and maintenance operations of the Project and its assets;
- D. Advance the Department’s implementation of BIM technology for potential future asset management including design, construction, and maintenance operations.
- E. Maximize the Project scope within the programmed funding amounts through innovation, design optimization and effective risk mitigation;
- F. Achieve effective project delivery; and
- G. Minimize physical intrusion and impact on the environment.

### 1.4 Procurement Schedule

The Department currently anticipates conducting this procurement process (the “Procurement Process”) in accordance with the following list of milestones (the “Procurement Schedule”). This Procurement Schedule is subject to revision and the Department reserves the right to modify this schedule as it finds necessary, at its sole discretion.

**Table 1: Procurement Schedule**

<i>Milestone</i>	<i>Date</i>
Final RFP Release	Tuesday, December 19, 2023
Last date for Offeror team registration ( <u>Form E</u> – Offeror Team Registration)	Tuesday, January 9, 2023
Pre-Proposal One-on-One Meeting No. 1 (Regarding the RFP)	Tuesday, January 16, 2024
Anticipated final Addenda	Thursday, February 1, 2024
Proposal Due Date	Friday, February 16, 2024, at 10:00 a.m. Eastern Time
Interviews	Thursday, February 29, 2024
Apparent Best Value Selection Announcement	Friday, March 8, 2024
Anticipated Award Date	Monday, April 8, 2024



## 1.5 Draft Preconstruction and Construction Schedule

A draft schedule of Preconstruction and Final Engineering and Construction milestone dates is included in Table 2 (Preconstruction and Final Engineering and Construction Schedule). This schedule is subject to revision upon coordination with the Contractor and the Department.

**Table 2: Preconstruction and Final Engineering and Construction Schedule**

<i>Milestone</i>	<i>Date</i>
Sub-Phase 1A Notice to Proceed	Thursday, May 23, 2024
Sub-Phase 1B Notice to Proceed	Friday, September 20, 2024
Phase 2 (Final Engineering and Construction) Proposal NTP and Construction Commencement	Tuesday, April 1, 2025

## 1.6 Reference Information Documents

Reference Information Documents (“RIDs”) are available for further information pertaining to the Project at the following link: <https://ftp.dot.state.oh.us/pub/Construction/WOO23Rndabout-PDB-BIM-RFQ/RIDS/>

Reliance on the RIDs shall be governed by Section 3.5.1 of the PDBC.

## 2 RFP PROCESS

Offerors will have an opportunity to attend one Pre-Proposal One-on-One meetings with the Department prior to the Proposal Due Date. The Department will interview Offerors after receipt of Proposals as part of the evaluation process. If an award is made, the Department will execute the PDBC with the responsible and responsive Offeror that is determined by the Department to provide the best value to the Department and be in the best interest of the Department.

### 2.1 Examination of RFP and Requests for Clarification

Each Offeror shall be solely responsible for (a) examining, with appropriate care and diligence, the RFP, RIDs, and any other documents or information provided by the Department, prior to submitting the Proposal (collectively, the “RFP Documents”), (b) requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained in the RFP, or of any provision that such Offeror fails to understand and (c) informing itself with respect to any and all circumstances which may in any way affect the nature of its Proposal or the performance of its obligations if such Offeror enters into a PDBC with the Department.

Should a question arise at any time during any portion of the Procurement Process, the Offeror may seek clarification by submitting a clarification question using the Department’s Pre-Bid website (referencing Project Number 243001).

<https://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/PBQs.aspx>

The Department will post a response on its website to RFCs submitted. Responses to RFCs posted on the Department's website are not revisions to the Contract Documents and are not binding. Any response requiring a revision to the Contract Documents will be implemented through issuance of Addenda to the RFP.

## 2.2 Pre-Proposal One-on-One Meetings

The Department intends to provide each Offeror the opportunity for one Pre-Proposal One-on-One Meeting with the Department prior to the Proposal Due Date to discuss issues and clarifications regarding the RFP. Pre-Proposal One-on-One Meetings will be held on the dates set forth in Section 1.4 (Procurement Schedule) and/or on any such other dates that may be designated by the Department in writing to Offerors. Federal Highway Administration (FHWA), other stakeholders, and consultants to the Department may also participate in the Pre-Proposal One-on-One Meetings.

To be eligible to participate in a Pre-Proposal One-on-One Meeting, an Offeror must register its team by the date specified in Section 1.4 utilizing Form E (Offeror Team Registration). During the Pre-Proposal One-on-One Meetings, Offerors may ask questions and the Department may provide responses for informational purposes. Any responses provided by the Department during the Pre-Proposal One-on-One Meetings may not be relied upon; however, the Department may, in its discretion, and subject to Section 2.1 (Examination of RFP and Requests for Clarification) above, respond in writing to questions or comments raised in Pre-Proposal One-on-One Meetings and/or incorporate the substance of its responses into the RFP by Addenda. The Department reserves the right to disclose to all Offerors any issues raised during the Pre-Proposal One-on-One Meetings if, in the judgement of the Department, such issues would jeopardize a fair and equitable Procurement Process. The Department will use commercially reasonable efforts to maintain the confidentiality of information related to Offerors and their Proposals as required to comply with this Section 2.2, Section 4.4 (Confidentiality/Public Information Act Disclosure Requests), and applicable law.

Additional information regarding the Pre-Proposal One-on-One Meetings will be provided by the Department to registered Offerors.

## 2.3 Addenda

The Department reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or Procurement Process at any time before the Proposal Due Date shown in Section 1.4 (Procurement Schedule). Any such revisions will be implemented through issuance of Addenda to the RFP.

## 2.4 Errors

If any mistake, discrepancy, deficiency, ambiguity, error, or omission is identified by an Offeror at any time during the Procurement Process in any of the RFP Documents supplied by the Department, the Offeror shall notify the Department of the mistake, discrepancy, deficiency, ambiguity, error or omission and recommend a correction in writing in accordance with Section 2.1 (Examination of RFP and Requests for Clarification).

## 3 GENERAL

### 3.1 Funding

The Department's plan of finance for the Project contemplates that the Department will fund the design and construction of the Project using a combination of federal funds and State of Ohio funds. Payments will be made by the Department in accordance with the negotiated PDBC.

Please refer to ODOT's Project Management System ELLIS for information regarding the amount of funding for the Project.

### 3.2 Federal Requirements

In order to preserve the ability of the Department to use federal funding for the Project, the Procurement Process and the Contract must comply with all applicable federal laws and regulations.

### 3.3 DBE Requirements

The Department has determined that federal Disadvantaged Business Enterprise ("DBE") requirements will apply to the design and construction of the Project and has adopted a plan to provide DBE firms opportunities to participate in the delivery of the Project as service providers, vendors, contractors, subcontractors, advisors, and consultants. The Department has adopted the definition of DBE set forth in 49 CFR § 26.5. Offerors' DBE compliance obligations shall be governed by all applicable federal DBE regulations, including 49 CFR Part 26, as well as applicable requirements set forth in the PDBC.

The Department is targeting a DBE goal of at least % of the Contract Price the Project. The DBE goal for the Project will be established by the Department, after discussions between the Offeror and Department, and incorporated as part of the Phase 2 Change Order. Prior to execution of the Phase 2 Change Order, the Offeror will be required to submit a detailed DBE Performance Plan to achieve the DBE participation goal.

### 3.4 OJT Requirements

The Department has determined that federal On the Job Training (OJT) requirements will apply to the Project. The Department has adopted the definition of OJT set forth in 23 CFR § 230. OJT compliance obligations shall be governed by all applicable federal OJT regulations, as well as applicable requirements set forth in the Contract.

ODOT anticipates a goal of [15]% of total labor hours for the Project be performed by trainees.

The OJT goal will be agreed upon between the Offeror and the Department and finalized by the Department as part of the Phase 2 Change Order.

### **3.5 Self-Performance Requirement**

The Offeror shall perform Phase 2 Work amounting to not less than 50 percent of the Contract Price with its own organization, unless otherwise approved by the Department.

## **4 PROCUREMENT PROCESS**

### **4.1 Procurement Method**

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

Following Proposal submission, the Proposal will be scored according to the criteria in Section 7 (Evaluation Process). The Department will then perform interviews in accordance with Sections 7.4 (Interviews) and 7.5 (Technical Proposal and Interview Evaluation). Following interviews and evaluation of interviews, the Department intends to select an Offeror for conditional award based on the Department's determination of apparent best value and finalize a PDBC for award and execution. If the Department and the apparent best value Offeror are unable to finalize and execute a PDBC, the Department may award the Project to the next highest rated Offeror.

Alternatively, the Department may modify and re-issue the RFP, or terminate the Procurement Process.

### **4.2 Authorized Representatives and Offeror Registration**

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

Chase Wells  
Alternative Project Delivery  
Administrator Ohio  
Department of Transportation  
1980 W. Broad Street, Columbus, Ohio  
43223 E-mail: Chase.Wells@dot.ohio.gov

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

Each Offeror shall timely register with the Department by submitting Form E (Offeror Team Registration) by email to the Department's Authorized Representative. Subject to applicable state and federal law as described in Section 4.4 (Confidentiality/Public Information Act Disclosure Request) hereof, Form E will remain confidential until after an award is made. Any

change in an Offeror Team's organization after its registration is subject to [Section 5.5](#) (Changes in Offeror's Organization). The Department reserves the right to reject any Proposal submitted by an Offeror that did not timely register pursuant to this [Section 4.2](#) (Authorized Representatives and Offeror Registration) or that failed to timely seek approval of any post-registration change in its organization pursuant to [Section 5.5](#) (Changes in Offeror's Organization).

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

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

### **4.3 Rules of Contact**

The rules of contact described herein apply from release of the RFP until selection of the best value Offeror or until the formal cancellation of the Procurement Process by the Department. During the Procurement Process, no employee, member, agent, advisor, or consultant of any Offeror Team may undertake any ex-parte communications, directly or indirectly, regarding this Procurement Process with any representative of the Department, or FHWA, including their staff, advisors, contractors, or consultants, except for communications expressly permitted by this RFP.

After an Offeror's submission of its [Form E](#) (Offeror Team Registration), the Offeror may not communicate with another Offeror with regard to the Project, the Proposal, or any other Offeror's Proposal.

Any verified allegation that an Offeror has engaged in such prohibited communications or attempted to unduly influence the selection process may be cause for the Department to disqualify the Offeror from participating with any Offeror; all at the sole discretion of the Department.

### **4.4 Confidentiality/Public Information Act Disclosure Requests**

#### **4.4.1 Confidentiality Rules**

All documents and materials submitted by the Offerors in conjunction with this Procurement Process will be subject to Section 149.43 of the Ohio Revised Code, also known as the Public Records Act. Offerors are encouraged to familiarize themselves with the Public Records Act and any other laws applicable to the disclosure of documents and materials submitted in connection with this RFP and to the matter of confidentiality and public information. The Department will not advise an Offeror as to the nature or content of documents or materials entitled to protection from disclosure under such laws or as to the interpretation of such laws, or as to the definitions of "proprietary," "privileged" or "confidential trade secrets", or commercial or financial

information.

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

#### **4.4.2 Trade Secrets**

ORC Section 5501.03, prevents disclosure of any materials or data submitted to, made available to, or received by the Ohio Director of Transportation, to the extent that the materials or data consist of trade secrets, as defined in section 1333.61 of the Revised Code (addressed below), or commercial or financial information, as ORC Section 5501.03 deems this information confidential, not public records for the purposes of the Public Records Act , and will therefore not be subject to disclosure.

##### **4.4.2.1 Definition**

- A. "Trade secret" is defined in ORC Section 1333.61(D) as "information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
- B. It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- C. It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

##### **4.4.2.2 Processing and Disclosure of Procurement Information**

During the Procurement Process, the Department does not intend to share with, or convey to, any person the information provided by the Offeror, unless either (i) disclosure is required by applicable law, or (ii) the Offeror gives prior written approval for such disclosure.

In the event the Department is requested to disclose any information that has been marked as "trade secret", the Department shall respond with a redacted copy prepared by the Department (the "Department Response").

In the event that an Offeror asserts a right to any redacted information in the Department Response with regard to any complete or partial document(s), data, or record(s), the Department intends to notify the Offeror of the assertion of right(s) (the "Notice of Rights"), and from the date the Offeror receives the Notice of Rights, the Offeror shall have the responsibility to respond to the requestor asserting that the information requested is exempt from disclosure under applicable law.

The Department shall not be obligated to maintain in confidence any information that is not a trade secret including information that (a) is already known by the State, (b) is or comes into the public domain through no fault of the State, (c) is independently developed by the State, or (d) comes to the State from a third-party in a manner not in violation of any obligation of confidentiality by such third party to the Offeror.

State law generally requires that documents which contain both confidential/trade secret and non- confidential information be disclosed with confidential information redacted.

## **4.5 Observers During Evaluation**

Offerors are advised that observers from federal or other agencies, as well as Department consultants, may observe the Proposal evaluation process and will be permitted to review the Proposals after the Proposal Due Date and attend interviews. Observers may include representatives from the Department, Department hired consultants, FHWA and their outside advisors. Observers will have access to the Proposals and may provide comments to the Proposal Evaluation Team. Outside observers will be required to sign the Department's standard confidentiality agreement.

## **4.6 Improper Conduct and Non-Collusion**

No Offeror nor any Offeror's Component Firms shall undertake any of the prohibited activities identified in Form C (Offeror Team Certifications and Questionnaire).

# **5 OFFEROR TEAM ORGANIZATION**

## **5.1 Registration of Businesses**

It is required that the Offeror is properly authorized and licensed under the laws of the State of Ohio to conduct business in this State of Ohio; and will remain in good standing to do business in the State of Ohio for the duration of the Project. If an Offeror has not performed work in Ohio, it must also be in good standing to do business in its home jurisdiction.

## **5.2 ODOT Prequalification**

All Offerors responsible for professional and construction services on the Project must be prequalified by the Ohio Department of Transportation according to Ohio Revised Code (ORC) Chapters 5525 & 5526. Services that require prequalification may only be performed by firms that are prequalified for those services at the time of performance of the services.

The Offeror is responsible for ensuring all Offeror Team firms responsible for professional and construction services on the Project are prequalified with the Department, as applicable, in accordance with Form D (Prequalification). Failure by the Offeror to meet the requirements of Prequalification may result in the Offeror being disqualified from the Procurement Process.

## **5.3 Organizational Conflicts of Interest**

The Department may reject any Proposal received in violation of this Section 5.3's

requirements.

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

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

Offerors are prohibited from receiving any advice or discussing any aspect relating to the Project or Procurement Process with any person or entity with an organizational conflict of interest. The Department may disqualify an Offeror if an organizational conflict of interest exists.

Each Offeror agrees that if an organizational conflict of interest is discovered, the Offeror must make an immediate and full written disclosure to the Department that includes a description of the action that the Offeror has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Department may, at its discretion, cancel the contract for this Project.

The Offerors' attention is further directed to Ohio Administrative Code (OAC) Section 4733-35-05 (C) and the requirements regarding organizational conflicts of interest. For guidance in determining if you would have a Conflict of Interest, please review the Department's Specifications for Consultant Services (primarily sections 2.15 through 2.18) and the referenced Codes within those applicable sections.

The Specifications for Consultant Services can be found at:

<http://www.dot.state.oh.us/Divisions/Engineering/Consultant/ConsultDocs/Specifications%20for%20Consulting%20Services%202016.pdf>.

While all of the references are for engineering or surveying services, the Department will use the same level of scrutiny for any consultant service.

Each Offeror shall identify potential conflicts of interest or a real or perceived competitive advantage relative to this Procurement Process. If a potential conflict of interest or competitive advantage is identified, the Offeror shall submit in writing the pertinent information to the Department's Office of Consultant Services prior to the submittal of the Proposal and the Offeror may request a waiver of the conflict of interest for the Department's consideration. Information on submitting a Conflict Waiver Request can be found at:

<http://www.dot.state.oh.us/Divisions/Engineering/Consultant/Pages/Manuals-and-Contract-Documents.aspx>.

Waiver Requests shall be directed to Susan Stehle by email at [Susan.Stehle@dot.ohio.gov](mailto:Susan.Stehle@dot.ohio.gov) or mailed to:

Office of Consultant Services



Ohio Department of Transportation  
1980 West Broad Street, Mail Stop 4100  
Columbus, Ohio 43223  
Attn: Susan Stehle

The Department, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization determined to have a conflict of interest or competitive advantage relative to this procurement that cannot be mitigated, shall not be allowed to participate as an Offeror for the Project. The Department will attempt to make all reasonable efforts to timely respond to a waiver request.

Each Offeror Team member will be required to complete a Conflict of Interest Certification on Form C (Responsible Offeror Certifications and Questionnaire).

The following firms will not be allowed to participate as an Offeror due to a known conflict of interest. This list shall not be considered all-inclusive and may be supplemented by the Department throughout the Procurement Process.

- A. Garver
- B. Mead & Hunt

## 5.4 Debarment or Suspension

No firm may participate in any Offeror Team to the extent that such firm is currently debarred, suspended, disqualified, or removed from bidding (including having been removed from bidding by the Department on account of pending liquidated damages on other projects) or performing work for the State of Ohio the federal government or more than three state governments or is subject to any proposed, pending, or past debarment, or suspension, in the past three years prior to the Proposal Due Date. Each Offeror will be required to acknowledge and certify that all firms meet the requirements of this Section 5.4 at the time of Proposal submission.

## 5.5 Changes in Offeror's Organization

Except as provided in the PDBC and in this Section 5.5, Offeror's Team as identified in its Form E (Offeror Team Registration) and subsequently in its Proposal must remain the same for the duration of procurement. If an Offeror wishes to make changes in the team members identified in its registration with the Department, including, without limitation, additions, deletions, reorganizations, and/or role changes in or of any of the foregoing, Offeror shall submit to the Department a revised Form E as soon as possible, but in no event later than the last date for Addenda set forth in Section 1.4 (Procurement Schedule).

After Proposals are submitted, the Major Participants identified in the Proposal may not be removed, replaced, or added to without the written approval of the Department. The Department may revoke an awarded contract if any the Major Participants identified in the Proposal is removed, replaced, or added to without the Department's written approval. To qualify for the Department's approval, the written request must document that the proposed removal,

replacement, or addition will be equal to or better than the individual or firm provided in the Proposal. Requests shall demonstrate, to the Department's satisfaction, that (a) the current Offeror team, including any replacement entity, meets the criteria set forth in the ITO and (b) the replacement or removal of the Major Participants identified in its Proposal will not affect, in whole or in part, the basis upon which the Offeror is evaluated. Requests for removals, replacements and additions must be submitted in writing to the Department's Authorized Representative as described in [Section 4.2](#) (Authorized Representatives and Offeror Registration). The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion.

## **5.6 Participation On More Than One Offeror Team**

Major Participants are prohibited from directly, or indirectly, participating in any capacity on more than one Offeror's team. This prohibition includes the participation on different teams through related corporate entities, such as an entity that directly or indirectly controls another entity, or two entities that are under common control. If Major Participants fail to comply with this prohibition, all Offeror teams on which such Major Participant is participating may be considered non-responsive and the Department may reject the corresponding Proposal.

# **6 PROPOSAL REQUIREMENTS**

## **6.1 General Provisions Regarding Proposals**

Proposal contents, information, organization, formatting, and submission shall adhere to the requirements of this ITO and ITO forms. Any failure to provide all the information, all completed forms or information in the format and organization specified, or the submittal of a Proposal subject to any reservations, qualifications, conditions, assumptions or which contains an alteration, deviation, or is non-compliant in any manner, may result in the Department's rejection of the Proposal or giving it a lower rating, in its sole discretion.

## **6.2 Proposal Contents**

The instructions and requirements for the Administrative Proposal, the Technical Proposal, and the Financial Proposal shall be organized in the order listed herein and shall be clearly indexed.

## **6.3 Proposal Due Date**

The completed Proposal shall be delivered no later than the Proposal Due Date and time specified in [Section 1.4](#) (Procurement Schedule) in the methods specified in this [Section 6](#).

## **6.4 Signatures Required**

[Form A](#) (Proposal Letter) shall be executed by the Offeror and shall be accompanied by evidence of signatory authorization as specified in [Form A](#) (Proposal Letter). Signatures on documents included in the original Proposal may be original (handwritten) or electronic (digital) signatures.

Electronic signatures must be applied by an authorized representative using One Span and be accompanied by a written statement acknowledging the intent of the signatory, and that of the party on whose behalf the signatory is signing, that the signature be binding.

## 6.5 Proposal Format

### 6.5.1 Submission Format Requirements

Through ODOT LiquidFiles, each Offeror shall submit two electronic files of the Proposal, as follows:

- A. One electronic searchable single file PDF format (compatible with Adobe and Bluebeam software) which does not restrict printing or copying text, images, and other content.
- B. One electronic password protected single file PDF format which restricts modification of the file, copying of text, images, or other content. The submission must be able to be read by the Department. The Offeror is not required to supply the password.

A cover sheet shall be provided within the submission, and it shall list the page numbers of every occurrence of a “trade secret” within the Proposal.

### 6.5.2 General Format Requirements

Proposal formatting requirements are as follows:

- A. All pages shall be 8.5-by-11 inches.
- B. Font shall be at least 12-point in Times New Roman (normal spaced lettering). Financial Information (including financial capability information), such as that provided by reporting / auditing agencies, may be provided using different font sizes provided they are legible.
- C. Text contained on charts, exhibits, tables, figures, and other illustrative and graphical information may use a smaller font size and/or different font type but shall be legible.
- D. All pages shall be numbered with a footer depicting, at a minimum, Offeror’s name and page number (Offeror name – Page X of XX). Margins shall be at least 1 inch all around. The page number may lie within the 1-inch margin.
- E. Proposal divider pages will not be counted towards the maximum number of pages unless the divider pages contain expounding information, as determined by the Department.
- F. If an Offeror is compelled to include material in addition to the information requested, the Offeror shall append that material to the end of the most appropriate section. Additional material is subject to the page limitations.
- G. All information, layout, and page formatting shall be identical in all copies. If information is materially different between copies, the Proposal may be rejected.
- H. Submissions exceeding the page limitations (see [Table 3](#) (Proposal Page Limitations)), substantial deviations from formatting requirements, or failing to follow the section format instructions outlined above are grounds for rejection and may deem the Offeror non- responsive.

**Table 3: Proposal Page Limitations**

<i>Proposal Section</i>	<i>Max No. of Pages</i>
<b>Administrative Proposal</b>	
Forms (including supporting information requested with Forms)	As Needed
<b>Technical Proposal</b>	
Offeror Organization and Key Personnel	7
Offeror Team Capabilities and Experience	8
Project Understanding and Approach	7
<b>Financial Proposal (Surety Letter)</b>	
Surety Letter	As Needed
Competitive Bidding Element	N/A (use Bid Express)

## 6.6 Electronic Submission

### 6.6.1 Electronic Submittal of Proposal

The Proposal, excluding the Competitive Bidding Element in accordance with Section 6.9.2 (Competitive Bidding Element (Mark-Up)), shall be submitted electronically through a Department secured file sharing system (ODOT LiquidFiles) no later than the Proposal Due Date and time specified in Section 1.4 (Procurement Schedule). Additional information on ODOT LiquidFiles can be found at:

<https://fileshare.dot.state.oh.us/img/External-Invited-User-Guide-ODOT-LiquidFiles.pdf>.

Contact the Department (Chase Wells, Ph. 614-466-4789) to establish a LiquidFiles account and to submit test submissions for verification.

### 6.6.2 Electronic Submittal of Competitive Bidding Element

To meet the bidding requirements of the Ohio Revised Code Section 5525.01, each Offeror is required to file with its bid a certified check or cashier's check for an amount equal to fifty thousand dollars (\$50,000) payable to the "Director of Transportation." The Department's Office of Contracts will accept a check up to 72 hours in advance of the letting. The Office of Contracts must receive the certified check or cashier's check by 10:00 a.m. on the Proposal Due Date. All checks must be sent to ODOT, Office of Contracts, Attention: Letting Manager, Fourth Floor, 1980 W. Broad St., Columbus, Ohio 43223. The Department will accept an electronic transfer of the \$50,000 from the Offeror or one of its members, as allowable by the ORC. The check shall be forthwith returned to the Offeror in case the Contract is awarded to another Offeror, or, in case of a successful Offeror, when the successful Offeror has entered into the Contract.

The Department uses the Bid Express website (<http://www.bidx.com>) as an official repository for electronic bid submittals. Offerors must submit their Mark-Up via Bid Express via the Project Bids (EBSX) files applicable to the Project.

The Offeror shall enter the Phase 2 Mark-Up as the "Unit Price". The value of the "Unit Price" entry shall be greater than or equal to "\$8.000", but less than or equal to "\$16.000". For example, a bid unit price entry of "\$15.000" will be interpreted as 15.000%.

The Department's Office of Contracts will provide Offerors with RFP Documents and any required Addenda through the Department's website. Addenda will not be provided by hard copy but will be available on the Office of Contracts website at: <http://contracts.dot.state.oh.us>.

Any interested parties and Offerors will be notified of all addenda via email by requesting to be considered "Plan Holders". To be considered a "Plan Holder", submit the necessary information at the following website:

<https://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/planholders.aspx>.

All proposals, plans, Project Bids (EBSX) files and addenda are also available on the Office of Contracts website (Project Number 233000): <http://contracts.dot.state.oh.us/home.do>.

Addenda and/or amendments to the RFP must be acknowledged in the Bid Acknowledgement section of the Project Bids (EBSX) file in order for any Offeror's Proposal to be considered for award of the PDBC. The section contains the certification of receipt of all proposals, addenda, amendments, plans, standard specifications and supplemental specifications. Supplemental Questionnaire information regarding the Offeror's outstanding ODOT and non-ODOT work have also been included in this Section

6.6.2. Bid Express will not accept Proposals that do not have amendments incorporated. Failure to incorporate changed quantities or items in your Proposal (EBSX) submissions will result in the rejection of your Proposal.

The Department will ensure that this electronic bid depository is available for a two-hour period prior to the deadline for submission of Proposals. In the case of disruption of national communications or loss of services by <http://www.bidx.com> during this two-hour period, the Department will delay the deadline for bid submissions to ensure the ability of potential Offerors to submit Proposals. If this occurs, instructions will be communicated to potential Offerors.

Submissions will NOT be accepted after the time specified except in extreme and unusual circumstances recognized by the Department.

## **6.7 Administrative Proposal**

The Administrative Proposal shall include the following forms and information as included in this Section 6.7. No page limits apply to the Administrative Proposal.

### **6.7.1 Proposal Letter (Form A)**

The Administrative Proposal shall include Form A (Proposal Letter). The Offeror shall attach to

the Proposal Letter the documents and information required to demonstrate the capacity for signature described in Form A.

### **6.7.2 Information About Offeror (Form B)**

The Administrative Proposal shall include a completed Form B (Information About Offeror's Team).

### **6.7.3 Responsible Offeror Certifications and Questionnaire (Form C)**

The Administrative Proposal shall include Form C (Offeror Team Certifications and Questionnaire) from the Major Participants. The forms shall be signed by an authorized representative shall include evidence of signature authorization for each such individual.

### **6.7.4 Prequalification (Form D)**

The Administrative Proposal shall include Form D (Prequalification), listing the Major Participant intended to perform each work type and Major Participant to perform Design Work along with the status of their prequalification. At a minimum, categories requiring prequalification by Project award shall include firms who will perform the Work.

## **6.8 Technical Proposal**

### **6.8.1 Design-Build Team Organization and Key Personnel**

The Offeror shall provide sufficient information to enable the Department to understand and evaluate the Offeror's team.

#### **6.8.1.1 Organization Charts**

The Offeror shall provide two organization charts:

- A. One Preconstruction Phase Organization Chart; and
- B. One Construction Phase Organization Chart.

Each organization chart shall show the "chain of command" of the required key personnel roles proposed for the Offeror's Team regarding the Project. Include any other roles critical to the Offeror's approach. At a minimum, the organization charts shall show all Key Personnel and how the Offeror is structured to deliver the Work.

Font requirements on the organization charts will not be enforced, but Offerors shall ensure it is legible and clear.

#### **6.8.1.2 Narrative**

The Offeror shall include a narrative to describe the interactions between positions, functions of shown intended roles, and other planned team integration techniques intended.

#### **6.8.1.3 Key Personnel**

This Section 6.8.1.2 shall include resumes of Key Personnel as described in Table 4 (Key Personnel). Resumes shall be limited to no more than one page per individual. Key Personnel roles may only be performed by one person. One individual may not fill the role of more than one position. Resumes for individuals shall be on separate and distinct pages.

Resumes should demonstrate the abilities of all identified Key Personnel through a description of qualifications, experiences, and performance of similar tasks on previous similar recent relevant projects. These qualifications and experience should provide confidence to the Department that the Project will be effectively managed through personal competence and accountability.

Resumes for all Key Personnel shall provide the following information:

- A. The individual’s position and authority within the Offeror’s Team.
- B. Previous projects, similar in nature to the proposed project or other significant efforts for which the individual has performed a similar function.
- C. Identify estimated percentage of their weekly time that the individual will be dedicated to the Project during the Preconstruction Phase and the Construction Phase.
- D. Relevant experience, professional registrations, education, and other components of qualifications applicable to this Project.
- E. Any unique qualifications.
- F. A statement indicating that the individual is currently employed by a member of the Offeror’s Team at the time of the Proposal Submittal.

**Table 4: Key Personnel**

<b>Key Personnel</b>	<b>Duties/Qualifications</b>
<b>DBT Project Manager</b>	The DBT Project Manager is responsible for all aspects of the Project, including, but not limited to, overall design, environmental compliance, construction, quality management, and contract administration. Preferences include at least 10 years’ experience as a Project Manager, experience with Design-Build Project Delivery, and experience with BIM.
<b>DBT Model Design Manager</b>	The DBT Model Design Manager is responsible for creating, managing, and updating BIM models to depict digital representations of the physical and functional characteristics of the project. The DBT Model Design Manager will utilize CADD tools to create 3D Models to be utilized by the Contractor to build the project. Preferences include at least a bachelor’s degree in architecture or engineering and at least five years of experience in an architect, engineering, or construction role.
<b>DBT Model Construction Manager</b>	The DBT Model Construction Manager is responsible for implementing, managing, and updating BIM models during construction to ensure prompt and accurate construction and record retention. The DBT Model Construction Manager will ensure that the BIM can be utilized by the Contractor to build the project. Preferences include at least a bachelor’s degree in architecture or engineering and at least five years of experience in an architect, engineering, or construction role.

## 6.8.2 Design-Build Team Capabilities and Experience

Provide the requested specific information as it relates to previous project experience and anticipated project management approaches.

### 6.8.2.1 General Offeror Experiences

Describe the general experience of the Offeror Team. Focus on specific firm experience that relates to carrying out the proposed project and how the experience will ensure success of the Offeror's general approach to the Project.

### 6.8.2.2 Technical Experience Attachments

The Technical Proposal shall include Technical Experience Attachments, which shall not exceed 6 pages total. Provide project information consisting of descriptions of projects completed by the Offeror Team. Include work by the Offeror that best illustrates current qualifications relevant to this Project. Projects should be completed within the last 10 years or substantially completed. Specify if noted Cost of Project is Design Cost or Construction Cost. Technical Experience Attachments shall be limited to two pages per project (on distinct pages).

- A. Technical Experience Attachments should demonstrate experiences in the following areas:
  1. Design and Construction of projects of scope and complexity relatable to this Project.
  2. Experience in the successful previous adoption of fair costing processes / negotiation of a GMP / Lump Sum under PDB / CMGC arrangements.
  3. Bringing innovation to meet budget constraints as part of early contractor involvement.
  4. Timely completion of projects of scope and complexity relatable to this Project.
  5. Proposed Key Personnel members' roles (if applicable) and/or firms' role with the Project, and the ability to function in a coordinated high performing team.
- B. Each Technical Experience Attachment must clearly include the following information:
  1. Sponsoring/Owner Agency's Project Name, Project Location, and contract type (e.g., PDB, DB, DBB, CMGC). Provide any commonly known industry-wide name (if applicable) and
  2. Owner's project number (If applicable);
  3. Name of the representative firm and the firm's responsibility;
  4. Overall project contract value and date on which the value was established. Provide represented firm's contract value for which firm was directly responsible. Where a portion of the work was subcontracted, include both the represented firm's total contract value and the percentage subcontracted;
  5. The sponsor/owner's contact information (project manager name, phone number, e-mail address). If the owner's project manager is no longer with the owner, provide an alternate contact at the agency that is familiar with the project. The alternate contact must have played a leadership role for the owner during the project;



6. Dates of design (if applicable) and construction (if applicable);
7. General Description of the overall project;
8. Detailed description of the work or services provided, and percentage of the overall project actually performed (as relative to costs); and
9. Description of original scheduled completion deadlines and actual completion dates, as applicable to the Offeror. Describe reasons for completing the project in advance of the contract completion deadline. Describe reasons for completing the projects later than the contract completion deadline specified within the original contract. Provide the value of any liquidated damages and/or penalties, and reasons for assessed liquidated damages and/or penalties, if applicable.

It is the Offeror's responsibility to ensure contact information is up to date. Information which cannot be verified shall be scored accordingly.

### **6.8.3 Project Understanding and Approach**

#### **6.8.3.1 Overall Approach**

Describe the Offeror's overall approach to deliver the Work described in the RFP, specifically including:

- A. Offeror's understanding of the Project Goals set forth in Section 1.3 (Project Goals), methods expected to meet project specific objectives, and the approach to help the Department achieve the Project Goals;
- B. An understanding of BIM including the necessary quality management processes to verify the design and construction, and how it can improve productivity and quality throughout the design, construction, and maintenance operations of the Project and its assets; and
- C. Offeror's approach to developing an Opinion of Probable Cost for the entire project during Sub-Phase 1B for Phase 2 Work; and
- D. Offeror's approach to documenting the Project development process including lessons learned, best practices, and administrative efficiencies in a way that can be reproduced by the Department in future BIM projects

#### **6.8.3.2 Preconstruction Phase – Sub-Phase 1A (BIM Proof-of-Concept) Approach**

Describe Offeror's specific Sub-Phase 1A (BIM Proof-of-Concept) approach, specifically including:

- A. A description of Offeror's plan for coordination and collaboration with the Department;
- B. Offeror's approach to managing and delivering the BIM Execution Plan;
- C. Offeror's overall approach to early engagement of modeling and personnel to further define the scope.

#### **6.8.3.3 Preconstruction Phase – Sub-Phase 1B (Project Development) Approach**

Describe Offeror's specific Sub-Phase 1B (Project Development) approach, specifically including:

- A. A description of Offeror’s plan for coordination and collaboration with the Department;
- B. Offeror’s approach to scheduling and quality management;
- C. Offeror’s approach to ensure that the Department receives a fair price for construction, including:
  - a description of the major cost components (i.e., cost drivers) for the Project and Offeror’s approach to obtaining a fair price for these major cost drivers;
  - a description of Offeror’s approach to competitively soliciting subcontractor quotes and how subcontracting packages will be developed and advertised to the subcontracting community, a description of Offeror’s approach to obtaining reasonable proposals from qualified subcontractors, and
  - a description of Offeror’s approach to openness and transparency in the subcontracting solicitation and selection process;
- D. Offeror’s approach to risk identification and mitigation during the Project Development Phase of the Project, identifying at least two key risks for this Project and proposing at least one mitigation strategy for each identified risk, to be performed during the Project Development Phase, to eliminate or minimize the impact of the risk to the Project; and
- E. Offeror’s approach to the BIM Execution Plan, including:
  1. A projected level of detail;
  2. How changes/modifications will be incorporated and tracked within the model;
  3. Assurances that the end product will be reproducible and compatible with the Department’s record retention requirements.

### **6.8.3.4 Construction Phase – Phase 2 (Final Engineering and Construction) Approach**

Describe Offeror’s specific Phase 2 (Final Engineering and Construction) approach, specifically including:

- A. A description of Offeror’s plan for coordination and collaboration with the Department;
- B. Offeror’s overall construction management approach, including project controls methods and approach to quality assurance and control;
- C. The scope of work Offeror intends to self-perform, and the scopes of work that Offeror intends to subcontract, and Offeror’s approach to development of Work Packages that would optimize project delivery; and
- D. A description of the Offeror’s construction approach using the BIM model to construct the Project and update the model throughout construction to reflect as-built conditions.

## **6.9 Financial Proposal**

### **6.9.1 Surety Letter**

The Financial Proposal shall include a single letter executed by Authorized Representatives the Surety as evidenced by a current certified power of attorney of each Surety. The letter shall

meet the following requirements:

- A. Confirmation each Surety that it is (x) rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company; and (y) listed in the current United States Secretary of the Treasury, Fiscal Service, Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.
- B. A commitment on the part of each Surety to provide a Performance Bond and Payment Bond for the Phase 1 Work, each in an aggregate amount of \$425,000, the Contract Price for Phase 1 of the Project, as the same may be increased from time to time by execution of a Change Order and Performance Bond Rider and Payment Bond Rider as applicable thereto, each in the forms attached as Exhibit K (Form of Payment and Performance Bonds) to the PDBC,
- C. Confirmation on the part of each Surety of its financial capacity and ability, as and when Change Orders are agreed upon between the Department and Offeror with respect to Phase 2, to increase the amount of the Performance Bond and Payment Bond, to an aggregate amount equal to the Contract Price for the initial Phase 1 Work and Phase 2 Work (the approximate total of all Phase 1 and Phase 2 Work is currently estimated to be approximately \$3.5 million as and when the Contract Price may be increased from time to time upon execution of each Change Order and the Performance Bond Rider and Payment Bond Rider, as applicable thereto.
- D. Such letter shall not include any conditions, qualifications, or reservations for underwriting or otherwise, other than:
  - 1. a statement on the part of each Surety that the commitment to issue the Performance Bond and Payment Bond for the aggregate amount of the Contract Price for Phase 1 is expressly conditioned upon the award and execution of the PDBC, by the Offeror and Department, and
  - 2. a statement on the part of each Surety of its financial capacity and ability to increase the aggregate amount of the Performance Bond and Payment Bond issued in Section 6.9.1(A)(1), as and when Change Orders are agreed upon between the Department and Offeror with respect to Phase 2 as set forth in Section 6.9.1(A)(2).
- E. The Surety or Sureties may reserve in the letter the right to approve any modifications to the PDBC prior to execution of the PDBC by the Department and Offeror that materially adversely impact the Surety obligations subsequent to the RFP submission, which approval by such Surety and/or Sureties shall not be unreasonably withheld, conditioned or delayed.

### **6.9.2 Competitive Bidding Element (Phase 2 Mark-Up)**

Offeror shall provide a Phase 2 Mark-Up between 8% and 16% using Bid Express in accordance with Section 6.6.2 (Electronic Submittal of Competitive Bidding Element).

Phase 2 Mark-Up will be applied in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process) of the PDBC.

### **6.10 Proposal Validity**

Proposals shall be valid for a period of 120 days after the Proposal Due Date. No Offeror may withdraw its Proposal within the 120-day period, unless notified by the Department that (a) no PDBC for the Project will be awarded by the Department pursuant to the RFP; (b) the Department has awarded the PDBC to another Offeror and has received the executed PDBC and other required documents; (c) the Department does not intend to award the PDBC to the Offeror; or (d) such Offeror is not the apparent best value or next highest ranking Offeror.

If the next best Offeror is notified during the 120-day period that it is selected for negotiations, such Offeror shall be automatically deemed to have extended the validity of its Proposal for the period until 180 days after the Proposal Due Date. Any Offeror may elect to extend the validity of its Proposal beyond the time periods set forth above.

## **6.11 Withdrawals and Late Submittals**

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

Proposals received after the time due on the Proposal Due Date may be rejected without consideration or evaluation. It is an Offeror's sole responsibility to see that its Proposal is received as required by this ITO.

## **6.12 Ownership of Proposal**

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

## **6.13 Proposal Costs Not Reimbursable**

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

# **7. EVALUATION PROCESS**

## **7.1 Overview**

The Department's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this Procurement Process.

Technical Proposals will be evaluated by the Proposal Advisory Group. The Proposal Advisory Group consists of a Proposal Evaluation Team and an Executive Management Team. The Proposal Advisory Group may be assisted by any number of subgroups and/or subject matter experts within the Department, other involved agencies, and/or entities contracted by the Department.

Proposals will first be reviewed by a Proposal Evaluation Team for conformance to this ITO regarding organization and format, the responsiveness of the Offeror to the requirements set forth in this ITO, and completeness of the Proposal. If responsive, Proposals will then be reviewed for compliance with the pass/fail criteria identified herein, as more fully set forth in [Section 7.2](#) (Responsiveness and Pass/Fail Evaluation).

Responsive, “passing” Proposals will be further evaluated based on the Offeror’s ability to meet and exceed the requirements and objectives established in the RFP in a beneficial way that provides a consistently outstanding level of quality. The extent to which the Offeror meets or exceeds the evaluation criteria in [Section 7.3](#) (Evaluation of Technical Proposals) and [Section 7.6](#) (Evaluation of Financial Proposal) will be determined by the Proposal Evaluation Team in its sole discretion and will be reflected in the rating of each Proposal.

Thereafter, qualitative evaluation of Offerors’ respective interview performance will result in an interview score for each Offeror. An overall Proposal score inclusive of the interview score will result as further described in [Section 7.7](#) (Overall Proposal Score).

The Proposal Evaluation Team will present their findings and recommended scoring information to the Executive Management Team for consideration. The Executive Management Team will examine the Proposal Evaluation Team’s findings and ratings. The Proposal Evaluation Team will establish Proposal and Interview scores with concurrence from the Executive Management Team based on the scoring guidelines within the ITO/RFP.

In each step, the Department may issue request for clarification to ensure Proposals are fully evaluated, and Offerors are given the opportunity to afford the Department clarifying information to aid in the evaluation, as more fully set forth in [Section 7.8](#) (Requests for Proposal Clarifications/Revisions).

**Table 5: Evaluation Scoring Summary**

<i>Proposal Section</i>	<i>Criteria</i>
Administrative Proposal	Pass/Fail
Technical Proposal	40 Points
Offeror Organization and Key Personnel	10 Points
Offeror Team Capabilities and Experience	8 Points
Project Understanding and Approach	22 Points
Interview	20 Points

Competitive Bidding Element	40 Points
Total	100 Points

## 7.2 Responsiveness and Pass/Fail Evaluation

Upon receipt, the Proposals will be reviewed by a subcommittee of the Proposal Evaluation Team.

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

### 7.1.1 Administrative Proposals

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

- A. The Administrative Proposal includes all forms described in Section 6.7 (Administrative Proposal);
- B. The Offeror meets all Project prequalification requirements listed in Form D (Prequalifications) in accordance with Section 5.2.

### 7.1.2 Technical Proposals

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

- A. The Technical Proposal includes all information required pursuant to Section 6.8 (Technical Proposal); and
- B. The Offeror Team included in the Proposal have not changed since the Offeror's registration with the Department, except with the Department's prior written approval.

### 7.1.3 Financial Proposals

Financial Proposals will be evaluated on a pass/fail basis based on the Financial Proposal's inclusion of a Surety letter responsive to all criteria set forth in Section 6.9 (Financial Proposal).

### 7.1.4 Department Right to Exclude Proposals from Consideration or to Waive Mistakes

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

## 7.3 Evaluation of Technical Proposals (40 points)

After completion of the pass/fail and responsiveness review, each Technical Proposal will be evaluated to determine its ability to meet or exceed the Project Goals and will be scored in the following categories, for a total maximum Technical Proposal score of 40 points:

- A. Offeror Team Organization and Key Personnel (10 points)
- B. Offeror Team Capabilities and Experience (8 points)
- C. Project Understanding and Approach (22 points)

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

### **7.3.1 Evaluation Offeror Team Organization and Key Personnel (10 points)**

#### **7.3.1.1 Organization**

The Offeror Team's organization will be evaluated based on the extent to which such organization:

- A. Demonstrates an effective organization to deliver a progressive design-build delivery;
- B. Demonstrates an efficient structure that is capable of effective internal coordination and collaboration with the Department, its consultants, and Stakeholders;
- C. Identifies appropriate personnel to perform the Work; and
- D. Is likely to facilitate successful delivery of the Project.

#### **7.3.1.2 Key Personnel**

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

- A. The required Key Personnel meet or exceed minimum requirements for qualifications and experience and provide experience that is likely to facilitate and improve successful delivery of the Project; and
- B. The Offeror-identified additional Key Personnel provide value and have experience that is likely to facilitate and improve successful delivery of the Project.

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

### **7.3.2 Evaluation of Offeror's Capabilities and Experience (8 points)**

The Offeror's experience will be evaluated on the basis of the demonstrated competency, capability, and capacity of the Offeror Team to successfully deliver a project of similar size,

scope, and complexity using alternative project delivery methods, particularly progressive design-build delivery. Specifically, the Department will evaluate the extent to which the Offeror's experience:

- A. Demonstrates experience designing and constructing projects of similar scope;
- B. Demonstrates experience collaborating with owners to determine cost effective solutions and resulting projects;
- C. Demonstrates experience and capability with open book pricing processes used in progressive design-build and CMGC delivery methods; and
- D. Demonstrates relevant experience that will improve the likelihood of a successful project. Experience on completed projects will be given more weight than projects in progress.

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

### **7.3.3 Evaluation of Project Understanding and Approach (22 points)**

#### **7.3.3.1 Categories**

Project understanding and approach will be evaluated to determine the Offeror's ability to meet or exceed the Project Goals and requirements and will be scored in the following categories:

- A. Project Approach – Overall Approach;
- B. Project Approach – Preconstruction Phase – Sub-Phase 1A (BIM Proof-of-Concept);
- C. Project Approach – Preconstruction Phase – Sub-Phase 1B (Project Development); and
- D. Project Approach – Construction Phase – Phase 2 (Final Engineering and Construction).

#### **7.3.3.2 Overall Approach**

Project Approach – Overall Approach will be evaluated based on the extent the Offeror demonstrates:

- A. An understanding of the Project, Project objectives, and Project Goals;
- B. An understanding of BIM and how it can improve productivity and quality throughout the design, construction, and maintenance operations of the project's assets; and
- C. An effective approach to developing reliable and consistent OPCs.

#### **7.3.3.3 BIM Proof-of-Concept, Project Development, and Final Engineering and Construction**

The evaluation criteria for the Project Approach (BIM Proof-of-Concept Phase, Project Development Phase, and Final Engineering and Construction Phase) will be evaluated based on the extent the Offeror demonstrates:



- A. An alignment with Project Goals and the concepts of progressive design-build delivery;
- B. An approach that effectively engages Key Personnel and other project personnel;
- C. An efficient and effective approach for internal coordination and collaboration and external coordination with, the Department, third parties, and stakeholders in connection with the Project, with emphasis on BIM collaboration;
- D. An understanding of the scope of work, schedule for the work, and effective processes to advance and manage the Project in a manner that is cost-effective and ensures quality while maintaining the schedule;
- E. Implementation of Building Information Modeling (BIM) and related technologies to improve digital delivery, data availability, workflow, and 3D model delivery with an emphasis on long-term utilization of the model information by the Department;
- F. An approach to developing an effective BIM Execution Plan and model element breakdown structure;
- G. An effective approach to identify innovation; and
- H. An approach to developing Work Packages, pricing, subcontracting, and risk pricing that drives innovation and cost savings.

The Department will add the points awarded for each evaluation factor to determine the Project Understanding and Approach score.

## **7.4 Interviews (20 points)**

Following Proposal submission, Offerors will be required to attend an interview with the Department as described in this [Section 7.4](#). Interviews will be held on the dates set forth in [Section 1.4](#) (Procurement Schedule) at the following location:

ODOT District 2  
317 E. Poe Rd.  
Bowling Green, OH 43402

Each Offeror may bring to its interview any material that it believes may assist the Department in evaluating the Proposal. Each team will be required to attend the interview with all Key Personnel in attendance.

The Offeror may bring other individuals so long as the total number of attendees does not exceed fifteen.

The presentation and question and answer (Q&A) period will last approximately 45 minutes and will be qualitatively evaluated and scored by the Department.

### **7.4.1 Interview Format**

The format of the interview will be as follows:

- A. Offeror Set Up (10 minutes)

- B. Offeror Presentation (20 minutes)
- C. Q&A (25 minutes, 5 Questions)

### 7.4.2 Interview Evaluation

Offerors will be evaluated on their interview performance and based on the extent the Offeror demonstrates:

- A. An experienced team and personnel that can successfully deliver the Project;
- B. Project understanding and approach; an understanding of Progressive Design-Build delivery method, including understanding of Offeror’s role at each Phase of the Project;
- C. Recognition of key points and ideas, including the Offeror’s role in Project advancement at each Project Phase, risks at each Project Phase, understanding of the GMP process and pricing transparency, and ideas and ability necessary to effectively collaborate with the Department and other stakeholders to achieve Project Goals; and
- D. Offeror’s approach to utilizing BIM technologies including development of a BIM Execution Plan and model element breakdown structure to advance the Department’s implementation of this technology beyond this Project.

## 7.5 Technical Proposal and Interview Evaluation

Table 6 (Technical Proposal and Interview Evaluations) includes scoring information used for the evaluation of the Technical Proposal and Interview.

**Table 6: Technical Proposal and Interview Evaluation**

<i>Adjectival Rating</i>	<i>Description</i>	<i>Percent of Possible Points</i>
<b>Excellent (E)</b>	<ul style="list-style-type: none"> <li>• Addresses ITO requirements in a <b>significantly beneficial</b> way (providing advantages, benefits, or added value to the Project).</li> <li>• Indicates <b>significant strengths</b> with <b>few or no minor weaknesses</b>.</li> <li>• Offers an approach with the <b>high potential of exceeding</b> Project Goals.</li> </ul>	<b>80-100%</b>
<b>Very Good (VG)</b>	<ul style="list-style-type: none"> <li>• Addresses ITO requirements in a <b>beneficial</b> way (providing advantages, benefits, or added value to the Project).</li> <li>• Indicates <b>few or minor weakness</b> that are <b>outweighed by strengths</b>.</li> <li>• Offers an approach which will <b>likely meet or potentially exceed</b> Project Goals.</li> </ul>	<b>60-79%</b>

<b>Good (G)</b>	<ul style="list-style-type: none"> <li>• Sufficiently addresses ITO requirements.</li> <li>• Indicates weaknesses that are generally balanced with the strengths.</li> <li>• Offers an approach which likely meet the Project Goals.</li> <li>• Approach with no identified strength and no identified weaknesses will be within this range.</li> </ul>	<b>40-59%</b>
<b>Fair (F)</b>	<ul style="list-style-type: none"> <li>• <b>Marginally addresses</b> the ITO requirements.</li> <li>• Indicates weaknesses that are not offset by strengths or weaknesses that could adversely affect successful project performance.</li> <li>• Offers an approach which <b>will require improvement</b> to meet the Project Goals.</li> </ul>	<b>20-39%</b>
<b>Poor (P)</b>	<ul style="list-style-type: none"> <li>• <b>Does not demonstrate</b> the potential to meet the ITO requirements.</li> <li>• Lacks essential information or information provided is conflicting or unproductive.</li> <li>• Indicates <b>significant</b> weaknesses or deficiencies.</li> <li>• Offers an <b>undesired</b> approach to the Project Goals.</li> </ul>	<b>0-19%</b>

The following definitions will be used by the Proposal Advisory Group when evaluating Technical Proposals and Interviews:

Strengths — represents a benefit to the Project and is expected to increase the Offeror’s ability to advance the Project Goals and exceed requirements.

- Significant Strength has a considerable positive influence on the Offeror’s ability to advance the Project Goals or exceed requirements.
- Strength has a slight positive influence on the Offeror’s ability to advance the Project Goals and exceed requirements.

Weaknesses — represents a negative influence on the Offeror’s ability to advance the Project Goals and values, meet requirements or provide efficient or effective performance.

- Weakness has a considerable negative influence on the Offeror’s ability to advance the Project Goals, meet requirements or provide efficient or effective performance.
- Minor weakness has a slight negative influence on the Offeror’s ability to advance the Project Goals, meet requirements or provide efficient or effective performance.

Within each scoring range, points will be based on a balance of the relative significance of the strengths, weaknesses, and clarity in demonstrating the Offeror’s ability in advancing the Project Goals.

## 7.6 Evaluation of Financial Proposal (40 points)

### 7.6.1 Competitive Bidding Element (Phase 2 Mark-Up)

The Offeror who submits the lowest Phase 2 Mark-Up will receive 40 points. The formula for determining number of points for the competitive bidding element is as follows:

40 points x (Lowest Offeror Phase 2 Mark-Up / Offeror Phase 2 Mark-Up)

## 7.7 Overall Proposal Score (100 points)

The Department intends to identify the Offeror with the highest overall score as the “Apparent Best Value Offeror”. The Offeror's Overall Proposal Score is the sum of the component scores determined under Section 7.3 (Evaluation of Technical Proposals), Section 7.4 (Interviews), and Section 7.6 (Evaluation of Financial Proposal).

## 7.8 Request for Proposal Clarifications

The Department reserves the right, at its sole discretion, to ask written questions of the Offerors and to request clarification of any submittal. The Offerors agree to respond to the Department's requests with the appropriate personnel, and to answer questions necessary to provide clarification of any areas where the intent or meaning of the submittal is in doubt within five Working Days. Such requests will be for purposes of clarification only.

## 7.9 Recommendation to Executive Management Team

The Proposal Evaluation Team will make a recommendation to Executive Management Team regarding the rankings of the Proposals and identification of the best value Offeror. The Executive Management Team will evaluate the recommendations and will determine whether to proceed with award of a PDBC to the best value Offeror or to take any other action.

# 8 POST-EVALUATION PROCESS AND EXECUTION

## 8.1 Incorporation of Proposal and Finalization of the Contract

### 8.1.1 Limited, Good Faith Negotiations

The Department will proceed with the best value Offeror based on the selection criteria outlined in Section 7 (Evaluation Process) and enter into limited, good-faith negotiations within the parameters in Section 8.1.1.1 (Limited Good Faith Negotiations) with the best value Offeror in order to execute the PDBC. By submitting its Proposal, each Offeror commits to enter into PDBC substantially in the form included in the RFP of this ITO, as such PDBC is subsequently modified as mutually agreed upon by the Department and Offeror following the limited, good faith negotiations outlined in Section 8.1.1.1 herein.

#### 8.1.1.1 Limited, Good Faith Negotiations

The Department anticipates that limited, good-faith negotiations will occur between the Department and the selected best value Offeror within the parameters set forth in 23 CFR 636.513 regarding (i) scope, schedule, and any other information provided by the best value Offeror in its proposal, and (ii) pricing, compensation structure, and allocation of risk as contemplated by and set forth in the PDBC, and any such resulting modifications of the PDBC following such negotiations, shall be mutually acceptable to the Department and the Offeror.

### 8.1.1.2 Termination of Negotiations

If, after limited, good faith negotiations within the parameters set forth in 23 CFR 636.513 with respect to: (i) scope, schedule and any other information provided by the best value Offeror in its Proposal; and (ii) pricing compensation structure and allocation of risk as contemplated by the PDBC, a PDBC reasonably acceptable to the Department and with the best value Offeror cannot be negotiated and agreed upon, the Department will terminate negotiations upon written notice to the Offeror.

Following such notice of termination of negotiations with the Offeror the Department may take the following actions:

- A. Proceed to the next best value Offeror and enter into limited good-faith negotiations, within the parameters set forth in Section 8.1.1 (Limited, Good Faith Negotiations) herein; or
- B. Reject all Proposals; or
- C. Issuance of a request for Proposal Revisions to Offerors; or
- D. Issuance of a new RFP with respect to the Project.

## 8.2 Conditions Precedent to Contract Execution

The following are conditions precedent to execution of the PDBC by the Department:

- A. Successful completion of limited, good faith negotiations between the Department and the Offeror as set forth in Section 8.1.1.1 (Limited, Good Faith Negotiations) herein;
- B. Execution of the PDBC by the Offeror.

## 8.3 Debriefings

All Offerors submitting Proposals will be notified in writing of the results of the evaluation process. Offerors not selected for award may request a debriefing. Debriefings will be provided at the Department's earliest convenience after execution of the Contract. The debriefing will be conducted by a procurement official familiar with the rationale for the selection decision and PDBC award as determined by the Department. Consistent with ORC 9.28(B), no evaluation information will be shared until after PDBC Execution.

Debriefings shall:

- A. Be limited to discussion of the unsuccessful Offeror's Proposal and may not include specific discussion of a competing Proposal;
- B. Be factual and consistent with the evaluation of the unsuccessful Offeror's Proposal;
- C. Provide information on areas in which the unsuccessful Offeror's Proposal had weaknesses or deficiencies;
- D. May not include discussion or dissemination of the thoughts, notes, or rankings of individual members of any evaluation committee, but may include a summary of the rationale for the selection decision and PDBC award.

## 9 DEPARTMENT RIGHTS AND DISCLAIMERS

In addition to the reserved rights articulated throughout the RFP, the Department reserves the right, in its sole and absolute discretion, to do any of the following:

- A. Reject any or all Proposals;
- B. Issue a new RFP;
- C. Cancel, modify, or withdraw the RFP;
- D. Appoint an evaluation team to review Proposals and seek the assistance of outside technical experts in the Proposal evaluation;
- E. Revise and modify, at any time before the Proposal Due Date, the RFP;
- F. Extend the Proposal Due Date;
- G. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposal on one or all the Offerors;
- H. Refuse to receive or open a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based on, but not limited to, any of the following:
  - A violation of the terms of the RFP on the part of a Major Participant;
  - An issuance of a notice of debarment or suspension to a Major Participant;
  - A submittal by the Offeror of more than one Proposal under the Offeror's own name or under a different name;
  - The existence of a conflict of interest or evidence of collusion in the preparation of a Proposal, Proposal, or bid for any design or construction project by a Major Participant; or
  - A submittal by an Offeror that is contingent on conditions and exceptions not acceptable to the Department.
- I. Revise the evaluation process in the event that only one Proposal is received.

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

# EXHIBIT A: FORMS

## FORM A: PROPOSAL LETTER

OFFEROR: \_\_\_\_\_

Proposal Date: \_\_\_\_\_, 2024

Ohio Department of Transportation 1980 W. Broad Street  
Columbus, Ohio 43223  
Attn: Chase Wells, Alternative Project Delivery

The undersigned (“**Offeror**”) submits this proposal (this “**Proposal**”) in response to that certain Request for Proposals (**RFP**) issued by the Ohio Department of Transportation (the Department), dated February 1, 2024, as amended, to develop, design, and potentially construct the WOO-23-17.88 Roundabout (the Project), as more specifically described in the RFP Documents. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

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

In submitting this Proposal, the Offeror understands and agrees that, if selected as the best value Offeror by the Department, the Department and Offeror will enter into limited, good faith negotiations, as described in Section 8.1.1 (Limited, Good Faith Negotiations) of the ITO within the parameters set forth in 23 CFR 636.513 with respect to (i) scope, schedule and any other information provided by the best value Offeror in its Proposal, and (ii) pricing compensation structure and allocation of risk as contemplated and as set forth in the PDBC. The Offeror understands and agrees that any such resulting modifications of the PDBC following such limited good faith negotiations shall be mutually acceptable to the Department and the Offeror prior to execution of the PDBC by the Offeror and the Department.

If selected by the Department as the best value Offeror, Offeror agrees to do the following or, if not the Contractor, to cause the Contractor to do the following: (a) agree to attend and actively participate in limited, good faith negotiations and meetings with the Department in an effort to agree upon and execute the PDBC, as such PDBC may be modified within the parameters set forth in Section 8.1.1 (Limited, Good Faith Negotiations) of the ITO and mutually agreed upon by the Department and Offeror; (b) satisfy all other conditions to award of the PDBC that do not expressly conflict with this Proposal Letter; and (c) perform its obligations as set forth in the Instructions to Offerors (ITO), as amended, that do not expressly conflict with this Proposal Letter, including compliance with all commitments contained in this Proposal.

The following individual is designated as the Offeror Point of Contact in accordance with Section 4.2 (Authorized Representatives and Offeror Registration): \_



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

- Administrative Proposal;
- Technical Proposal; and
- Financial Proposal.

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

*[List all Addenda by number and date issued.]*

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

Subject to good faith negotiations referenced in Section 8.1.1 (Limited, Good Faith Negotiations) of the ITO, this Letter and the potential modifications of certain terms and conditions of the PDBC within the parameters described therein and Section 8.1.1 of the ITO, Offeror certifies that its Proposal is submitted without reservation, qualification, assumptions, or conditions except as otherwise expressly stated in this Proposal.

Offeror acknowledges the requirements of Section 3.4 (OJT Requirements) and hereby certifies that it will meet such requirements.

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

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

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

Offeror consents to the Department's disclosure of its Proposal pursuant the applicable provisions of law to any Persons in the Department's sole discretion after award of the PDBC by the Department. Offeror acknowledges and agrees to the disclosure terms described in ITO Section 4.6 (Improper Conduct and Non-Collusion). Offeror expressly waives any right to contest such disclosures as may exist under applicable law.

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

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

With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Offeror is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate and authorized officer of the corporation. If the Offeror is a partnership, such evidence shall be in the form of a partnership resolution and a general partner



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

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

*[Insert the Offeror's name]*

By: \_\_\_\_\_ Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

2. Sample signature block for partnership or joint venture:

*[Insert the Offeror's name]*

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

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

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

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

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

3. Sample signature block for attorney in fact:

*[Insert the Offeror's name]*

By: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Attorney in Fact

## FORM B: INFORMATION ABOUT OFFEROR'S TEAM

Name of Offeror: \_\_\_\_\_

Type of entity: \_\_\_\_\_

Offeror's address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Telephone \_\_\_\_\_ Email

<b>Offeror Team Role</b>	<b>Name and Address of Head Office</b>	<b>Name and Title of Contact</b>	<b>Contact Information (E-mail and Telephone)</b>
Lead Contractor			
Lead Designer			
(List any Major Participants or known subcontractors or subconsultants here)			

## FORM C: OFFEROR TEAM CERTIFICATIONS AND QUESTIONNAIRE

FIRM NAME: \_\_\_\_\_

### 1. Certifications

The Undersigned hereby certifies that:

- a. It has carefully examined and is fully familiar with all provisions of the RFP and ITO, has reviewed all materials provided, any Addenda, and the Department's responses to questions, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed and does not contain internal inconsistencies.
- b. The information and supporting data provided by the Undersigned is accurate and complete to the best of its knowledge.
- c. It has carefully checked all the words, figures, and statements in the Proposal.
- d. It has notified the Department of any identified deficiencies and omissions in the RFP and other documents provided by the Department.
- e. The Proposal is not sham or collusive and that the Proposal as not made in the interest or behalf of any person, partnership, company, association, organization, or corporation not herein name or disclosed.
- f. It has not directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interests of the public body which is to award the contract, or of any other bidder/proposer, or anyone else interested in the proposed contract; and that the bidder/proposer has not in any manner sought by collusion to secure for himself/herself/themselves, an advantage over any other bidder/proposer.
- g. Prior to the opening and reading of Proposals, the Undersigned:
  - i. did not, directly or indirectly, induce or solicit anyone else to submit a false or sham Proposal;
  - ii. did not, directly or indirectly, collude, conspire, connive or agree with anyone else that said Offeror or anyone else would submit a false or sham bid, or that anyone should refrain from bidding or withdraw a Proposal;
  - iii. did not, in any manner, directly or indirectly, seek by agreement communication, or conference with anyone to raise or fix the bid price of said Offeror or of anyone else or to raise or fix any overhead profit or cost element of their price or of that of anyone else;
  - iv. did not, directly or indirectly, submit their Proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereof, to any corporation, partnership, company, association organization, bid depository, or to any member or agent, thereof, or to any individual or group individuals, except to the awarding authority or to any person or person who have a partnership or other

financial interest with said Offeror in their business.

- h. It does not have any organizational conflict of interest as defined in Section 5.3 (Organizational Conflicts of Interest).
- i. It isn't currently debarred, suspended, disqualified, or is currently removed from bidding or performing work, voluntarily or involuntarily, for the State of Ohio or the federal government.
- j. It hasn't been debarred suspended, disqualified, or removed from bidding or performing work, voluntarily or involuntarily, for the State of Ohio and the federal government during the past three years.
- k. It isn't subject to any proposed or pending debarment, suspension, or similar actions.
- l. It will use good faith efforts to meet the aforementioned goals that requires the Offeror to subcontract to a sufficient number of DBEs at a sufficient dollar amount to meet or exceed the goal or submit documentations of its good faith efforts to do so.
- m. If awarded the Contract, the Offeror will update DBE Performance Plans on a monthly basis, or more frequently if deemed necessary by the Department to assure it continues to use good faith efforts to meet or exceed the goal set forth in the Contract.
- n. It will comply with the FHWA Buy America Requirements of 23 CFR 635.410, and the Build America, Buy America Act, Section 70913 et seq. of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, which permits FHWA participation as more fully described in the PDBC.
- o. It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2; has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, where required, 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.
- p. 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. 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. Questions

The Undersigned shall respond either “yes” or “no” to each of the following questions. If the response is “yes” to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. The Undersigned shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. For the Undersigned, the term “**affiliate**” shall mean any entity which owns a substantial interest in or is owned in common ownership with the Undersigned .

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

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

If yes, please explain the circumstances. If

no, so state. Yes \_\_\_\_\_ No \_\_\_\_

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

If yes, please explain the circumstances. If

no, so state. Yes \_\_\_\_\_ No \_\_\_\_

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

If yes, please explain the circumstances. If

no, so state. Yes \_\_\_\_\_ No \_\_\_\_

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross- complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy, or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes \_\_\_\_\_ No \_\_\_\_\_

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

If yes, please explain the circumstances. If

no, so state. Yes \_\_\_\_\_ No \_\_\_\_

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

If yes, please explain the circumstances. If

no, so state. Yes \_\_\_\_\_ No \_\_\_\_

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

If yes, please explain the circumstances. If

no, so state. Yes \_\_\_\_\_ No \_\_\_\_

- h) Been assessed liquidated or other damages for failure to complete any contract on time? If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

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



3. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry. Executed \_\_\_\_\_, 2024.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Organization)

*[Evidence of signature authorization for such individual attached]*

**FORM D: PREQUALIFICATIONS**

<i>Contractor Prequalification (Ohio)</i>				
Work Type Code	Work Type Description	By Project Award	Prior to Work	Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)
1	Clearing & Grubbing		X	
2	Building Removal		X	
4	Roadway Excavation & Embankment Construction	X		
5	Major Roadway Excavations		X	
6	Incidental Grading		X	
7	Soil Stabilization		X	
8	Temporary Soil Erosion & Sediment Control		X	
9	Aggregate Bases		X	
10	Flexible Paving		X	
11	Apply Bituminous Treatments		X	
12	Rigid Paving		X	
13	Pavement Planning, Milling, Scarification		X	
14	Concrete Texturing		X	
15	Sawing		X	
16	Flexible Replacement		X	

<i>Contractor Prequalification (Ohio)</i>				
Work Type Code	Work Type Description	By Project Award	Prior to Work	Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)
17	Rigid Pavement Replacement		X	
18	Pavement Rubblizing, Breaking, Pulverizing		X	
19	Structure Removal		X	
23	Reinforcing Steel		X	
35	Drainage (Culverts, Misc.)		X	
36	Guardrail / Attenuators		X	
37	Fence		X	
38	Misc. Concrete		X	
39	Maintenance of Traffic		X	
40	Waterproofing		X	
41	Raised Pavement Markers		X	
42	Signing		X	
43	Highway Lighting		X	
45	Pavement Markings		X	
46	Landscaping		X	
47	Mowing		X	
48	Trucking		X	
49	Herbicidal Spraying		X	

<i>Contractor Prequalification (Ohio)</i>				
Work Type Code	Work Type Description	By Project Award	Prior to Work	Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)
57	Sealing of Concrete Surfaces with Epoxy or Non-Epoxy Sealers		X	

<i>Professional Services Prequalification (Ohio)</i>			
Prequalification Category	By Project Award	Prior to Work	Consultant/Subconsultant to Perform the Design Work (Status of Prequalification – Approved/Submitted/To be submitted)
<b>Roadway Design – General</b>			
Bicycle Facilities and Enhancement Design Roadway		X	
Non-Complex Roadway Design	X		
<b>Geotechnical Engineering – General Services</b>			
Geotechnical Engineering Services		X	
Geotechnical Testing Laboratory		X	
Geotechnical Field Exploration Services		X	
Geotechnical Drilling Inspection Services		X	

<b>Professional Services Prequalification (Ohio)</b>			
<b>Prequalification Category</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Consultant/Subconsultant to Perform the Design Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
Limited Lighting Design		X	
Complex Lighting Design		X	
<b>Right of Way Plan Development – General</b>			
Subsurface Utility Location Services		X	

## FORM E: OFFEROR TEAM REGISTRATION

### INSTRUCTIONS:

1. Submit one PDF copy of this Form E on behalf of the Offeror's Team in accordance with Section 4.2 (Authorized Representatives and Offeror Registration) by email to the Department's Authorized Representative.
2. All Major Participants in the Proposal must be listed on this Form E and their respective roles identified. Attach additional pages if more space is required.
3. An authorized representative of the Offeror must sign this Form E
4. This Form E must be submitted prior to the last date for Offeror registration set forth in ITO Section 1.4 (Procurement Schedule).

Name of Offeror: \_\_\_\_\_ Date: \_\_\_\_\_

<i>Firm Name</i>	<i>Role</i>	<i>Contact Information</i>

The following individual is identified as the Offeror's Procurement Point of Contact (PPC), authorized to submit this Form E on behalf of the Offeror:

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

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

Firm: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

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

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

Signature \_\_\_\_\_

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

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# **PROGRESSIVE DESIGN-BUILD CONTRACT**

**PID 117545**

**Project (24)3001**

**WOO-23-17.88 Roundabout**

**Addenda 1 – Feb 1, 2024**

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## LIST OF EXHIBITS

Exhibit	Title
A	Acronyms and Definitions
B	Contract Particulars
C	Proposal Commitments

Exhibit	Title
D	Key Personnel and Principal Participants
E	Technical Requirements
F	[RESERVED]
G	Opinion of Probable Cost (OPC) and Pricing Process
H	Force Account Provisions
I	Delay Costs
J	Unit Pricing Provisions
K	Form of Payment and Performance Bonds
L	Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts
M	Disadvantaged Business Enterprise (DBE) Trucking; DBE Materials and Supplies Vendors (MSVs)
N	Contract Provisions for Federal Aid Construction Contracts
O	Notice of Requirement of Affirmative Action to Ensure Equal Employment Opportunity and Workforce Diversity Requirements on all ODOT Administered Federally Funded Projects
P	On-the-Job Training Program
Q	Prompt Payment – ODOT Let Construction Projects
R	[RESERVED]
S	[RESERVED]
T	Critical Path Method Progress Schedule
U	[RESERVED]
V	[RESERVED]
W	Price Fluctuation Clauses
X	Digital Data for Material Ticketing
Y	[RESERVED]
Z	Risk Register
AA	[RESERVED]



**PROGRESSIVE DESIGN-BUILD CONTRACT****WOO-23-17.88 Roundabout | PID 117545**

This Progressive Design-Build Contract (hereinafter the “PDBC”) for WOO-23-17.88 Roundabout | PID 117545 Project is entered into as of \_\_\_\_\_ (the “Effective Date”), by and between the State of Ohio, Department of Transportation (hereinafter the “Department”), acting through its Director and \_\_\_\_\_ (hereafter the “Contractor” or “Design-Build Team” or “DBT” and together with the Department, hereinafter referred to as the “Parties”).

**WITNESSTH:**

**WHEREAS**, on \_\_\_\_\_, 202\_, the Department seeks to expedite the development, design, installation, and construction of a single-lane roundabout at the intersection of US 23 and SR 105 in Wood County and Sandusky County. Special consideration shall be given to accommodation of large vehicles (Farm Equipment, Construction Equipment, WB-67 Semis) in the design of the roundabout, and utilizing Building Information Modeling (BIM) techniques for the design, review, and communication procedures under a collaborative process with the Department under attached Exhibit E (Technical Requirements) (collectively, the “Project”).

**WHEREAS**, pursuant to Section 5517.011 of the Ohio Revised Code and related provisions of Ohio law and federal law, the Department issued a Request for Proposals (RFP) together with Instructions to Offerors (ITO) for the Project on February 1, 2024.

**WHEREAS**, in response to the RFP, the Department received \_\_\_ Proposals on \_\_\_\_\_, 2023.

**WHEREAS**, the Department evaluated the Proposals and determined that the Contractor’s Proposal was the response to the RFP that provided the apparent best value as described in the ITO, which ultimately led the Department to award this PDBC to the Contractor.

**WHEREAS**, this PDBC and the other Contract Documents collectively constitute a part of the Contract and are entered into in accordance with the provisions of the RFP.

**WHEREAS**, the Parties intend for this PDBC to be progressive-design-build contract obligating the Contractor to perform all work necessary to complete the Project, which work, subject to the Department’s rights to terminate this PDBC for convenience, shall be conducted in two phases consisting of (i) a Phase 1 comprised of (a) Sub-Phase 1A (BIM Proof-of-Concept), (b) Sub-Phase 1B and (ii) Phase 2.

**NOW, THEREFORE**, in consideration of the mutual covenants herein set forth to be kept and performed, it is agreed by the Parties as follows:

# 1 CONTRACT DOCUMENTS AND INTERPRETATION

## 1.1 Governing Contract Documents

### 1.1.1 Intent of the Contract Documents

The Parties acknowledge and agree that the intent of the Contract Documents is to provide for the design, construction, administration, and completion of the Work. The Contractor hereby covenants and agrees to perform the Work in accordance with the Contract Documents.

### 1.1.2 Project Methodology

The Project shall utilize a Progressive Design-Build process to procure, award, and complete the Work as further described under Section 2 (Progressive Design-Build Approach) hereof.

### 1.1.3 Project Standards

The Project Standards as set forth in the Technical Requirements together with any subsequently approved Standards Deviation(s) in accordance with Section 4.1.5 (Standards Deviations) hereof, shall govern the Project. In the event there are conflicts between this PDBC and the ODOT 2023 Construction Material Specifications 100 General Provisions (ODOT C&MS 100 Series Specifications), the PDBC will control. The Project Standards as modified by any approved Standards Deviation(s) shall be implemented by the Department in accordance with the Technical Requirements and subsequently approved Work Package Proposals.

Work shall conform to ODOT Standards and Specifications with the exceptions of design plan development as necessary to utilize digital Building Information Modeling techniques.

### 1.1.4 Contract Management

This PDBC shall be managed in accordance with the laws of the State of Ohio and the ODOT Standards and Specifications.

### 1.1.5 Conflicts Among Project Standards

The Department will resolve conflicts, ambiguities, or inconsistencies among the Project Standards with reference to the following order of precedence:

- A. The Project Scope including approved Standards Deviations;
- B. The Technical Requirements in Exhibit E;
- C. Proposal Commitments in Exhibit C (Proposal Commitments) and Special Provisions;
- D. Supplemental Specifications; and
- E. Standard Construction Drawings applicable to the corresponding Work.

The Contractor hereby covenants and agrees to notify the Department in writing of any conflicts, ambiguities or inconsistencies among the Project Standards upon identification of the same, after which the Department shall review such conflict and issue a determination, which shall be determinative and binding upon the Contractor.

## 1.2 Definitions

Exhibit A (Acronyms and Definitions) contains definitions applicable to the Contract Documents.

## 1.3 Contract Documents Order of Precedence

In the event of conflict among the Contract Documents during the performance of the Work with respect to a particular Phase, the order of precedence of contractual incorporation shall be:

- A. Change Orders issued subsequent to the then-current Phase Change Order;
- B. The applicable Phase Change Order;
- C. Supplemental Agreements;
- D. This PDBC and Exhibits; and
- E. All Submittals prepared during the performance of the corresponding Work that the Department determines in writing shall be Contract Documents.

## 1.4 Interpretation and Construction of Contract Documents

In the Contract Documents, where appropriate:

- A. The singular includes the plural and vice versa; and
- B. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to as of the Effective Date.

Unless otherwise specified, lists contained in the Contract Documents shall not be deemed all-inclusive. The Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of each Work Package Proposal, to review the Contract Documents and to bring to the Department's attention any conflicts or ambiguities contained therein. The Department's answers to the questions posed during the RFP process shall in no event be deemed part of the Contract Documents and shall not be binding in interpreting the Contract Documents unless included in the Contract Documents pursuant to an addendum or amendment thereto or specifically directed in writing by the Department.

The fact that the Contract Documents omit or misdescribe any detail of the Work that is otherwise necessary to carry out the intent of the Contract Documents and delivery of the Project, or that are customarily performed, shall not relieve the Contractor from its obligation to perform such omitted or misdescribed details as if fully and correctly set forth in the Contract Documents, which omissions, correction of misdescriptions, or performance of those aspects customarily performed shall not in itself be the basis for contractual relief, or other claim at law or in equity.

Wherever the word "including," and variants, shall be deemed to be followed by the words "without limitation". "Or" means the inclusive connotation of "or" (i.e., meaning one, some, or all of a number of possibilities). "May," when used in the context of the PDBC shall mean a power or right exercisable by the Department (or designee) means the power to exercise that right or power in its sole discretion. "May," when used in all other contexts, indicates permission by the Department for the Contractor, or one of its Affiliates or Subcontractors, to do (or refrain from doing) an action.

All references inconsistent with any terms of this PDBC, including to measurement and payment in the Standard Specifications, shall not apply. Measurement and payment shall be deemed as references to equivalent provisions in this PDBC.

All references to time are to prevailing Eastern Standard time. Reference to a right include any benefit, remedy, discretion, authority, or power associated with such right.

## 1.5 Term

Without limiting Section 26.5 (Survival) and post-termination obligations under Section 21 (Termination for Convenience), this PDBC shall take effect on the Effective Date and will remain in effect until terminated in accordance with the terms of the Contract Documents.

## 1.6 Federal Requirements

- A. The Project will be funded in part with federal funds. Notwithstanding any provision to the contrary in the Contract Documents, if any conflict is identified between any Federal Requirement set forth in Exhibit L (Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts), Exhibit M (Disadvantaged Business Enterprise (DBE) Trucking, DBE Materials and Supplies Vendors (MSVs), Exhibit N (Contract Provisions for Federal Aid Construction Contracts), and the requirements of the Contract Documents, the Federal Requirements shall prevail over any such conflicting provisions.
- B. The Contractor shall comply with and shall cause its Subcontractors and Subconsultants of all tiers to comply with all applicable Federal Requirements. The Contractor shall include the Federal Requirements in all Subcontracts on the Project, so that such provisions will be binding upon each Subcontractor or Subconsultant working on the Project. The Contractor shall take such action with respect to any Subcontract or purchase order as the Department may direct as means of enforcing such provisions.
- C. **Compliance with 23 CFR 636.109:** Federal Requirements prohibit private entities from independently preparing NEPA documents or from having any decision-making responsibility in the NEPA process. Therefore, the Department shall retain all NEPA decision-making responsibility, and the Contractor acknowledges and agrees that it shall be strictly limited to producing studies and providing information related to the environmental process in accordance with all applicable restrictions of the NEPA process and FHWA policies and rules. With respect to the NEPA process, the Contractor acknowledges and agrees as to the following:
  - a. No commitments are made to any alternative being evaluated in the NEPA process and that the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated and fairly considered. Subject to, and in accordance with, Section 21 (Termination for Convenience), if the Department proceeds with the no-build alternative, this PDBC will be terminated for convenience.
  - b. All NEPA related documents reference in this Section 1.6 are provided in the Reference Information Documents.
- D. **Disadvantaged Business Enterprises:** It is the policy of the Department 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, the Department 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, as to be further discussed below in Section 9.2 (Labor Laws to be Observed).

- E. **Davis-Bacon Act:** Commencing upon the Phase 2 Change Order, the wages paid to laborers performing Work on the Project will be subject to the requirements of the Davis-Bacon Act (40 U.S.C. §§ 3141 to 3148), as further specified in Exhibit N. The Contractor shall identify and establish the prevailing wages applicable to the work classifications performing Phase 2 Work with reference to applicable wage determinations for the corresponding work classifications performing the Work. The Contractor acknowledges and agrees that initial wage determinations and/or wage classifications identified within the initial wage determination(s) will be subject to revision from time to time, including prior to the execution of the Phase 2 Change Order. As such, the Contractor further acknowledges and agrees that any Price Proposal must incorporate the prevailing wage rates incorporated in the then-current wage determinations pertaining to the relevant wage classifications engaged in the Work. For avoidance of doubt, the Contractor shall bear any and all costs attributable to the failure to utilize current wage determination(s) and shall have no Claim against the Department on account of such changes to any wage determination or the wage classifications addressed therein.

## 1.7 Standard of Care

The Contractor shall cause all Work to conform to the Project Standards, including but not limited to, the ODOT Standards and Specifications, and FHWA and AASHTO standards, practices, policies, guidelines and specifications. The Contractor shall develop electronic Building Information Model (BIM) formats in collaboration with the Department and with the reasonable standards and approaches as currently used as industry practice.

Contractor represents and warrants that it is experienced in public infrastructure projects, including, but not limited to, the design and construction of similar projects under comparable project condition. Given that status, experience and expertise, Contractor represents, covenants, and agrees that all of the services to be furnished by Contractor under or pursuant to this PDBC from the Effective Date until Completion of the Contract, and services in connection with the Project and all obligations to meet certain requirements described herein, shall be performed in a manner consistent with that industry standard of professional care applicable when performing services for projects such as the Project, including without limitation, the skill, diligence and quality which is exercised by design-build firms or entities engaged in the planning, design, construction and administration of projects of similar scope, function, size, quality, and detail (the "Standard of Care").

The Contractor and contractor's Designer agrees that the development of the BIM model will be iterative and interactive process with the Department and shall expect multiple requests from the Department to modify and adjust the BIM model in a manner that facilitates the Department's understanding of and usage of the BIM model. This may include, but is not

limited to, increased detail, formatting revisions, and training for the Department in the proper interpretation and review of the model.

## 2 PROGRESSIVE DESIGN-BUILD APPROACH

### 2.1 Project Phases

The Work shall be performed by the Contractor in two phases: (1) the Preconstruction Phase (Phase 1) consisting of (a) the BIM Proof-of-Concept Phase (Sub-Phase 1A), (b) the Project Development Phase (Sub-Phase 1B); and (2) the Final Design and Construction Phase (Phase 2).

### 2.2 Project Meetings

The Contractor and Contractor's Designer covenants and agrees to attend all of the meetings set forth herein, as necessary as determined by the Department in the development and format of the BIM model and Project development, and in Section 2.2 (Phase 1 Meetings) of Exhibit E (Technical Requirements). The Contractor further covenants and agrees to attend such additional meetings as may be required from time to time in the Department's reasonable discretion for special purposes. The Contractor acknowledges and agrees that such meetings will include the applicable Contractor's Representative, and the DBT's Project Manager, the Department and, based upon the content of the corresponding meeting, other active participants invited by the Department.

### 2.3 Phase 1: Preconstruction

#### 2.3.1 Pre-Sub-Phase 1A Work

Following the Effective Date, the Department and the Contractor shall conduct regular meetings to finalize the Sub-Phase 1A Work and Sub-Phase 1A Project Scope (the "Sub-Phase 1A Proposal"). The Contractor shall submit the Sub-Phase 1A Proposal to the Department in a form agreed to by the Parties, which shall include (a) a draft of the Sub-Phase 1A Project Scope, including all plans, reports, and other documents required to be developed by the Contractor, (b) a projected schedule for the performance of such Sub-Phase 1A Work, and (c) a Price Proposal that includes the Maximum Sub-Phase 1A Prime Compensation as indicated in Exhibit B (Contract Particulars).

Following the Contractor's submission of the draft Sub-Phase 1A Proposal, the Department shall review the draft Sub-Phase 1A Proposal, and the Department and the Contractor shall engage in good faith negotiations to finalize the terms and conditions of the Sub-Phase 1A Proposal to be incorporated into the Sub-Phase 1A Change Order. At the Department's request, the Contractor shall meet with the Department to review and discuss the draft Sub-Phase 1A Proposal and adjustments to the Sub-Phase 1A Project Scope. When the Parties have agreed to the Sub-Phase 1A Proposal, the Department shall prepare the Sub-Phase 1A Change Order incorporating the Sub-Phase 1A Proposal.

The Contractor's compensation for the preparation and negotiation of the Sub-Phase 1A Change Order shall be determined based upon agreed upon hourly rates as described in Section 11.2 (Compensation for Sub-Phase 1A Work), multiplied by the number of hours (or portions thereof) expended by Contractor's personnel engaged in the preparation and negotiation of the Sub-Phase 1A Change Order and shall be paid by the Department in conjunction with the first invoice submitted by the Contractor after the issuance of the Sub-

Phase 1A NTP; provided however, in the event the Parties do not agree upon the terms and conditions of the Sub-Phase 1A Proposal or fail to execute the Sub-Phase 1A Change Order, then the Department may exercise its right to terminate this PDBC under Section 21 (Termination for Convenience).

### **2.3.2 Sub-Phase 1A: BIM Proof of Concept**

Phase 1 and Sub-Phase 1A shall commence upon the Department's issuance of the Sub-Phase 1A NTP and shall continue until the earlier of (i) the Department exercising its right to terminate this PDBC under Section 21 (Termination for Convenience), or (ii) the final completion date for the Sub-Phase 1A Work as shown in the Sub-Phase 1A Proposal schedule. In the event the Department and the Contractor identify and mutually agree upon the necessity for adjustments to the Sub-Phase 1A Project Scope, including adjustments pertaining to the Maximum Sub-Phase 1A Prime Compensation, the Department shall prepare a Change Order incorporating such adjustments into the Sub-Phase 1A Project Scope.

#### **2.3.2.1 Sub-Phase 1B: Proposal**

During Sub-Phase 1A, the Department and the Contractor covenant and agree to hold regular meetings to mutually develop the Sub-Phase 1B Scope and establish the terms and conditions of the Sub-Phase 1B Change Order. In conjunction with the foregoing negotiations, the Contractor shall submit to the Department a draft Sub-Phase 1B proposal (the "Sub-Phase 1B Proposal") in a form agreed to by the Parties, which shall include (a) a proposed scope of work for Sub-Phase 1B Project Scope, including a list of all plans, reports, and other documents required to be developed by the Contractor, (b) a schedule for the performance of such Sub-Phase 1B Work and a preliminary schedule for the Phase 2 Work as required by Exhibit T (Critical Path Method Progress Schedule) and (c) a Price Proposal that includes the proposed Maximum Sub-Phase 1B Prime Compensation as indicated in Exhibit B (Contract Particulars).

The Department shall review the Contractor's Sub-Phase 1B Proposal and the Department and the Contractor shall engage in good faith negotiations to finalize the Sub-Phase 1B Proposal prior to the expiration of Sub-Phase 1A. At the Department's request, the Contractor shall meet with the Department to review and discuss the draft Sub-Phase 1B Proposal and adjust the Sub-Phase 1B Scope. When the Parties have agreed to the Sub-Phase 1B Proposal, the Department shall prepare a Sub-Phase 1B Change Order incorporating the Sub-Phase 1B Proposal.

### **2.3.3 Sub-Phase 1B: Project Development**

Sub-Phase 1B commences upon the Department's issuance of a Sub-Phase 1B NTP and shall continue until the sooner to occur of (i) the Department exercising its rights to terminate this PDBC under Section 21 (Termination for Convenience), or (ii) the final completion date for Sub-Phase 1B as set forth in the Sub-Phase 1B Change Order. In the event the Department and the Contractor identify and mutually agree upon the necessity for adjustments to the Sub-Phase 1B Project Scope, including adjustments pertaining to the Maximum Sub-Phase 1B Prime Compensation, the Department shall prepare a Change Order incorporating such adjustments into the Sub-Phase 1B Project Scope.



### 2.3.3.1 Reserved

### 2.3.3.2 Phase 2 Proposal

As part of its obligations during the performance of the Phase 1 Work, the Contractor shall develop and submit a proposal to perform the Phase 2 Work (the "Phase 2 Proposal"). Upon the Department's acceptance of the Phase 2 Proposal, the Parties shall execute the Phase 2 Change Order.

Within 30 Days of the Department's completion of the Sub-Phase 1B work, the Contractor shall submit its draft Phase 2 Proposal to the Department. Upon submittal to the Department by the Contractor, the Phase 2 Proposal shall constitute an offer that is binding on the Contractor.

The Phase 2 Proposal shall be in the form agreed by the Parties during Sub-Phase 1B and shall include:

- A. The Contract Price for the Work, together with all required supporting forms and information as required by Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process);
- B. Proposed updates to the Baseline Project Schedule to incorporate the Phase 2 Work, including the Substantial Completion Deadline and the Completion of the Contract Deadline;
- C. The proposed organization chart for Phase 2 and a description of any additions or changes to the Key Personnel, in each case in the form and with the supporting information required under Section 10 (Authorized Representatives and Key Personnel);
- D. A report that summarizes the agreed assumptions upon which the Phase 2 Proposal is based, if any;
- E. The Phase 2 Project Scope developed in accordance with Section 3.3 (Phase 2 Project Scope);
- F. DBE Forms required in accordance with Section 9 (Labor Requirements);
- G. An updated DBE Performance Plan prepared in accordance with Exhibit L (Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts) evidencing how the Contractor will achieve its listed commitments for the Phase 2 Work through the utilization of DBE firms;
- H. Completed certifications for the Phase 2 Proposal completed in the form agreed by the parties during Sub-Phase 1B;
- I. A list of the Design Documents, including all addenda thereto, used in preparation of the GMP, including a list of the clarifications and assumptions made to supplement the information contained in the Design Documents;
- J. The studies, plans, and reports generated as part of Sub-Phase 1B, including any site investigation reports, the Utility Map, ROW Plans, and DBE Performance Plan;
- K. Any other document, report, or information required under the terms of this PDBC to be submitted with or as part of the Phase 2 Proposal;

- L. Such other supporting documentation as may be reasonably requested by the Department; and
- M. The allocation between the Contractor and the Department of the management and financial responsibility for the Risk Register Events set forth in the Risk Register.

Portions of the Phase 2 Proposal may be attached at the Department's discretion, as exhibits and incorporated into the Phase 2 Change Order and if attached will become binding Contractor commitments under the PDBC, as amended.

### **2.3.3.3 Phase 2 Proposal Review and Negotiations**

#### **2.3.3.3.1 Initial Review and Negotiation of Phase 2 Proposal**

The Contractor shall, upon request by the Department, present the Phase 2 Proposal to the Department and others invited by the Department to attend the proposal meeting.

If the Phase 2 Proposal submitted by the Contractor is acceptable to the Department, in its sole discretion, the Department will Notify the Contractor of its acceptance, following which:

- A. The Parties will execute the Phase 2 Change Order; and
- B. subject to all other conditions under Section 2.8 (Notices to Proceed) being satisfied, the Department will issue the Phase 2 NTP.

If the Department, in its sole discretion, notifies the Contractor that the Phase 2 Proposal is not acceptable, then the Contractor and the Department shall enter into good faith negotiations prior to which the Contractor shall resubmit its Phase 2 Proposal incorporating those terms and conditions upon which the Contractor and the Department are in agreement. The Parties shall continue to negotiate until the earlier of (i) the Department's acceptance of the resubmitted Phase 2 Proposal, (ii) the Department's election to issue a written notice to not proceed to the Contractor in accordance with Section 2.3.3.3.2 (Failure to Agree to a Phase 2 Change Order), (iii) the expiration of the term of Sub-Phase 1B as set forth under the Sub-Phase 1B Change Order, or (iv) the Department's election to terminate this PDBC for convenience in accordance with Section 21 (Termination for Convenience).

#### **2.3.3.3.2 Failure to Agree to a Phase 2 Change Order**

Without limiting the Department's rights under Section 21 (Termination for Convenience), with respect to the Phase 2 Proposal the Department may by a written notice delivered to the Contractor either:

- A. Not proceed with requiring the Contractor to submit a Phase 2 Proposal, including as a result of a delay or failure in the satisfaction of the conditions under Section 2.3.3.2 (Phase 2 Proposal); or
- B. Reject, at its sole discretion, the Phase 2 Proposal and not proceed to negotiate, agree or execute a Phase 2 Change Order.

### **2.3.3.3.3 Actions Following Notice of Failure to Agree Phase 2 Change Order**

Following delivery of a written notice under Section 2.3.3.3.2 (Failure to Agree to a Phase 2 Change Order) or a failure by either Party to execute a Phase 2 Change Order after the Department's acceptance of the Phase 2 Proposal in accordance with Section 2.3.3.3.1 (Initial Review and Negotiation of Phase 2 Proposal):

- A. The Contractor shall continue to perform and complete the Phase 1B Work (other than that part of the Phase 1B Work requiring preparation of a Phase 2 Proposal or solely for the purposes of preparing a Phase 2 Proposal);
- B. Upon the Department's written notice, the Contractor shall assign to the Department all of the right, title, and interest of the Contractor in and to the work products developed under the Phase 1 Work; including the Phase 1 Design Work; if the Department elects to terminate the Contractor prior to completion of Final Design Documents, the Contractor shall be released from all liability (under contract, tort, or any other legal theory) that may arise in relation to any Department use of the design produced by the Contractor. Final Design Documents approved and signed by the Engineer of Record shall remain the liability of the Contractor.
- C. Upon completion and the Department's written acceptance of the Phase 1 Design Work and any remaining obligations under the Phase 1B Work, this PDBC will expire in accordance with Section 1.5 (Term);
- D. Title to the Phase 1 Design Work will remain vested in or pass to the Department in accordance with Section 26.15 (Ownership and Copyright of Submittals). Any Submittals which are provided to the Department by the Contractor or Subcontractors as part of the Phase 1 Work may be used and disclosed by the Department in accordance with Section 26.16 (Intellectual Property);
- E. The Department may, in its sole discretion, proceed with any other action as the Department deems appropriate for delivery of the Phase 2 Work, including soliciting from, negotiating with, or awarding a contract to any other Person for any part of the Phase 2 Work; and
- F. The Department may, in its sole discretion, terminate this PDBC pursuant to Section 21 (Termination for Convenience) if it determines to not proceed with the Phase 2 Work.

## **2.4 Phase 2: Final Design and Construction**

### **2.4.1 Phase 2 Change Order**

Phase 2 shall commence upon the Department's issuance of a Phase 2 NTP and shall continue until the end of the term of the Phase 2 Work as set forth in the Phase 2 Change Order.

The Phase 2 Change Order shall include the content specified in the Project Scope and generally apply to all Work Packages. The executed Phase 2 Change Order shall not be modified except through a Change Order.

## 2.5 Development of Change Orders and Work Packages

### 2.5.1 Open Book Basis of Negotiations

The development of all Change Orders and Work Packages shall be on an Open Book Basis, and the Department and applicable Authorized Representatives shall have the right to access all records, accounts, and other data used by the Contractor in connection with the preparation of any draft or final Proposal, subject to the provisions of Section 25.7 (Escrow Documents). The Contract Price shall be developed in a cooperative manner in accordance with the guidelines and principles described in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

#### 2.5.1.1 Calculation of the Contract Price

The Contract Price for the Phase 2 Work shall be computed as the Contractor's reasonable, good faith estimate of the cost of the Phase 2 Work authorized therein in a format developed pursuant to the protocols in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

The backup support for the calculation of the Contract Price shall be provided to the Department in a manner and in the format developed pursuant to the protocols in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

## 2.6 Risk Identification, Pricing and Assignment

### 2.6.1 Risk Approach

The Parties will adopt a collaborative approach to risk identification, pricing and risk assignment and the Contractor shall cooperate with the Department to:

- A. Develop, review and make updates to the Risk Register, attached hereto as Exhibit Z (Risk Register) including identifying new risks and reflecting discussions and decisions made during risk management meetings;
- B. Develop proposals and seek solutions for avoiding and mitigating the risks listed on the Risk Register during the development of the Design Documents and the development of the Baseline Schedule;
- C. Develop qualitative and quantitative analysis of the risks;
- D. Develop methods to track costs and time incurred directly associated with such risks;
- E. Consider different approaches to the risk allocation for the Construction Work and determine the allocation of financial responsibility and management responsibility with respect to Risk Register Events for the purposes of developing OPCs and the Phase 2 Proposal;
- F. Determine the specific mitigation actions to be taken by each Party in response to the risks listed on the Risk Register;
- G. Close in the Risk Register those risks which have been avoided or passed and document the resolution; and
- H. Otherwise assess, review and monitor risks and risk response strategies as required under the Project Scope.

Risks applicable to the Work will be identified jointly during Phase 1 and the Parties shall endeavor to agree to: (i) the probability of occurrence; (ii) ranges of potential cost impact; (iii) the allocation of financial responsibility; (iv) the designation of primary management responsibility; (v) potential schedule impacts and (vi) mitigation measures.

During the negotiation of the Phase 2 Change Order, the Department will consider changes to the initial allocation of financial responsibility and the designation of primary management responsibility with respect to each Risk Register Event in accordance with the process outlined in this Section 2.6.1 (Risk Approach), after which any such changes shall be accounted for during the development of each initial GMP Price Proposal and thereafter incorporated into the terms and conditions of the corresponding Change Order.

### **2.6.1.1 Risk Register**

The Parties shall develop a Risk Register with respect to the entire Project in accordance with the guidelines and principles described in this Section 2.6 (Risk Identification, Pricing and Assignment) and Section 18.1 (Partnering).

The Contractor shall be responsible for maintaining and updating the Risk Register. The Risk Register shall identify potential risk issues related to Work (each a "Risk Register Event"). All Risk Register Events shall be primarily categorized as either a Department Risk or a Contractor Risk and shall include a designation of management responsibility and financial responsibility for the corresponding Risk Register Event.

If the Parties determine that financial responsibility for a Risk Register Event is shared by both the Department and the Contractor, then such Risk Register Event shall constitute a Provisional Sum and the corresponding entry on the Risk Register will provide the Department's share of the financial or management responsibility for the Risk Register Event and the Contractor's share of the financial or management responsibility for the Risk Register Event and will be categorized as both a "Department Risk" and a "Contractor Risk". An example of a shared Risk Register Event is provided as the first row on the Risk Register attached as Exhibit Z (Risk Register).

The Risk Register shall include dates on which the Department gives its approval of a particular Risk Register Event, and the Risk Register Event shall be deemed as being in effect of that date. The Phase 2 Change Orders shall include the most-current Risk Register as of the effective date of the corresponding Change Order updated with all Risk Register Events reasonably expected to be applicable to the corresponding Work Package.

#### **2.6.1.1.1 Department Risks**

All Risk Register Events that are a Department Risk shall (i) assign management responsibility for such Risk Register Event to either the Department or the Contractor, (ii) assign financial responsibility for such Risk Register Event to the Department and/or the Contractor, and (iii) describe the types and extent of relief that the Contractor shall be entitled to seek upon occurrence of the Risk Register Event. Risk Register Events that are Department Risks may also include requirements for determining of time impacts, payment requirements, and other terms.

If a Risk Register Event occurs while performing Construction Work, and the Risk Register Event is a Department Risk, then the Contractor shall be entitled to seek a Change Order in accordance with Section 12.4 (Change Orders).

#### **2.6.1.1.2 Provisional Sums**

Provisional Sums may be utilized as a method to manage financial responsibility for Risk Register Events that are Department Risks or, if mutually agreed upon by the Department and the Contractor to manage shared financial responsibility with respect to a specific Risk Register Event. Risk Register Events utilizing Provisional Sums shall specify:

1. the amount of any Provisional Sum;
2. whether the Provisional Sum is solely the responsibility of the Department (in which case, the Department may elect to include amounts in any Department's Risk Contingency) or whether the Provisional Sum is a Shared Provisional Sum;
3. terms for sharing and disbursement of the Provisional Sum residue; provided however, to the extent any Provisional Sum is included in either the Contractor's Risk Contingency or any Department Risk Contingency, then such residue shall be allocated in accordance with the terms and conditions pertaining to the distribution of excess held in such contingency;
4. the types and extent of relief (cost and/or schedule) that the Contractor is provided upon occurrence of the Risk Register Event;
5. whether the Risk Register Event provides for relief in accordance with this PDBC if the Provisional Sum, Shared Provisional Sum, or other identified relief is exhausted. If relief in accordance with this PDBC is provided for, and allocated to the Department, then the Contractor must submit a written Notice of Potential Change Order in accordance with Section 12.4 (Change Orders). For any portion of a Provisional Sum for which the Contractor agrees to assume financial responsibility, the Contractor's relief shall be to draw upon the Contractor's Risk Contingency; and
6. any required mitigation efforts to be taken by the Contractor or the Department.

#### **2.6.1.1.3 Contractor Risks**

All Risk Register Events for which the Contractor is assigned financial responsibility (each a "Contractor Risk") will be included in the Contractor's Risk Contingency established under each initial GMP Price Proposal. If a Risk Register Event occurs while performing Construction Work, and the Risk Register Event is a Contractor Risk, then the Contractor shall be entitled to request amounts from the Contractor's Risk Contingency to pay for the costs of such Contractor Risk; provided, upon the exhaustion of the Contractor's Risk Contingency, Contractor shall not be entitled to seek any additional costs attributable to the occurrence of the Contractor Risk; provided further, under no circumstances shall the Contractor be entitled to seek schedule relief for the occurrence of the Risk Register Event beyond that identified in the Risk Register.

## 2.7 Cost Submittals

### 2.7.1 Sub-Phase 1B Opinion of Probable Cost

In collaboration with the Department, the Contractor shall develop an Opinion of Probable Cost (OPC) for the Phase 2 Work developed in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

### 2.7.2 Cost Submittals during Sub-Phase 1B (GMP)

The Contractor shall develop the Design Documents to a level of detail required in the Sub-Phase 1B Project Scope and sufficient to support the Phase 2 Proposal.

The Contractor shall submit the Phase 2 Proposal for the Phase 2 Work following the protocols in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). The Contractor is entitled to treat such Submittals as Escrow Documents in accordance with Section 25.7 (Escrow Documents). The Contractor shall develop each initial GMP Price Proposal through negotiation on an Open Book Basis, allowing the Department to review and evaluate all cost data and underlying assumptions, supported by a transparent and competitive Subcontractor procurement processes further described in Section 8 (Subcontracting Requirements), and subject to the self-performance provisions described in Section 8 (Subcontracting Requirements).

The Contract Price for each Work Package will be based on the reasonably estimated actual cost of completing the associated Work as further described in Exhibit G.

## 2.8 Notices to Proceed (NTP)

### 2.8.1 Contractor's Obligations

All obligations of the Contractor under this Section 2.8 shall be completed by the Contractor in such a manner that there is no material adverse impact to the designated Completion Deadlines under the Project Schedule.

### 2.8.2 Notice to Proceed for the Sub-Phase 1A Work

The Contractor shall perform or permit performance of any part of the Sub-Phase 1A Work on the Commencement Date stated in the Sub-Phase 1A NTP. The Department will issue the Sub-Phase 1A NTP no later than 30 Days after the following conditions have been satisfied:

- A. The PDBC has been executed and the Contractor has submitted and the Department has accepted the Sub-Phase 1A Proposal;
- B. The Department has received the Contractor's required insurance certificates and associated documentation for the Sub-Phase 1A Services in accordance with Section 17 (Insurance Requirements); and
- C. The Contractor has designated the initial Contractor's Representative in accordance with Section 10.1 (Authorized Representatives).

### 2.8.3 Notice to Proceed for the Sub-Phase 1B Work

The Contractor shall not perform or permit performance of any part of the Sub-Phase 1B Work until the Commencement Date stated in the Sub-Phase 1B NTP. The Department will issue the Sub-Phase 1B NTP no later than 30 Days after the following conditions have been satisfied:

- A. The Parties have agreed and executed the Sub-Phase 1B Change Order;
- B. The Department has received the Contractor's required insurance certificates and associated documentation for the Sub-Phase 1B Work in accordance with Section 17 (Insurance Requirements); and
- C. The Contractor has satisfied any other conditions to the issuance of Phase 1B NTP as agreed by the Parties during Phase 1A.

### 2.8.4 Reserved

### 2.8.5 Notice to Proceed for Phase 2 Work

The Contractor shall not perform or permit the performance of any part of the Phase 2 Work until the Commencement Date stated in the Phase 2 NTP. The Department will issue the Phase 2 NTP no later than 45 Days after the following conditions have been satisfied:

- A. The Parties have agreed and executed the Phase 2 Change Order;
- B. The Department has received the Contractor's Performance Bonds and Payment Bonds and required insurance certificates and documentation for the Phase 2 Work in accordance with the Phase 2 Change Order;
- C. The Contractor has completed any other conditions precedent to the issuance of the Phase 2 NTP under the Phase 2 Change Order;
- D. The Contractor has obtained any and all Governmental Approvals (other than any Department-Provided Approvals) required to commence the performance of the Phase 2 Work;
- E. The Department has approved the DBT BIM Execution Plan;
- F. The Department has approved the Project Baseline Schedule; and
- G. There has been a final NEPA decision as described in Section 1.6 (b) (Federal Requirements) regarding the Project.

Issuance of Phase 2 NTP authorizes the Contractor to perform all other Work and activities pertaining to the Project.

## 2.9 The Department's Rights

By entering into this PDBC, the Department is not obligating itself to authorize Construction Work on any component of the Project.

The Department will, in its sole discretion, determine:

- A. Whether or not it is in the best interest of the Department and the general public for the Department to continue to work with the Contractor after completion of the Phase 1 Work;



- B. Whether or not to require that the Contractor submit a Phase 2 Proposal;
- C. Whether or not to accept the Contractor's Phase 2 Proposal or execute the Phase 2 Change Order.

The Contractor is not entitled to claim or seek payment from the Department of any amount as a result of the Department making a determination not to proceed with requiring submittal of a Phase 2 Proposal, a Phase 2 Change Order, or otherwise authorize the Contractor to perform the Phase 2 Work (in whole or part) or to award the Phase 2 Work (in whole or in part) to another Person or taking any other action or exercising any other right under this Section 2.9.

The Department's rights under Section 2.3.3.3.2 (Failure to Agree to a Phase 2 Change Order) are without prejudice to its rights and remedies for a Contractor Default under Section 19 (Default), including where such Contractor Default results in a failure to agree to a Phase 2 Change Order, and the Department may terminate this PDBC for any or no reason at its convenience in accordance with Section 21 (Termination for Convenience). For avoidance of doubt, the failure of the Parties to agree to a Phase 2 Change Order shall not constitute a Contractor Default hereunder.

## **2.10 Reserved**

### 3 PROGRESSIVE DESIGN-BUILD REQUIREMENTS

#### 3.1 Sub-Phase 1A Project Scope

The Sub-Phase 1A Project Scope shall include the following activities and deliverables:

- A. Development of the Maximum Sub-Phase 1A Prime Compensation
- B. The BIM Execution Plan as further described in Exhibit F (BIM Execution Plan Requirements);
- C. Development of a preliminary Project Schedule for all Phases;
- D. Begin establishing the Project Risk Register and pricing of risks as further described in Section 2.6 (Risk Identification, Pricing and Assignment);
- E. Begin development of the Cost Model and Estimating Methodology Report for development of each initial GMP Price Proposal as further described in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process); and
- F. Development of the Sub-Phase 1B Proposal.

#### 3.2 Sub-Phase 1B Project Scope

The Sub-Phase 1B Project Scope will be developed and agreed during Sub-Phase 1A and is expected to include the following activities and deliverables:

- A. DBE Performance Plan, DBE Outreach Plan and associated plans as described in Exhibit L (Disadvantaged Business Enterprise and Good Faith Efforts) for Phase 2 including the setting of a DBE participation target for the Design and Construction Work;
- B. Environmental documents and Submittals as further described in Section 8 of Exhibit E (Technical Requirements);
- C. Utilities coordination as further described in Section 10 of Exhibit E (Technical Requirements);
- D. Assisting the Department in the Development of Utility Agreements;
- E. Further development of the Phase 2 Project Scope including evaluation of Project Standards;
- F. Development of the Phase 2 Baseline Schedule to the stage and level of detail described in Exhibit T (Critical Path Method Progress Schedule);
- G. Further development of the Project Risk Register and the allocation and management of risk;
- H. Assist in the development of cost and risk sharing mechanisms for Phase 2;
- I. Further design and engineering development of the selected alternative including updated constructability analysis to the appropriate level of detail for GMP proposal development for the Phase 2 Change Order;
- J. Preparation of procurement packages and selection of Subcontractors in accordance with Subcontractor Bidding and Selection Plan;

- K. Causing the conduct of required investigations and surveys including geotechnical and SUE and reporting the results and setting forth the potential impact on the Project;
- L. Further investigation and analyses such as structural, hydraulic, drainage, geotechnical as necessary and appropriate to develop the Design Documents and the Baseline Schedule;
- M. Coordinate with the State to develop each GMP Price Proposal pursuant to Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process);
- N. Submit Phase 2 Proposal; and
- O. Required Payment Bond and Performance Bond for Phase 2.

### 3.3 Phase 2 Project Scope

The Phase 2 Project Scope shall include performance requirements, Project Standards, Specifications, the Technical Requirements, drawings and other documents applicable to the Phase 2 Work, as set forth in the Phase 2 Change Order, and describing the Contractor's responsibilities. The Department's initial requirements and a framework for the Phase 2 Project Scope shall be developed and agreed between the Parties as part of the Sub-Phase 1B Work. The Department is entitled to supplement the Phase 2 Project Scope at any time during Phase 1 and any impact, if any, upon the Phase 1 Work will be administered through the process described in Section 12 (Contract Changes). The Contractor is responsible for identifying additions or amendments to the Phase 2 Project Scope necessary to appropriately define and perform the Work and, subject to the Department's approval, such additions and amendments may be incorporated into the Phase 2 Project Scope during Phase 1.

The Phase 2 Project Scope will be considered a part of and included in an exhibit to the PDBC at the execution of the Phase 2 Change Order and at that time will incorporate and supersede all matters governing the Phase 2 Work that formerly appeared in the Technical Requirements. Subsequent changes to the Phase 2 Project Scope will be in accordance with the Change Order process as set forth in Section 12.

### 3.4 Project Standards

An initial list of Project Standards is included in Section 7.1 (Governing Regulations) of Exhibit E (Technical Requirements). The Department shall supplement the Standards to the Project Scope during Phase 1 and any impact upon the Phase 1 Work, if any, will be administered through the process in Section 12 (Contract Changes). The Contractor is responsible for identifying additional Project Standards necessary and appropriate to define and perform the Work and, subject to the Department's approval, may add these to the Project Scope during Phase 1 pursuant to Section 4.1.5 (Standards Deviations).

Upon mutual agreement, the expectation and anticipated standards of the BIM Model shall be developed and agreed by the DBT and the Department. It is understood by both parties that these standards may need modified throughout the course of the Project; however both Parties agree to assist in the Development of the BIM Model standards in good faith.

## 3.5 Reference Information Documents

### 3.5.1 Review of RIDs and Project Site

Project Reference Information Documents (RIDs) are available to the Contractor at the following location:

<https://ftp.dot.state.oh.us/pub/Construction/WOO23Rndabout-PDB-BIM-RFQ/RIDS/>

RIDs may include electronic copies of existing reports, plans, photographs, topographic mapping, traffic data and projections, utility information, administrative guidelines, directives, technical manuals, specifications, and other documents pertinent to the Work.

The Contractor shall review and analyze the RIDs, including but not limited to, the boring logs and other geotechnical information, drainage information, and environmental information contained therein, and inspect and examine the Project Site and surrounding locations.

The Contractor hereby agrees and acknowledges that as a result of its review and analysis of the RIDs, its inspection and examination of the Project Site and surrounding areas, the Contractor is familiar with the Project Site and acknowledges and agrees that it is responsible for determining and obtaining any additional information and testing the Contractor deems necessary and appropriate to perform the Work in accordance with the Contract Documents.

The Department may review Submittals based upon the RIDs and provide comments where necessary. Such review shall not relieve the Contractor of any obligation concerning accuracy or completeness of Submittals based upon the RIDs.

Additional Documents may be proposed to be added to the RIDs by either Party at any time during Phase 1. For the Phase 1 or Phase 2 Work, portions of the RIDs may be explicitly referenced in a Change Order for the purpose of defining the Department's requirements. Such portions are deemed incorporated in the PDBC solely to the extent that they are so referenced. In the performance of the Phase 2 Work, the Contractor may rely on the RIDs only to the extent expressly agreed upon and set forth in a Change Order.

## 3.6 Contractor's Responsibility for Constructability, Safety and Life-Cycle Performance

The Contractor assumes responsibility for the professional quality, technical accuracy, timely development and completion, and coordination of the Design Documents and all other Professional Services. The Contractor shall review the Design Documents for constructability and safety and shall cooperate with the Department to demonstrate that the design optimizes maintenance, and life cycle performance of all elements of the Project and allows safe, efficient, and cost-effective operation of the Project.

## 3.7 Project Schedule

The Contractor shall prepare, provide, update and maintain the Project Schedule throughout each Phase. The Project Schedule shall be prepared in accordance with the requirements of Exhibit T (Critical Path Method Progress Schedule) and the Project Scope.

The Contractor shall perform and complete all Phase 1 Work, notwithstanding the execution of the Phase 2 Change Order and the resulting concurrent obligation to perform any Phase 2 Work.

### **3.8 Governmental Approvals**

The Parties will collaborate and fulfill their respective responsibilities during Phase 1 to obtain Governmental Approvals required prior to construction. Following the execution of the Phase 2 Change Order, the Contractor will be responsible to apply for and obtain all remaining Governmental Approvals or any modifications to Governmental Approvals already obtained.

As part of the Phase 2 Work the Contractor shall procure all Governmental Approvals; pay all charges, fees, and taxes; and provide all notices necessary and incidental to the due and lawful prosecution of the Work. It is the responsibility of the Contractor to obtain any Governmental Approvals and pay any costs required by the local road or street agency for the use of any Right of Way in connection with the Work.

## 4 DESIGN REQUIREMENTS AND SUBMITTALS

### 4.1 Design of the Project

#### 4.1.1 Design Progress Meetings

The Contractor shall hold regularly scheduled Design Progress Meetings as agreed upon by the Parties and shall coordinate with the Department to determine agenda topics prior to each meeting. The purpose of Design Progress Meetings is to keep open communication between the Designer and the Department to discuss anticipated BIM Model format and requirements, design approaches, anticipated submissions, and status of design submissions being reviewed by the Department. The Contractor's personnel are required to participate in all Design progress meetings. Refer to Section 2.2.4 (Design Progress Meeting) of Exhibit E (Technical requirements) for further details.

#### 4.1.2 Infeasibility of Design

Infeasibility of accepted Contractor designs, errors in the Design Documents, or improper Contractor design assumptions shall not be considered a revision to the Contract Documents.

#### 4.1.3 Design Responsibilities

The Contractor shall perform the Professional Services in accordance with the Governing Regulations set forth in Section 7.1 (Governing Regulations) of Exhibit E (Technical Requirements) as may be amended by the Project Scope. The Contractor shall:

- A. Consult with Department to understand the requirements for the Project and review available data.
- B. Advise the Department as to the necessity of providing or obtaining from others additional reports, data or services and assist the Department in obtaining such reports, data, or services.
- C. Develop Ohio Maintenance of Traffic (MOT) plans in accordance with the Standard Construction Drawings, Location and Design Manual, and OMUTCD.
- D. Develop and maintain and make available to the Department a project record which includes all significant events (changes, comments, etc.) which influenced the development of the Project.
- E. Perform any surveys required for the Project.
- F. Perform hydraulic analysis as set forth in the Project Scope. The results of the analyses must show no harmful interference to adjacent riparian vegetation (along streams) resulting from the Work. Results must be certified by the Contractor.
- G. Perform any additional needed soils surveys, soils borings, and geotechnical investigations, as appropriate with analysis necessary to develop the Design Documents.
- H. Reference the appropriate Project Standards, including the ODOT Construction and Materials Specifications in the Plans for all Construction Work to be performed and all Materials to be furnished.

- I. Provide Plans, specifications and supporting documents for review by the Department at each stage of plan development required by the Project Scope.
- J. Provide written approval on Contractor accepted Shop Drawing(s). Contractor's written approval shall be provided with all Submittals to the Department.
- K. Provide approval between the Designer and the individual within the Contractor's organization responsible for erection and temporary works regarding acceptability of developed Engineered Drawings identified in the following ODOT C&MS Sections: 501.05.A 1 (Bracing adjacent to railroad tracks), 501.05A 2 (Demolition of Structures over or within 14 feet of railroad tracks), 501.05.A 3 (Erection of structural members over or within 14 feet of railroad tracks), 501.05B 3 (Falsework for cast-in-place concrete slab bridges), & 501.05B 6 (Total load applied during construction exceeds 75 percent of legal limit). Contractor's written approval shall be provided with the Submittal to the Department. Any Engineered Drawings requiring approval from entities not employed by the Department shall be in format following L&D standards.

#### **4.1.4 Design and Professional Services Prequalification**

Design Work or Professional Services that requires prequalification may only be performed by firms that are prequalified for that Work at the time of performance of the Design Work or Professional Services.

The Contractor shall cause the Designer and all other Subconsultants performing Design Work or Professional Services to be prequalified by ODOT as appropriate for the Work and in the category for which each organization is performing the Work.

The Designer and all Subconsultants' names and addresses must be the same as those on file with ODOT. All Professional Services must comply with Section 4733.16 of the Ohio Revised Code.

The Contractor shall interpret all references to guidelines, recommendations and considerations within applicable design manuals as minimum requirements except when specifically excluded within the Project Scope. The Contractor shall perform recommended evaluations if not provided by the Department.

#### **4.1.5 Standards Deviations**

The Contractor shall perform an analysis and submit to the Department for review and approval any proposed deviation in any Project Standards or Governing Regulation. The Contractor's analysis shall indicate the reasons for a Standards Deviation and shall propose an acceptable solution. A Standards Deviation shall not be included in the Design Documents without the Department's written approval.

#### **4.1.6 Engineering Properties of Subsurface Conditions**

The Contractor shall determine the engineering properties of all subsurface conditions and Materials for design and construction of the Work. The Contractor shall base such subsurface determinations on exploration data and information provided by the Department and procured by the Contractor, local and regional geologic and hydrogeologic mapping and publications, and experience in similar geologic settings and construction. The Contractor covenants and agrees to perform all interpretation and interpolation of geotechnical information in a manner which would be reasonably exercised by members of the engineering profession practicing under

geological and regional conditions similar to those of the site of the Project. The Contractor acknowledges and agrees that all use of, interpretation of, and interpolation of the geotechnical data and information for design and construction, both at specific exploration locations and between locations, are the sole responsibility of the Contractor.

## 4.2 Department's Responsibilities for Design Activities

The Contractor shall submit the Design Documents to the Department. The Department reserves the right to review and comment on the Design Documents in accordance with Section 4.8 (Department Review of Contractor Submittals). The Contractor shall cause the Designer and Subconsultants, if appropriate, to be available throughout the Term to answer questions, issue clarifications, and correct errors and omissions.

The Department shall have the discretion to determine the level of review required for any Submittal in accordance with Section 4.7 (Contractor Submittals Listing & Schedule). The Contractor bears sole responsibility for the quality, accuracy, completeness, and compliance with the requirements of the Contract Documents regardless of the Department's level of review.

The Department's failure to identify improper or incorrect design shall not, in any way, prevent later rejection of a Design Document if an improper or incorrect design is discovered, or obligate the Department to grant acceptance under Section 5.14.4 (Completion of the Contract and Continuation of Contractor's Responsibilities).

## 4.3 Errors and Omissions

The Contractor shall be responsible for the accuracy of the Design Work and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions. The Department's use of the Contractor's services shall not relieve the Contractor of any responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities.

In the event of any negligent act, error or omission which the Department determines to be the responsibility of the Contractor, the correction, repair or reconstruction of which may require additional field or office work, the Contractor shall perform such corrective action as may be necessary.

The Contractor shall be responsible for damages including but not limited to economic waste, direct and indirect damages incurred as a result of its negligent act, error or omission, and for losses or costs to repair or remedy construction.

## 4.4 Financial and Cost Accounting Requirements for Errors and Omissions

When notified by the Department of a potential error or omission in the Work, the Contractor shall establish and maintain financial and related cost accounting records to segregate all costs associated with evaluation and correction of the potential error or omission. All costs associated with errors and omissions, including directly-associated costs (e.g., legal, accounting, and other professional fees), shall be borne by the Contractor and may not be charged to the Department directly or through overhead with respect to this Project.



## 4.5 Submittals and Documentation

The Contractor shall make all Submittals to the Department in accordance with Section 21.5 (Document Management) of Exhibit E (Technical Requirements) and as set forth in in the Project Scope. The Contractor covenants and agrees to provide all information requested by the Department as a result of a request made pursuant to the Ohio Open Records Law Ohio Rev. Code sec. 149.43 et seq. within the timeframe provided to the Contractor in conjunction with such request.

## 4.6 Review of Submittals

The Contractor covenants and agrees to verify that there are no conflicts between Buildable Units in such Submittals being reviewed and any previously approved Design Documents. The Contractor shall submit Design Documents to applicable agencies requiring review in a format following L&D Manuals.

## 4.7 Contractor Submittals Listing & Schedule

- A. The Contractor shall submit to the Department for review and acceptance, a comprehensive list and schedule for Contractor Submittals with the dates of each Submittal in order to achieve the Completion Deadlines (the “Contractor Submittals Listing & Schedule”).
- B. In Contractor Submittals Listing & Schedule, the Contractor shall distinguish between Submittals required to be reviewed and approved by the Department and those for informational purposes only. In addition, the Contractor Submittals Listing & Schedule shall include:
  1. A description of any Contractor Submittals that are not already described in the Contract Documents including identifying the contents and purpose;
  2. The planned schedule for submittal of the Contractor Submittals, which shall be consistent with the Project Schedule and any time period for Submittals under this PDBC;
  3. The required or proposed level of review to be provided by the Department; and
  4. Any required reviews or approvals of Contractor Submittals by third parties.
- C. The Contractor Submittals Listing & Schedule shall include a list of Contractor Submittals to be submitted to the Department in relation to the performance of the Phase 1 Work.
- D. The Contractor shall maintain, update, and re-submit the Contractor Submittals Listing & Schedule:
  1. At least monthly if there have been any material changes in the prior month;
  2. Together with submittal of its Phase 2 Proposal; and
  3. During the performance of the Phase 2 Work to establish all Submittals associated with Final Design, the Construction Work and the As-Built Construction Record-Drawing Model and Plans.
- E. The Department will complete its review of the initial Contractor Submittals Listing & Schedule and any update to it, issue its comments, and confirm its acceptance or

rejection, within 15 Days of receipt. If the Department does not provide its acceptance or rejection or provide comments within such time period, the Contractor may proceed to submit Contractor Submittals in accordance with the Contractor Submittals Listing & Schedule.

#### **4.8 Department Review of Contractor Submittals**

- A. The Contractor shall submit all Contractor Submittals to the Department within the time periods under the accepted Contractor Submittals Listing & Schedule.
- B. For those Contractor Submittals which have been designated as requiring the Department's review and approval, unless a different review period is agreed between the Parties and inserted in the Contractor Submittals Listing & Schedule, the Department will complete its review, issue its comments, and confirm its approval or rejection, within a timeframe agreed during Phase 1.
- C. At each stage of the Project, concurrent submissions above the prescribed amount will be subject to additional review periods. The additional review period will consider the submission size and complexity. The Department will partner with the Contractor with respect to additional review times and submission numbers in an effort to meet the Project Schedule. The Department will provide the additional timeframe needed for review on the next working day following submission.
- D. If the Department does not provide its approval or disapproval of a Contractor Submittal within the review period set forth in item B above, the Contractor shall provide a Notice to the Department stating the date on which the Department's disposition should have been received. If the Department fails to respond within a further 2 Working Days thereafter, the Contractor may seek an extension of time and reimbursement under Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) if the absence of Department approval or disapproval of the Submittal materially adversely impacts the Critical Path of the Baseline Schedule.

#### **4.9 Contractor Analysis of the Department Review Comments**

- A. The Contractor shall provide Notice to the Department in writing within 7 Days after receipt of any Department comments to a Contractor Submittal if the Contractor determines that incorporation of any comment(s) would cause the Submittal to become deficient in any respect, would materially increase the scope of the Work, amount to a Change Order, would give rise to a delay that materially adversely impacts the Critical Path of the Baseline Schedule or would otherwise materially adversely affect in any manner the performance of the Work. Upon receipt of a notification from the Contractor, the Department will have the right to modify the comment(s) and/or address the issues raised in the Contractor's notice in question.
- B. The Contractor's failure to provide Notice to the Department in accordance with this Section 4.9 shall constitute the Contractor's full acceptance of the Department's comments, the Contractor's full acceptance of all responsibility for resulting changes to the Contractor Submittals, and the Contractor's full acceptance that the comment does not constitute a change to the Work.
- C. Prior to execution of the Phase 2 Change Order, the Contractor shall review and evaluate any Department comments to a Contractor Submittal provided as part of the Phase 1 Work for the purposes of the preparation of its Phase 2 Proposal, including

providing recommendations to the Department for different approaches so as to achieve value for money and cost and schedule certainty for the Phase 2 Work.

- D. Following receipt of the Contractor's recommendations, the Department will resolve the treatment and approach to the comment as it applies to the Phase 2 Work and provide Notice to the Contractor of any related assumptions to apply to the Phase 2 Proposal.

#### **4.10 Contractor Revision and Re-submittal**

The Contractor shall revise all Contractor Submittals to include a disposition of all the Department-provided comments (including revisions to previous comments) and resubmit such Contractor Submittals to the Department for review and approval by the Department.

#### **4.11 Plans and Working Drawings**

The Plans shall show details of structures, the lines and grades, typical cross-sections of the Roadway, and the location and design of structures.

The Contractor shall prepare Working Drawings when required by the Contract Documents and after verifying applicable field and plan elevations, dimensions, and geometries. Where Work consists of repairs, extension, or alteration of existing structures, the Contractor shall take measurements of existing structures to accurately join old and new Work.

Unless otherwise indicated, the Department will review Working Drawing Submittals to ensure conformance with the PDBC and to provide the Contractor a written response to document the results of its review as follows:

- A. "ACCEPTED" – The Department accepts the Submittal for construction, fabrication, or manufacture.
- B. "ACCEPTED AS NOTED" – The Department accepts the Submittal for construction, fabrication, or manufacture, subject to the Contractor's compliance with all Department comments or corrections to the Submittal. If also marked "RESUBMIT," the Department still accepts the submittal, but requires the Contractor to provide a corrected submittal to the Department.
- C. "NOT ACCEPTED" – The Department does not accept the Submittal. The Submittal does not conform to Contract requirements. Do not begin construction, fabrication, or manufacture of Work included in the Submittal. Revise the submittal to comply with Department comments or corrections and Contract requirements and provide the revised Submittal to the Department for another review.

"Accepted" and "Accepted as Noted" Working Drawings are Contract Documents. The Department's acceptance will not relieve the Contractor of responsibility to complete the Work according to the Contract Documents nor relieve a signatory engineer's responsibility as defined by OAC 4733-23.

## 5 CONTROL OF WORK

### 5.1 Authority of the Department

The Department shall determine in its sole discretion:

- A. The quality and acceptability of Materials furnished;
- B. The quantity of Work performed;
- C. The Contractor's rate of progress;
- D. The interpretation of the Contract Documents;
- E. Acceptable fulfillment of the Contract;
- F. Contractor compensation; and
- G. The acceptability of the Contractor's Design and Design Documents.

The Department's acceptance of the Work or any portion thereof does not constitute a waiver of the Department's right to pursue any and all legal remedies for Nonconforming Work or Work performed by the Contractor in an un-workmanlike manner.

The Department will not supervise, direct or have control or authority over, nor be responsible for the Subcontractors' or Subconsultants' means, methods, techniques, sequences or procedures of construction, design, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and regulations applicable to the furnishing or performance of the Work.

The Department will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents. The Department may order immediate remediation of conditions which endanger the public safety or welfare as set forth in Section 5.10.6 (Public Convenience and Safety), Section 5.11.1 (Maintenance During Construction), Section 5.11.2 (Failure to Maintain Roadway or Structure), Section 5.11.6 (Protection and Restoration of Property), Section 5.12 (Contractor's Use of the Right of Way or Other Department-Owned Property), and Section 17 (Insurance Requirements).

### 5.2 Phase 2 Preconstruction and Progress Meetings

The Contractor shall meet with the Department for a preconstruction meeting before beginning the Construction Work.

At or before the preconstruction meeting, the Contractor shall submit the updated Progress Schedule to the Department and furnish to the Department a list of proposed Subcontractors not included in the Phase 2 Change Order, as applicable. If the Contractor fails to deliver the required submissions to the Department at or before the preconstruction meeting, the Department may order the meeting suspended until the required submissions are furnished to the Department. The Contractor shall not be permitted to commence the corresponding Construction Work until the meeting is reconvened and concluded or the Department gives specific written permission to proceed with the corresponding Construction Work.

The Contractor covenants and agrees to conduct monthly Progress Meetings with the Department unless an alternate frequency is otherwise determined and agreed upon in writing by the Department at the preconstruction meeting. The Contractor covenants and agrees to

coordinate with the Department to determine agenda topics prior to each meeting. The purpose of Progress Meetings is to maintain and foster open communication between the Contractor and the department.

### **5.3 Cooperation Between Contractors**

At any time, the Department may contract for other work on or near the Project.

Separate Contractors working within the limits of the Project shall conduct their work without interfering with or hindering the progress or completion of Work being performed by other Contractors and shall cooperate with each other as directed by the Engineer.

### **5.4 Authority and Duties of Inspector**

The Department, acting through its Inspectors, is authorized to inspect the Work and the preparation, fabrication, or manufacture of Materials; provided however, Inspectors are not authorized to alter or waive requirements of the Contract Documents and the Contractor shall not be entitled to rely on any such alteration or waiver by any such Inspector. Inspectors are authorized to: (i) notify the Contractor of Work that does not conform to the Contract Documents; (ii) reject Materials that do not conform to Specification requirements; and (iii) until the issue is decided by the Department, suspend portions of the Work if there is a question regarding the Contract Documents, use of unapproved Material, or safety. Inspectors are not obligated or authorized to provide direction, superintendence, or guidance to the Contractor, its crew, its Subcontractors, Subconsultants, or Suppliers to accomplish the Work.

Any action or inaction of the Inspector does not constitute a waiver of the Department's right to pursue any and all legal remedies for Nonconforming Work, or work performed by the Contractor in an un-workmanlike manner.

### **5.5 Inspection of Work**

The Contractor acknowledges and agrees that the Department, in its sole discretion, may elect to inspect Materials and the Work. The Contractor covenants and agrees to provide the Department or its representatives, including its Inspectors, with access to the Work, information, and assistance necessary to conduct a complete inspection of the Work or applicable portions thereof. Notwithstanding anything to the contrary contained herein, the Contractor shall notify the Department at least 24 hours prior to all testing and inspection needs. Modifications to previously provided inspection notices are considered new notices and will follow the 24 hour prior notice requirement.

When directed by the Department, the Contractor shall remove or uncover completed Work to allow inspection. After the Department's inspection, the Contractor shall restore the Work according to the requirements of the Contract Documents. If the inspected Work conformed to the requirements of the Contract Documents, the Department will pay for uncovering or removing and restoring the Work as Extra Work according to Section 12 (Contract Changes). The Department will not pay for uncovering or removing and restoring Nonconforming Work.

The Department shall have the discretion to determine the level of inspection for any item of Work. The Contractor bears sole responsibility for the quality of Work and compliance with the Contract Documents regardless of the Department's level of inspection.

The Department's failure to identify Nonconforming Work shall not, in any way, prevent the Department's subsequent rejection if Nonconforming Work is discovered, or obligate the Department to grant acceptance under Section 5.14.4 (Completion of the Contract and Continuation of the Contractor's Responsibilities).

Inspection of Work may also include inspection by representatives of the federal government, other Government Entities or railroad corporations that pay a portion of the cost of the Work. Such inspections will not make such organizations a party to the PDBC and will not be considered as interfering with the rights of the Contractor or Department.

## 5.6 No Waiver of Legal Rights

Subject to Section 26.1 (Waivers), the following Department actions do not waive the Department's rights or powers under the Contract, or any right to damages herein provided:

- A. Inspection by the Department or by any of Department Inspectors or representatives.
- B. Review of Design Documents by the Department's Project Manager, or any of the Department's representatives.
- C. Any order, measurements, or certificate by the Department or its representatives.
- D. Any order by the Department or its representatives for the payments of money or the withholding of money.
- E. Acceptance of any Work.
- F. Any extension of time.
- G. Any possession taken by the State or its representatives.

The Department will not consider any waiver of a breach of this PDBC to be a waiver of any other subsequent breach.

## 5.7 Furnishing Right-of-Way

The Department will provide the Contractor with legal access rights to the Project ROW during the performance of the Phase 1 Work in compliance with Section 9 (Right-of-Way) of Exhibit E (Technical Requirements) as may be amended in the Project Scope, including ingress and egress from a public Road.

The Contractor shall comply with the requirements of ORC 5517.01 and shall notify the property owner or person in possession of the property at least 48 hours prior to entry into said property. The notification format shall be approved by the before use.

The Sub-Phase 1B NTP shall constitute permission for the Contractor to occupy public Right-of-Way within the Project area for the performance of the Phase 1 Work in compliance with Section 9 (Right of Way) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

The Department is responsible for securing all necessary Project ROW in advance of Construction Work. Provisions governing access dates to each parcel are set forth in Section 9 of Exhibit E (Technical Requirements) as may be amended in the Project Scope. Any exceptions will be identified at the time of the Phase 2 NTP. If any parcels have not already been cleared for access by the Contractor on the date of the Phase 2 NTP, the Department will

identify in the Phase 2 Change Order the specific dates such parcels will be made available to the Contractor.

Where proposed Work is beyond the Project ROW limits, the Contractor shall not commence any Construction Work outside of the Project ROW until notified by the Department that the needed additional Project ROW has been acquired and is otherwise available for Construction Work.

## **5.8 Unauthorized and Nonconforming Work**

### **5.8.1 Nonconforming and Unauthorized Work**

The Contractor shall correct any Nonconforming Work in the manner and within the time frames required by the Contract Documents, at no cost to the Department. The Department may reject or require the Contractor to remedy any Nonconforming Work and/or identify additional Work that must be done to bring the Project into compliance with Contract Document requirements at any time prior to Completion of the Contract, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, acceptances, or approvals were conducted by any Person.

Unauthorized Work is Work done contrary to the instructions of the Department, beyond the plan lines, or any Extra Work done without the Department's permission. The Department will not pay for Unauthorized Work. The Department may order the Contractor to remove or replace Unauthorized Work at no expense to the Department.

If the Contractor fails to comply with the Department's orders under the provisions of this Section 5.9.1 (Nonconforming and Unauthorized Work), the Department may correct or remove and replace Nonconforming Work or Unauthorized Work and deduct the costs from the Contract Price.

### **5.8.2 Nonconforming Work Compensation Adjustment**

The Department may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a reduction in the Contract Price in an amount determined by the Department, equal, at the Department's election, to:

1. The amount allocated to such Work in the Price Proposal;
2. The Contractor's cost savings associated with its failure to perform the Work in accordance with the Contract Document requirements; or
3. The amount deemed appropriate by the Department to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work.

## **5.9 Construction Requirements**

### **5.9.1 Prosecution and Progress**

The Contractor shall notify the Department in writing at least 24 hours before starting construction of each Buildable Unit of Work. If the prosecution of the Work is suspended, the Contractor shall notify the Department in writing a minimum of 24 hours in advance of resuming construction.

The Contractor shall pursue the Work diligently and continuously as to achieve the Completion Deadlines for each Milestone and achieve Substantial Completion of the Project by the Substantial Completion Deadline.

### 5.9.2 Limitation of Operations

The Contractor shall limit operations to prevent unnecessary inconvenience to the traveling public in accordance with the MOT. If the Department concludes that the extent of the Contractor's Work unnecessarily inconveniences the public or concludes limiting operations are necessary to protect existing facilities or completed Construction Work from damage, the Department will require the Contractor to finish portions of Work in progress before starting new Work.

### 5.9.3 Load Restrictions

The Contractor shall comply with all legal load restrictions when hauling Materials on public roads.

The Contractor shall operate Equipment of a weight or so loaded as to not cause damage to Structures, to Roads, or to other types of construction. The Contractor shall comply with ODOT C&MS subsection 501.05.B.6 (Total load applied to a structure during construction exceeds 75 percent of legal limit) for allowed loads on Bridges for Work undertaken in Ohio.

The Contractor shall not (i) use off road vehicles on bases or pavements unless permitted by the Department in writing, (ii) haul on concrete pavement, base, or Structures before the expiration of the curing period or (iii) exceed the legal load limits in this section unless permitted by the Department in writing.

### 5.9.4 Haul Roads

Prior to hauling Equipment or Materials, the Contractor shall provide written notification to the Department of the specific roads or streets on the haul route. If the haul route includes roads and streets that are not under the jurisdiction and control of the State of Ohio and the Department determines that State controlled roads are not available or practical for a haul route, the Contractor may use local roads and streets that are not restricted by the relevant Government Entity. If the Department determines that state controlled roads are available and practical for a haul route, the Contractor shall revise the proposed haul route provided in the original written notification and resubmit to the Department.

If the Department determines that haul route roads were properly used by the Contractor for any purpose in connection with the Work and that the haul route roads were damaged, then the Department may order the Contractor to perform immediate and practical repairs to ensure reasonably normal traveling conditions. The Department will pay for repairs according to applicable provisions of Section 12 (Contract Changes).

The Contractor shall not file a Claim for delays or other impacts to the Work caused by disputes with Government Entities regarding the use of local roads or streets as haul routes. The Contractor shall save the Department harmless for any closures or hauling restrictions outside the Project Limits beyond the control of the Department.



### **5.9.5 Reserved**

### **5.9.6 Public Convenience and Safety**

At all times, the Contractor shall ensure that the Work interferes as little as possible with the normal unrestricted flow of traffic. The Contractor shall provide for the safety and convenience of the general public and the residents adjacent to the Project Site and the protection of persons and property. Furthermore, the Contractor shall not close any highways or streets unless specifically allowed by the PDBC per Section 11.10.2 (Lane Closure Deductions).

Any illegal drugs, drug paraphernalia, mobile drug labs or dumps, weapons or firearms found on the Project ROW shall be considered a potential crime scene and shall not be handled or moved. In such an event, the Contractor shall immediately notify law enforcement and the Department.

### **5.9.7 Sanitary Provisions**

The Contractor shall provide and maintain sanitary accommodations in a neat condition for the use of employees and Department representatives that comply with the requirements of the State and local Boards of Health, or of other Government Entities having jurisdiction over the Project.

### **5.9.8 Bridges over Navigable Waters**

The Contractor shall conduct all Work on navigable waters so that it does not interfere with free navigation of the waterways and that it does not alter the existing navigable depths, except as allowed by permit issued by the U.S. Coast Guard.

### **5.9.9 Use of Explosives**

Use of explosives is prohibited for this Project.

### **5.9.10 Unmanned Aircraft Systems**

If the project requires or anticipates the use of unmanned aircraft systems within Project Right-of-Way, the Contractor will follow proper risk assessment and federal regulations in accordance with ODOT Supplement 1132 in Ohio.

## **5.10 Damage to the Work and Maintenance During Construction**

### **5.10.1 Maintenance During Construction**

The Contractor shall maintain the Work during construction and until the Department accepts the Work under Section 5.14.4 (Completion of the Contract and Continuation of Contractor's Responsibilities). The Contractor is responsible for damage done by its Equipment.

The Contractor shall maintain the previous courses or subgrade during all construction operations, when placing a course upon other courses of embankment, base, subgrade, concrete or asphalt pavement, or other similar items previously constructed. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or if destroyed, the removal of Work previously accepted by the Department.

The Contractor shall maintain the post construction storm water Best Management Practice (BMP) features. The Contractor shall prevent sediment laden surface water from coming in contact with the BMP features during construction.

The Contractor shall maintain the Work during the Construction Period and before acceptance of the Work under Section 5.14.4. The Department will not provide additional compensation for maintenance Work. All cost of maintenance Work during construction and before the project is accepted shall be included in the Contract Price and the Contractor will not be paid an additional amount for such Work.

Snow and ice control during the Construction Period will be by the Department and applicable Government Entities.

The Contractor shall not be required to assume any maintenance responsibilities until NTP for Construction Work pursuant to the Phase 2 Change Order, following which the Contractor shall be responsible for maintenance of existing facilities within the Project Limits as described herein.

The Contractor shall perform a baseline inspection and submit a baseline inspection report that shall be used as a benchmark to determine the minimum required maintenance condition of all existing project elements throughout the Construction Period. The baseline inspection report shall identify any existing defects, safety issues, or elements requiring repair on detour routes. The report will include mitigation measures for all identified defects, safety issues, or elements requiring repair. Prior to and during detour use, the Contractor shall make repairs to the detour route to ensure it is reasonably smooth and free from holes, ruts, ridges, bumps, dust, standing water, and other items required to maintain safe driving conditions. Once the detour is removed and traffic returned to its normal pattern, the detour route shall be restored to a condition that is equivalent to that which existed prior to its use for this purpose.

The Contractor shall maintain all elements within the Project limits such that the baseline element condition is equaled or exceeded.

### **5.10.2 Failure to Maintain Roadway or Structure**

If the Contractor, at any time, fails to comply with the provisions of Section 5.11.1 (Maintenance During Construction), the Department will immediately notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Department may immediately proceed to maintain the Project, and deduct the entire cost of this maintenance from monies due or to become due the Contractor in accordance with the Contract Documents.

### **5.10.3 Contractor Responsibility for Work**

Until the Department accepts the Work during by issuing a Notice of Final Completion pursuant to Section 5.14.2.2 (Notice of Completion), the Contractor is responsible for the Project and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before Completion of the Contract. The Contractor shall bear the expense of the repairs except when damage to the Work was due to a Force Majeure Event, as set forth in Section 14 (Force Majeure Events), without the fault or negligence of the Contractor.

#### 5.10.4 Damage by Traffic Using Substantially Completed Work

In the event that the Department determines that damage to completed permanent items of Work results from traffic using a substantially completed section of Roadway, the Department may compensate the Contractor for repair of the damage as authorized by Change Order. Additionally, if traffic permanently damages beyond use the following temporary maintenance of traffic items, the Department will compensate the Contractor for replacement of the item as authorized by Change Order:

1. Arrow board;
2. Work zone signal, pole, or controller;
3. Lighting unit or pole;
4. Changeable message sign;
5. Work Zone Impact Attenuator;
6. Truck Mounted Impact Attenuator; or
7. Digital Speed Limit Sign Assembly.

To receive compensation for the damage to permanent items of Work or temporary maintenance of traffic items named above, the Contractor must first meet the following requirements.

- A. Notify the Department of each occurrence of damage in writing within 10 Days.
- B. Contact the local law enforcement agency to determine if the accident was investigated and a report filed. If an accident report was filed, obtain the report and notify the motorist, and copy their insurance company, via certified mail informing both that the motorist is responsible for the cost of damage repairs. If the motorist does not respond within 30 Days, make a second attempt to contact the motorist and copy the insurance company via certified mail.
- C. If no response is received from the motorist or insurance company within 30 Days of the motorist receipt of the second notice, send a letter to the Department within eighteen months of the event and include documentation of good faith effort to seek recovery from responsible parties.
- D. The Department will make an adjustment according to Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) and Section 12.8 (Changes and Extra Work Price Determination) to compensate the Contractor for the added costs and delays, if any, resulting from the repair or replacement of damaged Work.

If there is no accident report on file and no means of identifying the responsible motorist, the Contractor will be compensated to repair the damaged Work.

In case of suspension of Work by the Contractor or under the provisions of Section 20.2 (Department Suspension for Cause), the Contractor shall be responsible for the Project and shall take necessary precautions to prevent damage to the Project; provide for normal drainage; and erect any necessary temporary structures, signs, or other facilities at its expense. During such period of suspension of Work, properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings

furnished under the Contract Documents, and take adequate precautions to protect new tree growth and other vegetative growth against injury.

### **5.10.5 Removal of Graffiti**

The Department may direct the Contractor to remove graffiti any time during the Work. The Department will make an adjustment according to Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) for delay impacts to Critical Path activities and Section 12.8 (Changes and Extra Work Price Determination) to compensate the Contractor for the added costs, if any, resulting from all ordered graffiti removal.

### **5.10.6 Protection and Restoration of Property**

The Contractor is responsible for the preservation of all public and private property impacted by the Contractor's operations.

The Contractor is responsible for all damage or injury to property, during the prosecution of the Work, resulting from any act, omission, neglect, Nonconforming Work or misconduct in the manner or method of executing the Work. The Contractor will remain responsible for all damage and injury to property until the Project is accepted under Section 5.14.4 (Completion of the Contract and Continuation of Contractor's Responsibilities).

If the Contractor causes any direct or indirect damage or injury to public or private property by any act, omission, neglect, or misconduct in the execution or the non-execution of the Work, then it must restore, at its own expense, the property to a condition similar or equal to that existing before the damage or injury.

If mail boxes, road, or street name signs and supports interfere with the Work, the Contractor shall remove and erect those items in a temporary location during the Construction Period in a manner satisfactory to and as directed by the Department. After Substantial Completion of the Work and before Completion of the Contract, the Contractor shall erect the mailboxes, road, or street name signs and supports in their permanent locations according to the Plans unless otherwise directed by the Department.

The Contractor shall cooperate with the Department in protecting and preserving survey monuments that are affected by the Work as required by ORC 5519. At the beginning of the Work, the Contractor shall verify the position of all survey monuments in the area to be improved, according to ODOT C&MS Section 623 (Construction Layout Stakes and Survey Monuments). If survey monuments not shown in the Contract Documents are unexpectedly encountered, then the Contractor shall protect, reference, and preserve those survey monuments in the same manner as survey monuments that are shown in the Contract Documents.

The Contractor shall not create staging areas, store Materials and Equipment, or borrow or waste materials in areas identified as an environmental resources areas in the Contract Documents. All properties to be utilized by the Contractor outside the Project Limits shall be cleared for all environmental resource impacts prior to the beginning of Construction Work. Environmental resources include but may not be limited to:

1. Cultural Resources:

- a. Buildings, structures, objects, and sites eligible for or listed on the National Register of Historic Places; and
  - b. Historic or prehistoric human remains, cemeteries, and/or burial sites (pursuant with ORC 2909.05.
2. Ecological Resources:
    - a. Wetlands;
    - b. Streams; and
    - c. Wooded areas with trees to be removed in excess of 8 inches diameter at breast height.
  3. Public Lands:
    - a. Lands meeting the criteria of 49 U.S.C. 303, 23 CFR 771.135: 4(f); and
    - b. Lands meeting the criteria of 16 U.S.C. 4601-4, 36 CFR59.1: 6(f).
  4. FEMA Mapped 100 year Floodplains; and
  5. Hazardous Waste Areas.

Except for locations utilized specifically for:

1. Reuse of Clean Hard Fill as described in CA-EW-20 (ODOT Beneficial Reuse Form). Prior to transferring Clean Hard Fill from the project, fully execute form CA-EW-20 and provide appropriate documentation to the Department as described for each reuse option.

All areas proposed to be utilized by the Contractor outside the Project Limits and not described above shall be reviewed by environmental Subcontractor(s) that are prequalified by the Department for each environmental resource. The Contractor shall cause the environmental Subconsultant(s) to certify that the proposed site to be utilized for the Contractor will not impact:

1. Cultural Resources;
2. Ecological Resources;
3. Public Lands;
4. FEMA Mapped 100 year Floodplains; or
5. Hazardous Waste Areas.

The Contractor shall provide all documentation and the environmental Subconsultant certification to the Department.

In the event that the areas proposed for use by the Contractor outside the Project ROW contain environmental resources, the Contractor shall be responsible to the Department for all environmental clearances and permits prior to the beginning Construction Work.

### **5.10.7 Contractor's Responsibility for Utility Property and Services**

At points where the Contractor's operations are adjacent to properties of railway, cable, telephone, and power companies, or are adjacent to other property, and any damage to their property may result in considerable expense, loss, or inconvenience, the Contractor shall not commence with the operation until all arrangements necessary for the protection of the property

have been made. The Contractor shall ensure continuity of Utility service as further described in Section 10 of Exhibit E (Technical Requirements).

The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations to ensure these operations progress in a reasonable manner, that duplication of rearrangement Work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event interruption to underground or overhead utility services results from an accidental breakage or from being exposed or unsupported, the Contractor shall immediately alert the occupants of nearby premises as to any emergency that the accidental breakage may create at or near such premises. The Contractor shall then notify the Department and the Utility Owner of the utility facility of the disruption and cooperate with the said Utility Owner or operator in the restoration of service. If utility service is interrupted, the Contractor shall perform the repair work continuously until the service is restored unless the repair work is performed by the Utility Owner. The Contractor shall not begin Work around fire hydrants until the local fire authority approves provisions for continued service.

## **5.11 Contractor's Use of the Project Right of Way or Other Department-Owned Property**

### **5.11.1 Disposal of Waste Material and Construction Debris and Excavation of Borrow on the Project Right of Way or on Other Department-Owned Property**

The Contractor shall dispose of waste material according to Section 5.13.2 (Borrow and Waste Areas) and dispose of construction debris according to Section 5.13.5 (Construction and Demolition Debris). In addition to the rights granted in Section 5.13.3 (Rights In and use of Materials Found in the Work), the Contractor's use of the Project ROW or other Department-owned property for the disposal of waste material and construction debris and excavation of borrow material is restricted as follows:

- A. If the Contract Documents identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project ROW or on other Department-owned property, then only perform these operations in these designated locations.
- B. If the Contract Documents do not identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project ROW or on other Department-owned property, then do not assume that the Department will make such locations available.

If the Contractor's request to use locations within the Project ROW or on other Department-owned property is approved by the Department, then the Department will allow the Contractor to dispose of waste material and construction debris or excavate borrow material for a negotiated fee per cubic yard.

### **5.11.2 Contractor's Use of Portable Plants Within the Project Right of Way or on Other Department-Owned Property**

The Contractor's use of portable plants within the Project ROW or on other Department-owned property is limited.

The Contract Documents do not identify locations within the Project ROW or on other Department-owned to place a portable plant. The Contractor shall not assume that the Department will make such locations available.

### **5.11.3 Placement of a Portable Plant within the Project Right of Way or on Other Department-Owned Property**

To place a portable plant within the Project ROW or on other Department-owned property, the Contractor shall comply with the following requirements:

- A. Local noise ordinances.
- B. Obtain any necessary EPA permits for the operation of the plant. Provide the Department with a copy of the information submitted to obtain the permit and a copy of the permit.
- C. Provide the Department written certification that the plant will supply Material only for the Project for which it was approved. The plant shall not be used to supply any other project or to sell materials commercially.
- D. Submit an ingress/egress plan to the Department for approval that details the anticipated truck movements and provides acceptable protection, warning, and guidance to motorists, pedestrians, and the workers.

### **5.11.4 Equipment Storage and Staging**

The Contractor may use, fee-free, any portion of the Project ROW for staging, Equipment storage, or an office site with the approval of the Department, provided such usages do not interfere with the Work and are not prohibited by the Contract Documents.

### **5.11.5 Equipment Removal and Site Restoration**

The Contractor shall remove all Contractor Equipment and completely restore all utilized sites as required by Section 5.13.4 (Cleaning Up) before Completion of the Contract as provided in Section 5.14.4 (Completion of the Contract and Continuation of the Contractor's Responsibilities).

## **5.12 Environmental Requirements**

### **5.12.1 Environmental Protection**

The Contractor shall comply with all Federal, State, and local laws and regulations controlling pollution of the environment. The Contractor shall avoid polluting streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, sediments, or other harmful materials, and avoid polluting the atmosphere with particulate and gaseous matter.

By execution of this PDBC, the Contractor, will be deemed to have stipulated as follows:

- A. 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.
- B. That the Contractor 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.
- C. That the Contractor shall promptly notify the Department 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.
- D. That the Contractor agrees to include or cause to be included the requirements of paragraph A. through D. of this Section 5.13.1 in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

The following provisions with respect to permits shall be read in conjunction with Section 8 (Permitting) of Exhibit E (Technical Requirements).

Fording of streams is prohibited.

Causeways for stream and river crossings or for Work below a Bridge are permitted provided:

- A. The causeway complies with the requirements of the 404 Permit the Department obtained for the Project.
- B. The Contractor obtains a 404 Permit from the U.S. Army Corps of Engineers if the Department has not obtained such a permit. The Contractor shall obtain the 404 Permit prior to beginning construction of the causeway. The Department does not guarantee that the Contractor will be able to obtain a 404 Permit.

The Contractor shall comply with the Ohio Water Pollution Control Act (OWPCA), (ORC Chapter 6111). The Department will obtain a storm water permit when the plan work acreage requires a permit. The Contractor shall apply for a permit to cover operations outside the Project limits shown on the plans as required by the OWPCA provisions. When the Department has not applied for a permit on the Project and a permit is required because of the total area of the Contractor's Work, the Contractor shall apply for, obtain, and comply with the required permit for both the Work within Project Limits and the Contractor's Work.

The Department has obtained the required permits from the U.S. Army Corps of Engineers and Ohio EPA for Work in the "Waters of the United States" and isolated wetlands under ORC Chapter 6111. The Contractor shall comply with the requirements of these permits.

When Equipment is working next to a stream, lake, pond, or reservoir, appropriate spill response Equipment is required. The Contractor shall not stockpile erodible material next to a stream, lake, pond, or reservoir.



The Contractor shall take precautions to avoid demolition debris and discharges associated with the excavation and hauling of material from entering the stream. In addition, the Contractor shall remove any material that does fall into the stream as soon as possible.

When excavating in or adjacent to streams, the Contractor shall separate such areas from the main stream by a dike or barrier to keep sediment from entering the stream. The Contractor shall take care during the construction and removal of such barriers to minimize sediment entering the stream.

The Contractor shall contain, collect, characterize and legally dispose of all liquid waste and sludge generated during the Work. The Contractor shall not mix wastes with storm water. The Contractor shall not discharge any liquid waste without the appropriate regulatory permits. The Contractor shall manage liquid waste and sludge in accordance with ORC Chapter 6111 and all other laws, regulations, permits and local ordinances relating to this waste.

The Contractor shall control the fugitive dust generated by the Work according to OAC-3745-17-07(B), OAC-3745-17-08, OAC-3745-15-07, and OAC-3745-17-03 and local ordinances and regulations. Prior to the initiation of abrasive coating removal, pavement cutting or any other construction operation that generates dust, the Contractor shall demonstrate to the Department that construction related dust will be controlled with appropriate Reasonable Available Control Measures (RACM) as described in OEPA Engineering Guide #57 (<http://epa.ohio.gov/dapc/engineer/equides.aspx>).

In addition, the Contractor shall use dust control measures when fugitive dust creates unsafe conditions as determined by the Department.

In Ohio, the Contractor shall perform open burning according to Section 5.13.2 (Borrow and Waste Areas).

### **5.12.2 Borrow and Waste Areas**

Prior to beginning borrow or wasting operations, the Contractor shall obtain the Department's written approval of a detailed operation plan (which shall be updated as necessary prior to each occasion on which the Contractor intends to begin new borrow or wasting operations) that addresses the following concerns:

- A. Control of drainage water;
- B. Cleanup, shaping, and restoration of disturbed areas;
- C. Disposal of Regulated Materials;
- D. Avoidance of regulated areas;
- E. Excavation and filling of waste and borrow areas;
- F. Saving of topsoil; and
- G. Temporary Sediment and Erosion Control BMPs required for compliance under the Clean Water Act, Ohio Water Pollution Control Act, (OWPCA) (ORC Chapter 6111), and the NPDES permit.

The Contractor shall perform all engineering, including any field investigation, necessary to ensure long term stability of all side slopes and foundations of all borrow and waste areas. The Contractor shall also furnish a certification by a Registered Engineer attesting to the stability of

all borrow and waste areas. All damage resulting from the instability of borrow and waste areas, the removal of borrow materials, the placement of waste materials, or the hauling of material to and from these areas is the sole responsibility of the Contractor. Repairs to approved haul roads will be made in accordance with Section 5.10.4 (Haul Roads).

The Contractor shall ensure that all side slopes of all waste areas do not reduce horizontal sight distance as defined by the Department's Location and Design Manual.

The Contractor shall (i) have the proposed borrow and waste areas reviewed by an environmental Subconsultant that is pre-qualified by the Department as appropriate for ecological work; and (ii) have the environmental Subconsultant certify that the proposed borrow and waste operations will not impact the "Waters of the United States" or an isolated wetland. If Subconsultant certification is not provided, the Contractor shall obtain the 404/401 permits necessary to perform the operations as proposed. The Contractor shall have the environmental Subconsultant certify that the Work conforms to the requirements of the permit(s). The Contractor shall provide all documentation submitted to obtain the appropriate permit(s) and a copy of the permit(s) to the Department.

If burning is permitted in Ohio under the OAC-3745-19 and ORC 1503.18, the Contractor shall submit a copy of the Ohio EPA permit and the Ohio DNR permit to the Department and copies of all information used to obtain the permit.

Prior to the disposal of waste materials, the Contractor shall submit to the Department an executed copy of the contract or permission statement from the property owner. The contract or permission statement must indicate that the waste materials are not the property of the Department. Further, the contract or permission statement must expressly state that the Department is not a party to the contract or permission statement and that the Contractor and property owner will hold the Department harmless from claims that may arise from their contract or permission statement.

The Contractor shall restore all borrow or waste areas including cleanup, shaping, replacement of topsoil, and establishment of vegetative cover by seeding and mulching according to Section 5.13.4 (Cleaning Up) and Ohio Item 659 (Seeding and Mulching) where in Ohio. The Contractor shall ensure the restored area is well drained unless approval is given by the Department to convert a pit area into a pond or lake, in which case confine restoration measures to the disturbed areas above the anticipated normal water level.

For waste sites shown on the plan, the plan will indicate if the clearances have or have not been obtained for the project right-of-way locations. No extension of time or additional compensation will be paid for any delays due to not having the written permit(s) to waste in a floodplain.

The allowed use of Project ROW and other Department property for borrow and waste is detailed in Section 5.13.3 (Rights in and Use of Materials Found in the Work) and Section 5.12 (Contractor's Use of the Project ROW or Other Department-Owned Property).

Borrow and Waste Area shall adhere to Section 5.11.6 (Protection and Restoration of Property).

### **5.12.3 Rights In and Use of Materials Found in the Work**

Upon obtaining the Department's approval, the Contractor may use material, such as stone, gravel, or sand, found in the plan excavation for another Contract Item. The Contractor shall

excavate or remove material only from within the grading limits, as indicated by the slope and grade lines.

#### 5.12.4 Cleaning Up

The Contractor shall maintain the Project in a presentable condition. The Contractor shall remove all rubbish, layout stakes, sediment control devices as directed by the Department, excess material, temporary structures, and Equipment, including stream channels and banks within the Right-of-Way at drainage structures, and all borrow and waste areas, storage sites, temporary plant sites, haul roads, and other ground occupied by the contractor in connection with the Work. The Contractor shall establish suitable vegetative cover in these areas by seeding and mulching according to Item 659, except for cultivated fields and leave the Project Site in an acceptable condition as determined by the Department.

#### 5.12.5 Construction and Demolition Debris

In Ohio, the Contractor shall follow OAC-3745-37, OAC-3745-400, and ORC Chapter 3714 which regulate the use and disposal of construction and demolition debris.

The Contractor shall legally dispose, reuse within the Project or recycle debris containing wood, road metal, plaster, asphalt, brick and/or stone, at a licensed construction and demolition debris site, recycling facility, or, with respect to the reuse of any such materials, at the designated location within the Project Site.

Under the regulations cited above the disposal of brush, trees, stumps, tree trimmings, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter is restricted. If allowed by the Contract Documents, the Contractor may waste brush, trees, stumps, tree trimming, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter within the Project ROW. Otherwise, the Contractor shall submit a plan and any required permits to legally dispose of these materials off the Project ROW to the Department and shall provide all documents submitted to obtain any permits to the Department.

When reusing PCC, the Contractor shall (i) mix the PCC with at least 30 percent natural soil to construct an inner core in the waste area; (ii) cover this inner core with 3 feet (1.0 m) of natural soil on the top and 8 feet (2.4 m) on the side slopes; and (iii) place and compact the material according to ODOT C&MS 203.06.D (Spreading and Compacting Random Materials) to prevent future settlement and sliding.

Clean Hard Fill consisting of reinforced or non-reinforced concrete, asphalt concrete, brick, block, tile or stone that is free of all steel as per ODOT C&MS 703.16 (Suitable Materials for Embankment Construction) shall be managed in one or more of the following ways:

- A. Recycled into a usable construction material;
- B. Disposed in licensed construction and demolition debris facility; or
- C. Used in legitimate fill operations on the site of generation according to Section 5.13.2 (Borrow and Waste Areas).

The Contractor shall notify the local Board of Health or the local EPA office 7 Days before placing Clean Hard Fill off the Project ROW and shall submit copies of this notification to the Department. Prior to transferring Clean Hard Fill from the Project Site, the Contractor shall fully

execute form CA-EW-20 and provide appropriate documentation to the Department as described for each reuse option as described in CA-EW-20 (ODOT Beneficial Reuse Form).

### 5.12.6 Regulated Materials

With respect to known Regulated Materials and Contractor-Generated Regulated Materials (defined herein), the Contractor is solely responsible for:

- A. complying with all regulatory requirements, applicable Laws, and Governmental Approvals pertaining to Regulated Materials located at the Site or any portion thereof;
- B. collecting, containing, characterizing, and properly disposing of all Regulated Materials, including waste generated or encountered during the Work;
- C. ensuring that the Site is properly managed during the Work so that Regulated Materials do not migrate outside the Site;
- D. using reasonable efforts, including design modification and/or construction techniques, to avoid excavation or dewatering in areas of the Site containing known Regulated Materials;
- E. unless otherwise expressly provided in this PDBC, making its own arrangements for storing and disposing of waste and excess substances generated from the Contractor's performance of the Work utilizing storage and disposal facilities that are properly licensed and permitted for such storage and disposal in accordance with applicable Law and regulatory requirements, including notifying the Department and making alternative arrangements of any such storage or Disposal Facility loses its permitted status during the Term;
- F. using, containing, storing, managing, transporting and disposing of all Contractor-Generated Regulated Materials (defined herein) in accordance with this PDBC and all applicable Law and regulatory requirements, including obtaining an "EPA Identification Number," and signing of waste manifests, bills of lading, chain of custody and waste profiles;
- G. coordinating removal and disposal of all Contractor-Generated Regulated Materials upon Substantial Completion or the earlier termination of this PDBC for any reason, in accordance with this PDBC, and all applicable Law and regulatory requirements, including demonstrating such removal, remediation disposal necessary for protection of human health and the environment to the reasonable satisfaction of the Department and providing the Department with copies of all records relating to such removal remediation and disposal;
- H. paying all associated costs and obtaining all necessary permits for a legal disposal site beyond the Site; and
- I. paying all penalties, expenses (including attorneys' fees and costs), costs suits, judgments, claims, actions, damages (including damages to natural resources, property or persons), delays and liability associated with arising out of, or related to any Contractor-Generated Regulated Materials.

## 5.12.7 Unknown Regulated Materials

### 5.12.7.1 Discovery of Unknown Regulated Materials

If the Contractor discovers any Unknown Regulated Materials in “material quantities” during the Work, the Contractor shall notify the Department immediately and include details with respect to any requirement to notify State or federal agencies under applicable Law. For the purposes of this Section 5.13.7, “material quantities” of an Unknown Regulated Material means quantities that initiate any reporting, investigation or remediation under any Environmental Law.

### 5.12.7.2 Continuing Work after discovery

After the discovery of any Unknown Regulated Materials that are not Contractor-Generated Regulated Materials, the Contractor shall not disturb, or further disturb the condition or interfere with the Department’s right or ability to investigate the condition, and shall suspend Work in the immediate area of the suspected Regulated Materials until the Department authorizes the Contractor to resume Work; provided however, during the pendency of the Department’s notice to continue Work, the Contractor shall continue Work on the unaffected areas of the Site.

### 5.12.7.3 Department’s responsibility and determination

The Department will promptly investigate any suspected Unknown Regulated Materials of which it has received notice under Section 5.13.7.1 (Discovery of Unknown Regulated Materials) that are not Contractor-Generated Regulated Materials, and thereafter evaluate whether the discovery of such Unknown Regulated Materials justify an increase in the Contract Price and/or an extension of the Contract Time, subject to the Contractor’s demonstration of the following:

- A. the Contractor has given timely notice of the corresponding condition and the Unknown Regulated Materials as required in this Section 5.13.7.3, and, where applicable, Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) for Critical Path delay impacts and Section 12.8 (Changes and Extra Work Price Determination) to compensate the Contractor for the added costs and delay; and
- B. the Contractor has given the Department to investigate prior to the asserted condition and Unknown Regulated Materials being disturbed in accordance with this Section 5.13.7.3.

Any Disputes as to whether the conditions pertaining to Unknown Regulated Materials have caused a decrease or increase in the Contract Price or require an extension of the Contract Time shall be addressed in accordance with the Partnering and Dispute Resolution provisions set forth under Section 18 (Partnering and Dispute Resolution) hereof.

### 5.12.7.4 Third-party contractors

The Department reserves the right to use other third-party contractors to investigate and perform work to determine the nature and extent of any Unknown Regulated Materials on the Site that is not a Contractor-Generated Regulated Material and to handle and/or remove such Unknown Regulated Material from the applicable portion of the Site. Except as otherwise provided in this PDBC, the Department’s use of other third-party contractors shall not constitute a basis for the Contractor to submit an NPCO or EDR.

### 5.12.7.5 Generator Status

Except as otherwise provided herein, (i) the Contractor shall not be considered to be the “generator” of Regulated Materials located within or outside the Site; (ii) the Contractor shall not be required to execute any Regulated Materials manifests as a “generator”; provided however, for any Contractor-Generated Regulated Materials, the Contractor shall prepare such Regulated Materials manifests for the Department’s signature, and (iii) Regulated Materials encountered in the performance of the Work, shall be disposed of, if at all, utilizing an ‘EPA Identification Number’ or other appropriate legal device, including any RCRA identification number permitted under applicable Law and obtained by, and carried in the name of the Department or another Person designated by the Department.

Notwithstanding anything to the contrary contained herein or under any applicable Law or Government Regulation, the Contractor (and not the Department) acknowledges and agrees that the Contractor shall be considered the “generator” under the following circumstances:

- A. the Regulated Materials are transported onto the Site by the Contractor or any Component Firm; or
- B. any spill, leak, emission, release, discharge, injection, escape, dumping or disposal of Regulated Materials into the soil, air, surface water, groundwater, or environment is caused by the Contractor or any Sub-Contractor, including the Contractor’s or any Component Firm’s breach of any applicable Law, Governmental Approval or this PDBC, and/or the negligence, or willful misconduct of the Contractor or any Component Firm ((A) and (B) together constitute “Contractor-Generated Regulated Materials”).

## 5.13 Completion Deadlines and Acceptance

### 5.13.1 Substantial Completion of the Work

#### 5.13.1.1 Requirements for Substantial Completion

The following requirements must be satisfied for the Contractor to request a Substantial Completion Inspection of the Phase 2 Work, notice of which shall be provided by written notice from the Contractor to the Department:

- A. The Contractor has completed all project level punch lists provided by the Department.
- B. The Contractor has completed the Phase 2 Work in accordance with this PDBC (except for Work otherwise only required to be performed for the purposes of achieving Completion of the Contract) and the Work is ready for use for the purpose intended.
- C. The Contractor has ensured that the Work in connection with Substantial Completion has been performed in accordance with all requirements of the Contract Documents.
- D. 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.
- E. The Contractor has received all applicable Governmental Approvals required for the Project.

- F. The Contractor has furnished to the Department certifications in form and substance satisfactory to the Department, certifying that the Design Documents meet all requirements of the Contract Documents.
- G. The Contractor has furnished to the Department certifications, in form and substance satisfactory to the Department, certifying that the Construction Work meets all requirement of the Contract Documents.
- H. There is no outstanding Nonconforming Work, or incomplete Work that would be necessary to achieve Substantial Completion identified by the Contractor or the Department.

### 5.13.1.2 Substantial Completion Inspection

Once the Department has reasonably verified that the conditions of Section 5.14.2.1 (Requirements for Substantial Completion) have been met, the Department shall perform a Substantial Completion Inspection of the Work that is subject to the foregoing written notice from the Contractor.

The Contractor hereby acknowledges and agrees that the Department's verification may require substantial time and will be dependent upon the number and severity of outstanding items requiring verification, as identified in Section 5.14.2 (Requirements for Substantial Completion). The Department agrees that it shall make reasonable efforts and act diligently in such verification. The Contractor shall allow 7 Days in the Project Schedule for this effort. In the event the Department finds that the conditions of Section 5.14.2.1 (Requirements for Substantial Completion) have not been met, the Department will reject the Contractor's request for a Substantial Completion Inspection. The Contractor will be notified of this rejection in writing.

If the Department notifies the Contractor that the conditions of Section 5.14.2.1 (Requirements for Substantial Completion) have not been met, then the Contractor shall resubmit its Substantial Completion notice to the Department upon correction or satisfaction of the outstanding requirements, and the Parties shall continue this process until (i) the Department notifies the Contractor that the Department will perform the Substantial Completion Inspection, (ii) the Contractor initiates Dispute Resolution Procedures under Section 18.2 hereof, or (iii) the PDBC is otherwise terminated in accordance with the terms of this PDBC.

The Substantial Completion Inspection shall be performed within 15 Days of the Department's verification. It shall serve as the Department's validation that the Work appears to have achieved Substantial Completion. The Substantial Completion Inspection does not waive any available rights or remedies of the Department, nor divest the Contractor of any responsibility for compliance with the Contract Documents or liability for damages.

Within 15 Days after the Department's inspection of the Work, the Department will issue a Substantial Completion Inspection report that will document the findings of the inspection, including categorizing the Work as one of the following:

- A. Unacceptable or not complete;
- B. Substantial Completion has been achieved with Substantial Completion Inspection Punch List items found by the Department; or
- C. Substantial Completion has been achieved.

If the Department finds the Work unacceptable or not complete, the Contractor will rectify the deficiencies and request another Substantial Completion Inspection pursuant to Section 5.14.2.2 (Requirements for Substantial Completion).

### **5.13.1.3 Notice of Substantial Completion**

If the Department finds the Work substantially complete or substantially complete with Substantial Completion Inspection Punch List items, it will notify the Contractor in writing (Notice of Substantial Completion) within 7 days of issuing the Substantial Completion Inspection report. The Contractor's maintenance responsibilities will end and warranty periods will begin, on the date identified by the Department in the Notice of Substantial Completion, except for any maintenance related to unfinished Substantial Completion Inspection Punch List items. This shall not relieve the Contractor of responsibility to correct Nonconforming Work or repair damage caused by the Contractor or waive any other remedy to which the Department is entitled at Law or in equity. If a Notice of Substantial Completion is issued after the contractual deadline for Substantial Completion, Liquidated Damages or additional disincentives will apply.

### **5.13.1.4 Substantial Completion Inspection Punch List**

If required, the Department will issue to the Contractor a written Substantial Completion Inspection Punch List as noted above as a condition of its acceptance of the Substantial Completion of the Work. The Department will receive and compile punch lists from all agencies that have authority to provide one prior to issuing the Substantial Completion Inspection Punch List. The Substantial Completion Inspection Punch List will stipulate a reasonable time to complete the required Work as determined by the Department. Failure of the Contractor to complete the Substantial Completion Inspection Punch List items by the stipulated time will result in the assessment of fifty percent of the Liquidated Damages according to Section 13.7 (Failure to Complete on Time) for each Day beyond the stipulated time the Substantial Completion Inspection Punch List work remains incomplete and beyond the Substantial Completion Deadline. If the performance of the Substantial Completion Inspection Punchlist requires impacts to traffic and those impacts occur beyond the Substantial Completion Deadline, Liquidated Damages according to Section 13.7 (Failure to Complete on Time) will be assessed for each traffic impacted Day at the full rate.

## **5.13.2 Final Completion of the Work**

### **5.13.2.1 Requirements for Final Completion**

The following requirements must be satisfied for the Contractor to achieve Final Completion of the Work, notice of which shall be provided by written notice from the Contractor to the Department:

- A. The Contractor has completed all Work, including all Substantial Completion Punch List items and other items specifically identified for Final Completion.
- B. The Contractor has ensured the Work in connection with Final Completion has been performed in accordance with the requirements of the Contract Documents.
- C. 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.
- D. The Contractor has ensured that the Project is open for traffic and that no further Work is required.



- E. The Contractor has received all applicable Governmental Approvals required for the Project.
- F. The Contractor has furnished to the Department certifications, in form and substance satisfactory to the Department, certifying that the Design Documents meet all requirements of the Contract Documents.
- G. The Contractor has furnished to the Department certifications, in form and substance satisfactory to the Department, certifying that the Construction Work meets all requirement of the Contract Documents.
- H. There is no outstanding Nonconforming Work, or incomplete Work identified by the Contractor or the Department.
- I. All documentation, certification and submittals required by the Contract Documents have been received by the Department and all Federal Requirements have been satisfied.
- J. Final clean up including all of the Contractor's and each Subcontractor's and Subconsultant's personnel, supplies, Equipment, waste materials, rubbish, and temporary facilities have been removed from the applicable portion of the Site, the Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of the Department and the applicable portion of the Site and adjacent affected areas for which the Contractor is responsible are in good working order and condition.
- K. There are no overdue amounts owing to any Subcontractor or Supplier that remain unpaid, and the Contractor has resolved all, and there are no outstanding claims; actual, pending, or threatened claims against the Bonds; Liens on any materials, supplies, or equipment; or stop notices relating to the Project, including claims by Utility Owners.
- L. The Contractor has no reason to believe that any other Person has a valid claim against the Contractor, the Department, or the Project, which has not been communicated in writing by the Contractor to the Department as of the date of the written notice required by this Section 5.14.3.1.
- M. There is no existing default by the Contractor under any Utility Agreement, and no event has occurred which, with the passage 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.
- N. There exists no uncured breaches that with the giving of notice or passage or time, or both, could become Contractor Defaults.
- O. All guarantees, warranties and Bonds, as required by the Contract Documents, are in full force and effect.

### **5.13.2.2 Notice of Final Completion**

In the event the Department finds that the conditions of Section 5.14.3.1 (Requirements for Final Completion) have not been met, the Department will advise the Contractor, in writing, of any deficient requirements. Upon correction, the Contractor shall provide an updated written notification under Section 5.14.3.1 (Requirements for Final Completion) to the Department. This process will continue until there are no identified items that are requirements for Final Completion, at which time the Department will issue a Notice of Final Completion.

Final Completion is reached upon the date identified by the Department in the Notice of Final Completion. The Contractor hereby acknowledges and agrees that the Department's verification of Notice of Final Completion may require substantial time and will be dependent upon the number and severity of outstanding items requiring verification, as identified in Section 5.14.2.7 (Requirements for Final Completion). The Department agrees that it shall make reasonable efforts and act diligently in such verification and, if appropriate, issuance of the Notice of Final Completion.

#### **5.13.2.2.1 Final Completion Documentation Deficiencies**

If during the Department's evaluation of the initial notification submitted by the Contractor under Section 5.14.3.1 (Requirements for Final Completion), the Department finds deficiencies with respect to project documentation, as required in Section 5.14.3.1, the Contractor shall have 45 Days from the date of the Department's initial notice to rectify these deficiencies.

#### **5.13.3 Final Payment**

No compensation for Unauthorized Work or Nonconforming Work shall be permitted. Final payment is based on the following:

- A. Receipt of Notice of Final Completion pursuant to Section 5.14.3.2 (Notice of Final Completion).
- B. Receipt of all original project files and notes utilized in the preparation of the survey, design and construction of the Project.
- C. Receipt of As-Built Construction Record-Drawing Model and Plans.

#### **5.13.4 Completion of the Contract and Continuation of Contractor's Responsibilities**

The PDBC is complete, except for items covered by the required bonds, when the Contractor receives final payment. The Department will issue a letter confirming Completion of the Contract, noting any exception as provided in ODOT C&MS Items 659 (Seeding and Mulching), and C&MS 661 (Planting Trees, Shrubs, Perennials and Vines), and any warranty. The date the final payment is approved by the Department constitutes acceptance for the purpose of ORC 5525.16. Neither Completion of the Contract nor Substantial Completion relieves the Contractor of any responsibilities to properly perform or correct the Work or to repair damage or waives any remedies to which the Department is entitled at law or in equity.

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

The Department may order the Contractor to open a section of the Project to the safe use of traffic at any time. Unless such early opening is anticipated in the accepted MOT Plan included in the Phase 2 Change Order, the Department will make an adjustment according to Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) for Critical Path delay impacts and Section 12.8 (Changes and Extra Work Price Determination) to compensate the Contractor for the added costs and delay, if any, resulting from such an opening.

## 6 CONTROL OF MATERIALS

### 6.1 Source of Supply and Quality Requirements

The Contractor shall notify the Department of the proposed sources of supply before the delivery of Materials. The Department is entitled to approve Materials at the source of supply before such Materials are delivered to the Project Site. If the proposed sources of supply cannot produce the specified Material, then the Contractor shall furnish Materials from alternate sources without adjustment to the Contract Price or Substantial Completion Deadline.

The Contractor shall comply with the requirements of Exhibit X (Digital Data for Material Ticketing).

If the Department determines that previously approved materials from any source are not uniform and satisfactory or that the product from any source proves unacceptable, the Contractor shall cease operations until the Contractor demonstrates to the Department's satisfaction that the material is acceptable. The Contractor shall not use material which, after approval, has in any way become unfit for use. The Contractor shall use only new materials unless approved by the Department.

### 6.2 Samples, Tests, and Cited Specifications

The Department will inspect and determine whether the Materials comply with the specified requirements before they are incorporated into the Work. The Department may sample and test Materials or require certifications. Unless specified, the Department will pay for the tests and test Materials according to AASHTO, ASTM, or other methods complying with the Standard of Care. A qualified representative of the Department will take test samples according to Departmental procedures. Any reference to other specifications or testing methods shall mean the version in effect at the date of the applicable Work Package Proposal. All Materials being used are subject to inspection, test, or rejection at any time before their incorporation into the Work. The Department will furnish copies of the tests to the Contractor's Representative upon request. Furnish the required samples and specified Material Certifications.

The Contractor shall equip all transports and distributors hauling asphalt material with an approved submerged asphalt material sampling device.

### 6.3 Small Quantities and Materials for Temporary Application

The Department may accept small quantities and Materials for temporary application that are not intended for permanent incorporation in the Work. The Department may accept these small quantities and Materials for temporary application in either of the following cases:

- A. Where similar Materials from the same source have recently been approved.
- B. Where the Materials, in the judgment of the Department, will serve the intended purpose.

### 6.4 Plant Sampling and Testing Plan

The Department is entitled to undertake the inspection of Materials at the source.

In the event plant sampling and testing is undertaken, the Contractor and its Material provider shall:

- A. Cooperate and assist the Department with the inspection of Materials. Provide full entry to the Department at all times to such parts of the plant as may concern the manufacture or production of the Materials being furnished. Agree to all documentation and inspection requirements of ODOT C&MS Section 106.04 (Plant sampling and testing plan).
- B. If required by the Department, arrange for the Department's Inspector to use an approved building on the site of the plant. The building should be located near the plant and independent of any building used by the Material producer.
- C. Maintain and provide adequate safety measures at the plant at all times.

The Department reserves the right to retest all Materials that have been tested and accepted at the source of supply before their incorporation into the Work. After Materials that have been tested by the Department at the plant have been delivered to the Site, the Department may reject any such Materials that when retested do not meet the requirements of the Contract Documents.

## 6.5 Storage of Materials

The Contractor shall properly store all Materials to ensure the preservation of their quality and fitness for the Work. The Department may re-inspect stored Materials before their incorporation into the Work, notwithstanding any testing and inspection the Department may have undertaken before storage. The Contractor shall locate stored Materials to facilitate the Department's prompt inspection. The Contractor may use portions of the Project ROW for storage with the Department's approval. Any Materials storage space outside the Project ROW shall be provided at the Contractor's expense. The Contractor shall not use private property for storage purposes without written permission from the owner or lessee. If requested by the Department, the Contractor shall furnish copies of the written permission. The Contractor shall restore all storage sites to their original condition at no expense to the Department. The Contractor and property owner shall hold the Department harmless from claims that may arise as a result of the contract or permission statement between the property owner / lessee and the Contractor. This Section 6.5 does not apply to the stripping and storing of topsoil, or to other Materials salvaged from the Work.

Areas used to store Materials shall conform to Section 5.11.6 (Protection and Restoration of Property).

Payment for materials and equipment manufactured for the Project and stored on or off the Project Site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Department to establish the Department's title to such materials and equipment or otherwise protect the Department's interest, and shall include applicable insurance, storage and transportation to the Project Site, for such materials and equipment stored off the Project Site. The Contractor shall also comply with the following specific requirements:

- A. Title to such materials shall be vested in the Department, as evidenced by documentation satisfactory in form and substance to the Department, including, without limitation, recorded financing statements, UCC filings and UCC searches.

- B. The Contractor shall submit to the Department a written list identifying each location where materials are stored off the Project Site and the value of materials at each location.
- C. The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project Site.
- D. Representatives of the Department shall have the right to make inspections of the storage areas at any time.
- E. Such materials shall be (1) protected from diversion, destruction, theft and damage to the satisfaction of the Department, (2) specifically marked for use on the Project, and (3) segregated from other materials at the storage facility.

The Contractor shall reimburse the Department for any loss or damage to such unincorporated materials or equipment not covered by insurance.

Areas used to store Materials shall conform to Section 5.11.6 (Protection and Restoration of Property).

## 6.6 Handling Materials

The Contractor shall:

- a. Handle all Materials in such manner as to preserve their quality and fitness for the Work;
- b. Transport aggregates from the storage site to the Project Site in vehicles constructed to prevent loss or segregation of Materials after loading and measuring; and
- c. Ensure that there are no inconsistencies in the quantities of Materials loaded for delivery and the quantities actually received at the place of operations.

## 6.7 Unacceptable Materials

Unacceptable Materials are all Materials not conforming to the requirements of the Contract Documents at the time they are used and shall be considered Nonconforming Work. The Contractor shall immediately remove all unacceptable Materials from the Project Site unless otherwise instructed by the Department. The Department will determine if unacceptable Materials may remain according to the process set forth in ODOT Supplement 1102 (Acceptance of Non-Specification Material on Construction Projects). The Department must approve the use of previously identified unacceptable Materials that have been corrected or repaired before such Materials are incorporated into the Work. If the Contractor fails to comply immediately with any order of the Department made under the provisions of this Section 6.7, the Department will have authority to remove and replace unacceptable Materials and to deduct the cost of removal and replacement from any monies due or to become due to the Contractor.

## 6.8 Department-Furnished Material

The Contractor shall furnish all Materials required to complete the Work, except as otherwise agreed to in writing and documented in a Work Package Proposal.

The Department will deliver any Department-furnished Materials to the Contractor at the points specified in the Contract Documents.

The Contractor shall include the cost of handling and placing of all Department-furnished Materials in the Contract Price for the Contract Item for which they are used.

The Department will hold the Contractor responsible for all Department-furnished Materials upon their delivery to the Project Site. The Department will make deductions from any monies due the Contractor to make good any shortages and deficiencies, for any cause whatsoever, and for any damage that may occur to such Materials after such delivery, and for any demurrage charges.

## **6.9 Products Made in the United States**

The Contractor shall comply with the requirements set forth in Exhibit N (Contract Provisions for Federal Aid Contracts) Attachment 5.

## **6.10 Qualified Products List**

The Department may use Qualified Product Lists (QPL) for approval of manufactured Materials. The Contractor shall provide the Department documentation according to the Department's standard procedure that, at the time of delivery, the Material provided is on ODOT's QPL.

## **6.11 Maritime Transportation**

The Contractor shall ensure that Project-specific Materials or Equipment transported by ocean vessel are in compliance with 46 CFR 381 and the Cargo Preference Act. The Contractor shall transport at least 50% of any Equipment or Materials on privately owned United States-flag commercial vessels, if available.

## **6.12 Field Welder Certification Requirements**

All field welding must be performed by a certified welder unless otherwise noted. Welder's or welding operator's qualifications to perform field welding shall remain effective for 2 years from the date of test unless:

- (a) The welder or welding operator is not engaged in the welding process for which the welder or welding operator is qualified for a period exceeding 6 months; or
- (b) In the judgment of the Department, there is reason to question the welder's or welding operator's ability.

The Contractor shall keep records of the types of welds and dates engaged in welding within the two-year period to maintain the welder's or welding operator's qualification. If the Contractor fails to maintain such records for review and use in each project's records, the Department will require the welder or welding operator to be retested at any time.

## 7 UTILITIES

### 7.1 Utilities

The Contractor shall design the Project to keep the scope and extent of utility conflicts and relocations to a reasonable minimum consistent with the Project Goals.

Unless otherwise provided for by the Contract Documents, the Department will direct Utility Owners to relocate or adjust water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the Project Limits, such work by the Utility Owner being compensable to the Contractor except as otherwise provide in this Section 7.1.

The Contractor shall cooperate fully with each Utility Owner and make every effort to avoid delays and conflicts. The Project Schedule shall contain and include all reasonable effort required to resolve utility conflicts. When Utility Relocations are necessary, coordination and scheduling of these relocations with the involved Utility Owners shall be the responsibility of the Contractor.

If required under any Work Package Proposal, the design for all Utility Relocations within the Project Limits shall be coordinated by the Contractor. The Contractor shall determine and show on the Plans the names of all existing Utilities within Project Limits. The contractor shall reference Section 10 (Utilities) of Exhibit E (Technical Requirements) for design and coordination requirements.

If the Contractor is directed by a Utility Owner to perform any work not specifically identified as Utility Relocation Work within the Contract Documents, the Department will not compensate the Contractor for this work unless the Department approves the request in writing before the work begins. If the work is not preapproved by the Department, the Contractor will be responsible for obtaining reimbursement for its work from the Utility Owner which directed the Contractor to perform the work.

In the event that the Contractor requests that additional work not specifically contained in Contract Documents be performed by a Utility Owner, the Contractor will be responsible for reimbursing the Utility Owner for the additional work unless the Department has agreed in writing to pay for the additional work before the work begins.

The Contract Documents (including the Utility Agreements) will describe the Utility Relocation Work and indicate a time frame or date when the Department expects the Utility Owners to complete Utility Relocation Work. The Contractor shall provide adequate notification to Utility Owners performing Utility Relocation Work to prevent conflict with the Contractor's schedule of operations. The Contractor shall also indicate the various utility items, impacted utilities and indicate the time frame or date when the Utility Owners are expected to complete Utility Relocation Work in the Design Documents.

If a Utility Owner fails to perform Utility Relocation Work as provided for in the Contract Documents or Utility Agreements and the Contractor sustains losses or delays that could not have been avoided by the judicious design efforts, and reasonable accommodation or by judicious handling of forces, Equipment, and plant, or by reasonable revisions to the schedule of operations, then the Department will adjust the PDBC according to Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) for Critical Path delay impacts

and Section 12.8 (Changes and Extra Work Price Determination). The Contractor shall be eligible for additional compensation and extension of contract time only if:

- A. The Contractor has made every effort to prosecute the Work and mitigate impacts despite any delays encountered or revisions in the Contractor's scheduling of Work.
- B. The Contractor has made a reasonable effort to design and construct the Work to reasonably avoid the Utilities.

In accordance with ORC 153.64 for Work performed in Ohio, the Contractor shall notify the Department, the registered utility protection service, and any Utility Owners that are not members of the registered utility protection service at least 2 Workdays prior to commencing construction operations in an area that may affect underground utilities shown on the Plans.

Utility Owners in Ohio are required under applicable codes and regulations, to start staking, marking, or otherwise designating the location, course,  $\pm 2$  feet ( $\pm 0.6$  m), together with the approximate depth of Utilities in the construction area within 48 hours after notice is received, excluding Saturdays, Sundays, and legal holidays.

## 7.2 Utility Betterments

If a Utility Owner has requested that the Contractor design or construct a Betterment, the Contractor shall be responsible for negotiating and agreeing to the terms of the Betterment directly with the Utility Owner. The Contractor shall not perform any Work associated with a Betterment unless such Work has been subject to the Department's concurrence.

If the Contractor and the Utility Owner agree that a Betterment will be performed as part of a Utility Relocation, then:

- A. The terms agreed between the Contractor and the Utility Owner for performance of such Betterment shall be addressed in an amendment to the applicable Utility Agreement;
- B. Such Betterment will be subject to the same standards and requirements as if it were a necessary Utility Relocation;
- C. The Contractor shall undertake such Betterment in accordance with the requirements for Utility Relocation Work; and
- D. If the Betterment is not completed in accordance with the initial Change Order, the Department shall be entitled to a subsequent Change Order to omit or adjust the scope of the work and the Contractor's compensation to suit the Work performed.

## 7.3 Reserved



## 8 SUBCONTRACTING REQUIREMENTS

### 8.1 Compliance with Subcontracting Requirements

The Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts and shall ensure that all Subcontractors and Subconsultants performing Work on the Project comply with all applicable requirements of the Contract Documents relating to Subcontracts and subcontracting generally.

### 8.2 Limitation on Subcontracted Work

The Contractor shall perform Phase 2 Work amounting to not less than 50 percent of the Contract Price with its own organization, unless otherwise approved by the Department. The phrase “its own organization” includes only workers employed and paid directly by the Contractor or the Principal Participants, inclusive of employees who are employed by a lease agreement acceptable to the Department, and Equipment owned or rented with or without operators by the Contractor. The phrase does not include employees or equipment of a Designer, Subconsultant, Subcontractor, assignee, or agent of the Contractor.

The Subcontractor Bidding and Selection Plan shall identify self-performance and subcontracting percentages and shall separately identify the percentage of the Work that the Contractor intends to subcontract to Affiliates and the percentage of the Work that the Contractor intends to subcontract through an arm’s length transaction in which the Contractor and Affiliates may not bid. The Contractor’s percentage of the total Contract Price includes the cost of Materials and manufactured products purchased by the Contractor, but not the cost of Materials and manufactured products purchased by Subcontractors.

The Department will calculate the Contractor’s percentage based on the quantities shown in each Work Package\_Proposal and the unit prices of the Contract Items to be performed by the Contractor’s organization. If the Contractor performs only a portion of a Contract Item, then the Department will determine the proportional value administratively on the same basis. The Department will follow this procedure even when the part not subcontracted consists only of the procurement of Materials. However, if a firm both sells the Materials to the Contractor and performs the Work of incorporating the Materials into the Project, then the Department will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the Materials or performs the Work, the Department may refuse approval. An affiliate is one who has some common ownership or other close relation to said firm.

The Contractor shall use actual Subcontractor and Subconsultant prices for calculating compliance with any Disadvantaged Business Enterprise (DBE) percentage subcontracting and subconsulting obligations. If only a part of a Contract Item is sublet, then determine its proportional value administratively on the same basis. The Department will follow this procedure even when the part not sublet consists only of procuring Materials. However, if a firm both sells the Materials to the Contractor and performs the Work of incorporating the Materials into the Project, then the Department will consider these two phases in combination and as a single Subcontract. If an affiliate of the firm either sells the Materials or performs the Work, the Department may refuse approval.

### 8.3 Limitation on Organizational Changes

The Contractor shall not add, delete, or change the role of any Major Participant without the prior written approval of the Department.

### 8.4 Selection of Subcontractors

Prior to awarding any Subcontract for the Construction Work or the supply of Materials or Equipment, the Contractor shall be required, for each subcontract package, to solicit the minimum number of competitive bids set forth in the Subcontractor Bidding and Selection Plan. Following analysis of the bids in accordance with the Subcontractor Bidding and Selection Plan, the Contractor shall be entitled to award the subcontract package to the Subcontractor agreed by the Parties to offer the best value. In the event that the selected Subcontractor's bid exceeds a reasonable amount as determined by the Department, the Department shall be entitled to require the Contractor, at no additional cost to the Department, to re-package, re-bid or value engineer the subcontract package one time per subcontract package.

Subcontracted Work that is not competitively bid will be subject to the pricing process included in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). In the event that the selected Subcontractor's bid exceeds a reasonable amount as determined by the Department, the Department shall be entitled to require the Contractor, at no additional cost to the Department, to competitively procure the Work.

### 8.5 Substitution of Subcontractors

The Contractor shall not substitute any Subcontractor or Subconsultant with another Subcontractor or Subconsultant or cause any subcontracted Work to be performed by any Person other than the approved Subcontractor of Subconsultant, unless:

- A. The approved Subcontractor or Subconsultant, after having reasonable opportunity to do so, fails or refuses to execute a Subcontract that incorporates the requirements of the Contract Documents and/or, if applicable, the terms of such Subcontractor's written bid or proposal;
- B. The Subcontractor or Subconsultant fails or refuses to perform the Work under the Subcontract;
- C. The Subcontractor or Subconsultant is substantially delaying or disrupting the progress of the Work;
- D. The Subcontractor or Subconsultant fails or refuses to meet the insurance or bonding requirements set forth in this Contract;
- E. Work performed by the Subcontractor or Subconsultant is unsatisfactory and not in substantial accordance with the Contract Documents;
- F. The Subcontractor or Subconsultant is not licensed pursuant to Legal Requirements; and/or
- G. The Subcontractor or Subconsultant becomes bankrupt or insolvent.

The Contractor shall submit any request to substitute a Subcontractor or Subconsultant or any request for subcontracted Work to be performed by any Person other than the approved Subcontractor of Subconsultant to the Department by no later than 10 Days prior to the date of

the proposed substitution together with a written statement setting for the reasons for the proposed substitution. In the event the Subcontractor or Subconsultant that is proposed to be replaced constitutes a DBE, then the Department must also consent to such substitution of the DBE Subcontractor or DBE Subconsultant. The Contractor shall submit a termination or replacement form consistent with the requirements in Exhibit L (Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts) prior to the change occurring and obtain the Department's consent before taking any action.

## **8.6 Subcontracts for Professional Services and Pre-construction Work**

Engagement and selection of Subcontractors or Subconsultants performing Professional Services, Planning Work or Pre-construction Work, other than Subcontractors or Subconsultants that employ any of the Key Personnel, shall be coordinated with and approved by the Department. Prior to the award of any such Subcontract, the Department may require the Contractor to solicit qualifications and proposals from multiple firms for Professional Services, Planning Work, Pre-Construction Work or other work required.

Subject to the Department's approval and the requirements of Section 1.6 (Federal Requirements), the Contractor shall negotiate price and terms for each Professional Services, Planning and Pre-construction Work Subcontract that conform to standard industry practice for work of similar scope and complexity.

## **8.7 Affiliate Subcontracts**

The Contractor shall have the right to have Work performed by Affiliates only under the following terms and conditions:

1. The Contractor shall execute a written Subcontract with the Affiliate;
2. The Subcontract shall comply with all applicable provisions of Section 1.6 (Federal Requirements), be consistent with the Contract Documents and the Standard of Care, and be in form and substance similar to Subcontracts being used by the Contractor for similar Work with unaffiliated Subcontractors;
3. The Subcontract shall set forth the scope of Work and all pricing, terms, and conditions;
4. The pricing, scheduling, and other terms and conditions of the Subcontract shall be no less favorable to the Contractor (and in turn, the Department) than those that the Contractor could reasonably obtain in an arm's length, competitive transaction with an unaffiliated Subcontractor. The Contractor shall bear the burden of proving to the Department that the same are no less favorable to the Contractor;
5. No Affiliate shall be engaged to perform any Work that any Contract Document indicates shall be performed by an independent or unaffiliated party; and
6. No Affiliate shall be engaged to perform any Work that would be inconsistent with the requirements of the Contract Documents or the Standard of Care.

Before entering into a written Subcontract, supplement, or amendment with an Affiliate, the Contractor shall submit a true and complete copy of the proposed Subcontract to the

Department for Approval with a cover memorandum orienting the Department to all pricing terms. The Department will have 20 Business Days after receipt to deliver its comments to the Contractor.

The Contractor shall make no payments to Affiliates for Work in advance of performance thereof, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of termination compensation under Section 21 (Termination for Convenience).

## **8.8 Subcontractor Bidding and Selection Plan for Construction Work**

The Contractor shall prepare the Subcontractor Bidding and Selection Plan for Construction Work in a form reasonably acceptable to the Department.

## **8.9 Required Subcontract Terms**

Each Subcontract, excluding material purchase orders and any other contracts for materials entered into with Subcontractors that will not be performing any Work on the Site, shall include terms and conditions sufficient to ensure compliance by the Subcontractor or Subconsultant with all applicable requirements of the Contract Documents, and shall include provisions addressing the following requirements as well as any other terms that are specifically required by the Contract Documents to be included therein:

1. Each Subcontract of any tier shall include terms substantially similar to the terms in this PDBC to the extent that such terms are relevant to such Subcontract. "Terms substantially similar" in all instances shall include:
  - a. Grants of Intellectual Property Rights;
  - b. Access constraints and requirements pertaining to the Project Site;
  - c. Maintenance of books and records;
  - d. Joinder to, obligation to offer evidence in, Dispute Resolution Procedures, if necessary, in the Department's sole judgment, to resolve a Dispute;
  - e. Compliance with all Federal Requirements, including the attachment of FHWA Form 1273 in the exact form as provided in Exhibit N (Contract Provisions for Federal Aid Construction Contracts); and
  - f. Non-discrimination provisions as required by Section 9.3.8 (Incorporation of Provisions).
2. Each Subcontract of any tier shall include a provision that states that the Subcontractor is not a third-party beneficiary to the PDBC.
3. Each Construction Phase Subcontract of any tier shall:
  - a. Prohibit retainage in excess of 10% of the amount of payment under the Subcontract, if no separate performance and/or payment security is provided by the lower-tier Subcontractor;

- b. Prohibit retainage entirely under the Subcontract, if separate performance and/or payment security is provided by the lower-tier Subcontractor;
  - c. Provide that amounts withheld as retainage, if allowed, from Subcontractors shall be returned within 30 Days after the Work required under the Subcontract is satisfactorily completed; and
  - d. Provide that delay or postponement of payment under the Subcontract may only be effected after the Contractor or higher-tier Subcontractor, as applicable, has established good cause and that the delay or postponement is in accordance with the Contractor's or higher-tier Subcontractor's, as applicable, rights under the Subcontract.
4. Each Subcontract of any tier shall include payment (including "prompt payment") and other terms in compliance with this PDBC and applicable Laws.
  5. Each Subcontract of any tier shall include language acknowledging the timing of payments from the Department to the Contractor hereunder and the process set forth herein for the submission and review of invoices or requests for payment, as applicable.
  6. Each Subcontract of any tier shall expressly include a covenant to require the Subcontractor to participate, at the Contractor's request, in meetings between the Contractor and the Department concerning matters pertaining to such Subcontractor, its work, or the coordination of its work with other Subcontractors and contractors to the Department.
  7. Each Subcontract of any tier shall expressly require the Subcontractor to stop Work on the date and to the extent specified in a Notice of Termination in accordance with Section 21 (Termination for Convenience).
  8. Each Subcontract of any tier shall expressly permit assignment to the Department of all Contractor rights under the Subcontract in the event of termination pursuant to Section 21.
  9. Each Subcontract shall provide that the Department is a third-party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit.
  10. Each Subcontract shall provide that all guarantees, indemnities, professional responsibility, and warranties, express and implied, shall inure to the benefit of the Department as well as the Contractor.
  11. Each Subcontract shall provide for the use of appropriate alternative Dispute Resolution mechanisms to resolve payment disputes.
  12. Each Subcontract of any tier shall expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of the Department will be null and void.

## **8.10 Prompt Payment**

In accordance with ORC 4113.61, the Contractor covenants and agrees to make payment to each Subcontractor, Subconsultant and Supplier within 10 Days after Contractor's receipt of payment from the Department for Work performed or Materials delivered or incorporated into

the Project, provided that the Estimate prepared by the Contractor and approved by the Department includes Work performed or Materials delivered or incorporated into the Project by the Subcontractor, Subconsultant or Supplier.

Further, each Subcontractor, Subconsultant and Supplier shall covenant and agree in their corresponding Subcontract or supplier agreement to make payment to each lower tier subcontracting or subconsultant entity or lower tier supplying entity within 10 Days after Subcontractor's, Subconsultant's or Supplier's receipt of payment from the Contractor for Work performed or Materials delivered or incorporated into the Project, provided that the Estimate prepared by the lower tier subcontracting or subconsulting entity or lower tier supplier entity was incorporated and relied upon by the Subcontractor, Subconsultant or Supplier in its Estimate to the Contractor for Work performed or Materials delivered or incorporated into the Project. The Contractor hereby acknowledges and agrees that it shall be prohibited from holding retainage from Subcontractors, Subconsultants or Suppliers that can provide a Surety Bond. For unbonded Subcontractors, Subconsultants and Suppliers, the Contractor shall promptly release any retainage held, as set forth in any Subcontract or supplier agreement, 30 Days after the Work has met satisfactory completion.

For the purposes of this section, "satisfactory completion" of the Construction Work will be interpreted as occurring when the applicable Subcontractor has completed all physical work and submitted any necessary documentation required by the Contract Documents and the Department and "satisfactory completion" of all other Work will be interpreted as occurring when the applicable Subcontractor or Subconsultant has completed all Work or the applicable Supplier has delivered all Materials and, in each case, submitted all necessary documentation required by the Contract Documents and the Department. No Subcontract provision shall permit the Contractor to delay any Subcontractor's Subconsultant's or Consultant retainage payments until the Project's final payment.

The Contractor further covenants and agrees to require all Subcontractors, Subconsultants and Suppliers to incorporate the foregoing contractual obligations in each of their respective lower tier contracts.

If the Department determines that any Contractor, Subcontractor, Subconsultant or Supplier subject to this provision fails to comply with the foregoing 10-Day payment requirement, then the offending party shall pay, in addition to the payment due, interest in the amount of 18 percent per annum of the payment due, beginning on the eleventh Day following the receipt of payment from the Department and ending on the date of full payment of the payment due plus interest.

Repeated failures to pay Subcontractors, Subconsultants or Suppliers timely pursuant to this subsection will result in a finding by the Department that the Contractor is in breach of PDBC and subject to all legal consequences that such a finding entails. Further, repeated failures to pay timely pursuant to this subsection will result in a lower evaluation score for the Contractor and those Subcontractors, Subconsultants and Suppliers who are subject to evaluation by the Department.

To demonstrate its compliance with Ohio's prompt payment statute and related provisions, Contractor hereby covenants and agrees to comply with the reporting requirements set forth in Exhibit Q (Prompt Payment - ODOT Let Construction Projects).

### **8.11 General Responsibility for Work by Others**

1. The retention of Subcontractors by the Contractor will not relieve the Contractor of its responsibilities under the Contract Documents or for the quality of the Work, materials, or services provided by Subcontractors.
2. The Contractor shall supervise and be fully responsible for the acts and omissions of any Contractor-Related Entity in connection with the Work, the Site, or the Project, as though the Contractor directly employed all such individuals.

## 9 LABOR REQUIREMENTS

### 9.1 Introduction

The Contractor shall comply with the following Exhibits:

- Exhibit L (Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts).
- Exhibit M (Disadvantaged Business Enterprise (DBE) Trucking; DBE Materials and Supplies Vendors (MSVs)).
- Exhibit O (Notice of Requirement of Affirmative Action to Ensure Equal Employment Opportunity and Workforce Diversity Requirements on all ODOT Administered Federally Funded Projects).
- Exhibit P (On-The-Job Training Program).

### 9.2 Labor Laws to be Observed

The Contractor, under Title VI of the Civil Rights Act and related statutes, agrees that in the hiring of employees for the performance of Work under this PDBC or any Subcontract hereunder, the Contractor, consultant, Subconsultant, Subcontractor, nor any person acting on behalf of the Contractor shall, by reasons of race, religion, color, sex, national origin, disability or age, discriminate against any citizen of the United States in the employment of labor or workers, who are qualified and available to perform the Work to which the employment relates.

The Contractor, Subcontractor, consultant, Subconsultant, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this PDBC on account of race, religion, color, sex, national origin, disability or age.

The Contractor shall comply with OAC-4123:1-3, entitled "Specific Safety Requirements of the Industrial Commission of Ohio Relating to Construction," as amended, and with the Federal Occupational Safety and Health Act of 1970 and Code of Federal Regulations, Title 29, Chapter XVII, Part 1926 and as amended for work in Ohio.

The Contractor shall comply with Federal, State, and local laws, rules, and regulations that prohibit unlawful employment practices including that of discrimination because of race, religion, color, sex, national origin, disability or age and that define actions required for Affirmative Action and Disadvantaged Business Enterprise (DBE) programs.

### 9.3 Non-Discrimination Regulations

During the performance of the Work, the Contractor, its assignees and successors in interest, agrees as follows:

#### 9.3.1 Compliance with Regulations

The Contractor shall comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this PDBC.



### 9.3.2 Non-discrimination

The Contractor, with regard to the Work, will not discriminate on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency in the selection and retention of Subcontractors / Subconsultants, including procurements of Materials and leases of Equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Section 9.3.6 (Pertinent Non-discrimination Authorities), including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

### 9.3.3 Solicitations of Subconsultants, including procurement of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the Contractor for Work to be performed under a Subcontract, including procurements of Materials, or leases of Equipment, each potential Subcontractor / Subconsultant or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency.

### 9.3.4 Information and Reports

The Contractor shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor will so certify to the Department or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

### 9.3.5 Sanctions for Noncompliance

In the event of a Contractor's noncompliance with the Nondiscrimination provisions of this contract, the Department will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- A. Withholding payments to the Contractor under the PDBC until the Contractor complies; and/or
- B. Cancelling, terminating, or suspending the PDBC, in whole or in part.

### 9.3.6 Pertinent Non-Discrimination Authorities

During the performance of the Work, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor," which includes consultants) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-Aid programs and projects).
- C. Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of Federal-Aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12189), as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities).
- I. The Federal Aviation Administration’s Non-Discrimination Statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations).
- K. Executive Order 13166, Improving Access to Services for People with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).
- L. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (prohibits discrimination in the sale, rental, and financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status (presence of child under the age of 18 and pregnant women)).
- M. Title IX of the Education Amendments Act of 1972, as amended (20 U.S.C. 1681 et seq.) (prohibits discrimination on the basis of sex in education programs or activities).
- N. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) (prohibits discrimination on the basis of present, past or future military service).

- O. Genetic Information Nondiscrimination Act (GINA) (29 CFR Part 1635, 42 U.S.C. 2000ff).

### **9.3.7 49 CFR Part 26.13(b)**

The Contractor agrees not to discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. The Contractor understands that failure to carry out these requirements is a material breach of this PDBC, which may result in the termination of this PDBC or such other remedy as the Department deems appropriate, which may include, but is not limited to: a) Withholding monthly progress payments; b) Assessing sanctions including any of the following:

- A. Liquidated damages; and/or
- B. Disqualifying the Contractor from future bidding as non-responsible; and/or
- C. Contract termination; and/or
- D. Other remedies available by law including administrative suspension (debarred from pursuing additional contracts).

### **9.3.8 Incorporation of Provisions**

The Contractor shall include the provisions of Section 9.3.1 (Compliance with Regulations) through Section 9.3.7 (49 CFR Part 26.13(b)) above in every Subcontract, including procurements of Materials and leases of Equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor shall take action with respect to any subcontract or procurement as the Department or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a Subconsultant, or supplier because of such direction, the Contractor may request the Department to enter into any litigation to protect the interests of the Department. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **10 AUTHORIZED REPRESENTATIVES AND KEY PERSONNEL**

### **10.1 Authorized Representatives**

#### **10.1.1 Department Authorized Representatives**

The authority and responsibility of each Department Authorized Representative will be provided by the Department to the Contractor in a Notice delivered to the Contractor or in any Notice to Proceed.

The Department Authorized Representatives, and the authority and responsibilities of the Department Authorized Representatives, may from time to time be changed by Notice to the Contractor from the Department.

Nothing in this PDBC shall be construed to bind the Department for acts of any Department employee or any other Person that exceed the authority delegated to them under this PDBC or in any other written delegation.

#### **10.1.2 Contractor's Representative**

At all times during the Term, the Contractor shall designate a Contractor's Representative with full authority to represent and act for the Contractor. The Contractor shall designate its initial Contractor's Representative prior to issuance of the Sub-Phase 1A NTP.

The Contractor's Representative shall act for the Contractor in all matters concerning the Work and, subject to all requirements of this Contract, shall have the following authority and obligations:

- A. Ability to organize the Work and the Work of the Subcontractors/Subconsultants, to complete the Work in accordance with this PDBC; and
- B. Ability to delegate defined authority to other Contractor personnel (who upon such delegation also become Contractor's Representatives, as provided in this Contract, to the extent specified), subject to Notice to, and acceptance by the Department, which acceptance can be withheld for any reason or no reason at all.

### **10.2 Character of Workers, Methods and Equipment**

The Contractor shall be required to provide personnel with sufficient skills and experience to perform all assigned tasks. In ensuring that all personnel have sufficient skills and experience, the PDBC shall ensure and at no time allow any Prohibited Person to act or perform in any ownership, leadership, managerial, or other similar position that could influence the operations of an entity doing business with the Department.

If the Department gives written notification that specific Contractor's, Consultant's, Subconsultants', or Subcontractors' personnel are improperly performing the Work, intemperate, disorderly, or creating a hostile work environment, the Contractor shall be required to remove the identified personnel from the Project, and the Contractor shall be obligated to not allow removed personnel to return to the Project without the Department's approval. If the Contractor fails to remove the identified personnel, then the Department shall have the right, in its sole discretion, to suspend the Work that is affected by the identified personnel by delivering Notice

in accordance with Section 20 (Suspension of Work). If the Department suspends the Work under the previous clause, the suspension shall in no way, relieve the Contractor of its obligations contained in the Contract Documents or entitle the Contractor to a Change Order in accordance with Section 12 (Contract Changes). In the event that the Contractor disagrees with the Department's decision that a Contractor's, Consultant's, Subconsultants', or Subcontractors' personnel should be removed, the Contractor shall follow the dispute resolution provisions in Section 18 (Partnering and Dispute Resolution).

The contractor shall be required to use Equipment of sufficient size and mechanical condition to complete the Project by the Substantial Completion Deadline. In addition, the Contractor shall ensure that the Equipment does not harm the Roadway, adjacent property, other highways, workers, or the public.

The Contractor shall determine the design methodologies, construction methods or Equipment necessary to complete the Work according to the Contract Documents.

### **10.2.1 Suspension of Work Due to Character of Workers**

Subject to Section 20 (Suspension of Work), the Department may suspend the Work by Notice under this subsection for the following reasons:

- A. The Contractor does not furnish sufficient skilled and experienced personnel to complete the Project by the Substantial Completion Deadline.
- B. The Contractor does not remove personnel from the Project as directed in writing by the Department.

In the event that the Department suspends work under this Section 10.2.1 (Suspension of Work Due to Character of Workers), the Contractor shall comply with Section 20.3 (Contractor Responsibilities during Suspension).

## **10.3 Design and Engineering Personnel**

For licensing, certifications and accreditations required for Key Personnel, refer to Section 24.1 (Maintenance of Professional Qualifications; Performance by Qualified Personnel).

## **10.4 Key Personnel**

The Contractor shall retain, employ and use the Key Personnel along with other individuals specifically named/identified in Exhibit D (Key Personnel and Principal Participants) to fill the Key Personnel positions. The Contractor shall not change or substitute any such individuals except due to retirement, death, disability incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by the Department as described below. Department approval shall not be unreasonably withheld, delayed or conditioned if the proposed substitute individual possesses skill, knowledge and professional experience in the relevant fields that is equal to or greater than the skill, knowledge and professional experience of the person being replaced.

The Key Personnel shall receive instructions from the Department and Department Authorized Representatives. The Key Personnel shall promptly execute the Department's orders or directions, promptly perform Work as required, and promptly supply the required Materials, Equipment, tools, labor, and incidentals.

The Contractor shall notify the Department of any proposed replacement for any Key Personnel position. The Department shall have the right to review the qualifications and character of each individual to be appointed to each position and to approve or disapprove use of such individual in such position before the proposed replacement begins work on the Project. The Department shall have the right to contact owners and/or sponsors of projects on which the proposed individual has previously worked to verify work experience and positions held. The Contractor shall, upon the Department's request, provide contact information to facilitate this verification.

The Contractor shall ensure and maintain the availability of the proposed replacement.

## **10.5 Representations Regarding Key Personnel**

The Contractor acknowledges and agrees that the award of this PDBC by the Department to the Contractor was based, in large part, on the qualifications and experience of the personnel listed in Exhibit D (Key Personnel and Principal Participants), 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 connection with the Project. Key Personnel shall commit the amount of time to their applicable roles as agreed to in the Contract Documents. The Contractor shall document such commitment to the Department's satisfaction upon the Department's request.

## 11 CONTRACTOR'S COMPENSATION

### 11.1 Cost Principles and Limitations For Phase 1

#### 11.1.1 Cost Principles and Limitations

This shall define the process for the compensation of Phase 1.

Other actual and documented costs for the Phase 1 Work will be compensated at actual cost.

##### 11.1.1.1 Non-FAR (Contractor) Phase 1 compensation

The Contractor's compensation for Professional Services undertaken in the performance of the Phase 1 Work shall be computed by the wages and fringe benefits currently in effect for each hour the Work is performed by all labor employed in the Phase 1 Work. The Department will pay an additional 38 percent markup on these wages and Fringe benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by prevailing wage laws or by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

The Department will pay the actual itemized cost, without markup, of the following payroll taxes and legally required insurances:

- a. Social Security Tax.
- b. Medicare Tax.
- c. Ohio Workers' Compensation Premiums.
- d. State and Federal Unemployment Insurance.

Provide itemized statements in addition to the documentation requirements for all labor including the name, classification, date, daily hours, total hours, rate, and amount. If any person is paid more than the one rate, a separate listing shall be made for that person for each rate paid. Provide itemized statements for Ohio Workers' Compensation insurance premiums, all applicable insurance premiums, State and Federal Unemployment Insurance contributions, and Social Security Tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which shall be expressed as a cost per hour.

Instead of itemizing the cost of Social Security Tax, Ohio Workers' Compensation, and State and Federal Unemployment Insurance, the Contractor may elect to receive as compensation for these payroll taxes and premiums, an amount equal to 22 percent of the paid wages. If the Contractor pays fringes directly to the worker in lieu of paying into a fringe benefit program, then the Department will treat these fringe payments as paid wages when calculating the allowed 22 percent compensation.

The Department will pay, without markup, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement.

The Department will pay the prevailing wage and fringe rates that apply to the Project for the classifications required for Extra Work. The Contractor must provide payroll records for pay

rates higher than the prevailing wages and establish that the higher than prevailing rates are paid for original Contract Work.

The Department will pay actual costs for subsistence and travel allowances when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the Project. The Department will not pay a percent markup on these costs.

#### **11.1.1.2 Professional Services for FAR Participants (Designers) Phase 1 Compensation**

Labor Costs will include costs for Professional Services undertaken in the performance of the Phase 2 Work by personnel and entities that meet the definition of FAR Participants shall be the actual direct labor rates on file with the Department multiplied by the number of hours actually worked (the "Direct Labor") plus the Direct Labor multiplied by the Multiplier Rate on file with the Department for FAR Participants plus an 11% fixed fee. The 11% fixed fee utilized a weighted average overhead rate is calculated as follows:

Fixed Fee Calculation = [Direct Labor + Direct Labor(Weighted Avg O/H Rate)] x (11%)

The weighted overhead rate for the fixed fee calculation shall be 157.79%

### **11.2 Compensation for the Sub-Phase 1A Work**

The Contractor shall complete the Sub-Phase 1A Work under the compensation arrangement described in Section 11.1 (Cost Principles and Limitations for Phase 1). Total compensation may not exceed the Maximum Sub-Phase 1A Prime Compensation set forth in Exhibit B (Contract Particulars), subject to any Change Order.

The Contractor shall monitor the Sub-Phase 1A expenditures with reference to the Maximum Sub-Phase 1A Prime Compensation and track progress of all Sub-Phase 1A Work. Any proposed changes to the Maximum Sub-Phase 1A Prime Compensation shall be reviewed by the Department, and if agreed to, processed in accordance with Section 12 (Contract Changes).

### **11.3 Compensation for the Sub-Phase 1B Work**

The Contractor shall complete the Sub-Phase 1B Work under the compensation arrangement described in Section 11.1 (Cost Principles and Limitations for Phase 1). Total compensation may not exceed the Maximum Sub-Phase 1B Prime Compensation set forth in Exhibit B (Contract Particulars), subject to any Change Order.

The Contractor shall monitor the Sub-Phase 1B expenditures with reference to the Maximum Sub-Phase 1B Prime Compensation and track progress of all Sub-Phase 1B Work. Any proposed changes to the Maximum Sub-Phase 1B Prime Compensation shall be reviewed by the Department, and if agreed to, processed in accordance with Section 12 (Contract Changes).

### **11.4 Phase 1 Invoices and Payments**

During the Contractor's performance of the Phase 1 Work, the Contractor shall submit bi-monthly invoices for payment on (approximately) the first (1st) Day and the fifteenth (15th) Day of each month (each a "Processing Date"), after which the Department will approve payments to the Contractor (the "Period Costs"). In the event the Period Costs are not approved on the



corresponding Processing Date, then the Period Costs shall be approved as soon as practicable after all discrepancies are resolved. All direct costs, as applicable to the form of compensation, shall be properly supported by time records and/or copies of receipts or other acceptable evidence of expenses. Actual costs shall be determined in conformance with this PDBC, applicable provisions of the Department's policies and directives, the FHWA's Federal-Aid Policy Guide, and the cost principles set forth in FAR Part 31, as further discussed and clarified in the AASHTO Uniform Audit & Accounting Guide, or other reasonably agreed to and approved procedures that comply with the Department's contracting obligations under state and federal law.

The Department may make DBE specific work item payments if, in the Department's judgement, DBEs performed Work within the invoiced period. DBE work item payments may be made by the Department regardless of DBE invoice payment requests made by the Contractor and the requirements of Section 8.10 (Prompt Payment) shall apply.

The Department will return to Contractor any invoices that are incomplete and/or incorrect in any material respect for correction and resubmittal.

## **11.5 Reserved**

## **11.6 Compensation for Phase 2 Work**

### **11.6.1 Unilateral Authority to Pay**

The Department has unilateral authority to pay the Contractor sums the Department determines to be due to the Contractor for Work performed on the Project. This includes the unilateral processing of Change Orders in accordance with Section 12 (Contract Changes), if necessary, to create line items, unit rates and/or quantities to make these payments. This unilateral authority to pay by the Department does not preclude or limit the rights of the Department and the Contractor to negotiate and agree to the amounts to be paid to the Contractor.

### **11.6.2 Scope of Payment**

Payment of the applicable portion of the Contract Price is full compensation for all resources necessary to complete the associated Work Package and maintain the Work. The Contractor shall assume liability for risk, loss, damage, or expense resulting from the Work. The Contract Price and Contract Time shall only be changed by written Change Order or as determined by the Department in writing in accordance with this PDBC and the other Contract Documents. The total amount payable to the Contractor by the Department for the performance of the Phase 2 Change Order shall not exceed the Contract Price, as adjusted for any approved Change Orders.

### **11.6.3 Payment for Materials**

The Department will pay, up to 75 percent of the applicable Contract Item, for the invoiced cost of the delivered and approved Materials before they are incorporated in the Work, if the approved Materials are delivered, accepted, and properly stored on the Project Site or stored in storage places in the vicinity of the Project that are acceptable to the Department. The Department shall have the sole, exclusive right to reasonably determine if Materials have been stored in storage places in the vicinity of the Project.

The Department will pay for the cost of approved Materials before they are incorporated in the Work when requested by the Contractor, if the Department determines that it is not practical to deliver the Material to the Project Site and determines that storage off the Project Site is appropriate. Any payment for Materials manufactured for the Project and stored off the Project Site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Department to establish the Department's title to such Materials or otherwise protect the Department's interest, and shall include applicable insurance, storage, and transportation to the Project Site. The Contractor shall also comply with the following specific requirements:

- i. Title to such Materials shall be vested in the Department, as evidenced by documentation satisfactory in form and substance to the Department, including, without limitation, recorded financing statements, UCC filings and UCC searches.
- ii. The Contractor shall submit to the Department a written list identifying each location where materials are stored off the Project Site and the value of Materials at each location.
- iii. The consent of any surety shall be obtained to the extent required prior to payment for any Materials stored off the Project Site.
- iv. Representatives of the Department shall have the right to make inspections of the storage areas at any time.
- v. Such Materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of the Department, (2) specifically marked for use on the Project, and (3) segregated from other Materials at the storage facility.

The Contractor shall reimburse the Department for any loss or damage to such unincorporated materials or equipment not covered by insurance.

The storage of Materials off-site of the Project Site applies primarily for bulky Materials that are durable in nature and represent a significant portion of the Project cost as determined by the Department, such as aggregates, steel, and precast concrete.

The Department will pay for un-fabricated structural steel if the following requirements are met, in addition to the specific requirements (i-v) above:

- A. The Contractor has provided the Department an itemized invoice from the steel mill for the steel for which reimbursement is requested. For Ohio steel also supply the ODOT Office of Materials Management a copy of the itemized invoice.
- B. Project structural steel design plans are complete with no forthcoming revisions. Provide Contractor accepted shop drawings per ODOT C&MS 501.04 (Shop Drawings). Special consideration will be given to critical path steel structures to allow for structural steel plates to be ordered from mill plate order submittals that will be prepared prior to fully approved shop drawings for the given steel structure. The Contractor will bare all material modification costs as a result of design modifications between ordering the material and final shop drawing approval.
- C. Contractor accepted certified test data for all steel in question along with mill shipping notices have been received by the Department. In Ohio the accepted certified test data per ODOT C&MS 501.06 (Test Reports) shall be received by Office of Materials Management.

- D. The steel is properly stored to allow inspection by the Department. It shall also be properly set apart from other Material and identified as belonging to the Department.
- E. The Contractor provides the Department a written statement that in accordance with the requirements of Section 6 (Control of Materials), the Contractor is responsible for the steel that has been paid for until the actual steel is erected and accepted in the field.

Payment shall only be authorized after all the documentation listed above has been received by the Department and the steel has been inspected by the Department and its Office of Materials Management or its authorized representative to verify that all steel listed in the itemized invoice has been received by the fabricator and properly stored. The amount to be paid shall be equivalent to the itemized invoice from the steel mill but shall not exceed 50% of the Contract Item price for the structural steel.

The Department will not pay delivered Materials on small warehouse items or for plant Materials.

## **11.7 Mobilization**

### **11.7.1 Description**

Mobilization consists of the preparatory Work and operations including, but not limited to, those necessary for the movement of personnel, Equipment, supplies, and incidentals to the Project Site; for the establishment of all field offices, buildings, and other facilities necessary for Work on the Project; for all other Work and operations that must be performed or costs incurred before beginning the Work on the other Contract Items; and for demobilization.

#### **11.7.1.1 Limitation**

The aggregate amount for mobilization shall not exceed the percentage of the applicable Contract Price as further described under Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process) Part B.

The Contractor shall bill for Equipment and tools included in Mobilization at the approved rates incorporated into the Price Proposal.

#### **11.7.1.2 Basis of Payment**

The Department will make partial payments according to Section 11.12 (Administration of Estimates and Payments) and as modified by the following schedule:

Cost for Mobilization will be established according to Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process) Part B including the actual estimated Mobilization costs attributed to the elements of Work. These costs will be included in the CPM Activities for which the Mobilization costs are required.

## **11.8 Additional Terms and Conditions to Payment**

The Department will return to Contractor any invoices that are incomplete and/or incorrect in any material respect for correction and resubmittal.

Payment for Work and Materials shall not, in any way, prevent later rejection if Nonconforming Work is discovered, nor shall payment constitute acceptance under Section 5.14 (Completion Deadlines and Acceptance).

The Department is entitled to withhold payment for any portion of an item in any invoice that is deficient in Material approval.

The Department will not pay the adjusted final invoice until the Contractor remedies all Nonconforming Work and accepted Work damaged by the Contractor's operations.

Interest will be paid in accordance with ORC 126.30 (Interest on Late Payments for Goods and Services) when warranted.

Pay adjustments shall be based on the required adjustment computation method or procedure as defined by the applicable specification or contract provision.

Pay adjustments associated with price fluctuation will be made according to the mechanism shown in Exhibit W (Price Fluctuation Clauses), or as addressed in the Risk Register.

## **11.9 Pay Adjustment for Unit Price Items**

For pay adjustments based on a unit price or unit/cost, the Contractor shall provide a unit price in the SOV developed in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). If unit prices are used as the basis for any portion of the Contract Price, those unit prices shall be used as the unit price/cost component when calculating the applicable pay adjustment. For each unit priced item, the pay adjustment shall be calculated as the difference between the unit price used as the basis for the Contract Price and the computed adjustment to that amount multiplied by the applicable number of units.

## **11.10 Phase 2 Payment Deductions**

### **11.10.1 Withholdings**

Progress payments of the Contract Price will be subject to certain withholding and set-off rights of the Department, including the right to deduct amounts due and owing from the Contractor to the Department under the PDBC.

### **11.10.2 Reserved**

### **11.10.3 Reserved**

### **11.10.4 Incentive and Disincentive Provisions**

With respect to any Price Proposal appropriate incentives and/or disincentives may be set by the Parties upon their mutual agreement dependent upon the achievement by the Contractor of the Milestone Deadlines.

Additionally, with respect to any Price Proposal that is maintained as a GMP Price Proposal, the above established incentives/disincentives will not be considered when calculating the sharing of the GMP Savings. The GMP Savings will be established in accordance with the terms and conditions of the Change Order pertaining to the approved GMP Price Proposal.

## 11.11 Compensation Structure

During the negotiation pertaining to the Phase 2 Work, the Contractor shall proceed with preparing an initial Price Proposal in accordance with Section 11.11.1 (Initial Price Proposals) below and Parts B and C of Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

### 11.11.1 Initial Price Proposals

The Contractor will initially establish a Guaranteed Maximum Price (GMP) for the Work comprising all of Phase 2. The amount of the GMP will be established in accordance with Parts B and C of Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process) and shall incorporate the terms and conditions outlined under Sections 11.11.2 (GMP Price Proposal—Contractor’s Risk Contingency Reduction and Department’s Risk Contingency) through 11.11.4 (GMP Price Proposal—Shared Savings). Payment procedures under any approved GMP Price Proposal shall be developed in accordance with Sections 11.12.1-11.12.3 below. As provided in Exhibit G, the Contractor shall be responsible for, and shall pay without reimbursement from the Department, all cost of Work in excess of the GMP, as may be adjusted in accordance with Section 12 (Contract Changes) and Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) of this PDBC.

### 11.11.2 GMP Price Proposal—Contractor’s Risk Contingency Reduction and Department’s Risk Contingency

The Contractor’s Risk Contingency will be established under each initial GMP Price Proposal based upon the allocation of values to those Risk Register Events for which the Contractor has assumed financial responsibility under the then-current Risk Register. Upon the occurrence of a Risk Register Event for which the Contractor has assumed financial responsibility, the Contractor shall give notice to the Department of the occurrence of such Risk Register Event and thereafter the amounts attributable to such Risk Register Event will be (i) allocated to the applicable costs of the Work, (ii) incorporated into an updated Schedule of Values and (iii) invoiced in payment applications for the duration of the Risk Register Event. Subject to the availability of funds held under Contractor’s Risk Contingency, the Contractor shall have exclusive use and control of the Contractor’s Risk Contingency such that Contractor’s use of the Contractor’s Risk Contingency shall not be limited by the value assigned to a particular Risk Register Event. It is understood that the costs attributed to any Contractor’s Risk Contingency will be accrued and spent as they occur and will be captured during the GMP cost actualization that will occur at least annually per Section 11.12.1 (GMP Price Proposal – Progress Payments).

The Contractor shall manage the Contractor’s Risk Contingency through Completion of the Contract upon which any remaining balance in the Contractor’s Risk Contingency will be allocated between the Contractor and the Department in accordance with the following paragraph.

Upon Completion of the Contract if there is a remaining balance in the Contractor’s Risk Contingency, then 50% of any remaining balance shall be disbursed to the Contractor (the “Contractor’s Risk Contingency Incentive”) and 50% of any remaining balance shall be retained by the Department; provided that in no event shall the sum of the Contractor’s Risk Contingency Incentive and the Contractor’s share of any GMP savings (together, “Contractor’s Incentive Threshold”) exceed \$50,000. For avoidance of doubt, all amounts in excess of the Contractor’s Incentive Threshold will be retained at a rate of 100% by the Department. Any disbursement of

the Contractor's Risk Contingency Incentive shall be calculated and paid as part of the Final Payment. The Contractor shall not be entitled to the Contractor's Risk Contingency Incentive if the Department terminates this PDBC.

In addition to the establishment of the Contractor's Risk Contingency, the Department may elect to establish a Department's Risk Contingency within the GMP Price Proposal. In the event the Department elects to establish a Department's Risk Contingency, and the Department determines that one or more Risk Register Events allocated to the Department will require the Contractor to assist the Department with the administration of the corresponding Risk Register Events, then the terms and conditions of Contractor's administration of the corresponding Risk Register Event(s), including the allocation of any Department's Risk Contingency savings, will be negotiated in conjunction with the Phase 2 Change Order (or the applicable Change Order issued subsequent to the Phase 2 Change Order).

As an alternative to establishing a Department's Risk Contingency within a GMP Price Proposal, the Department may elect to establish a separate Department's Risk Contingency which will not be incorporated within a GMP Price Proposal

### **11.11.3 GMP Price Proposal—Phase 2 Mark-up**

In accordance with any approved GMP Price Proposal, the Contractor shall be paid the Phase 2 Mark-Up set forth in Exhibit B (Contract Particulars) in conjunction with the corresponding Change Order as allowed by Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). In the event of a Change Order approving costs in excess of the GMP, the Contractor shall be entitled to incorporate the Phase 2 Mark-Up in an amount equal to the product of the Phase 2 Mark-Up percentage multiplied by the cost of the Work as allowed by Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process) under the corresponding Change Order.

### **11.11.4 GMP Price Proposal—Shared Savings**

If at Completion of the Contract there are GMP savings (exclusive of remaining Contractor's Risk Contingency and, if applicable, Department's Risk Contingency), then the GMP savings shall be allocated between the Contractor and the Department at a rate of 50% to the Contractor and 50% to the Department; provided however, the sum of Contractor's Risk Contingency Incentive and Contractor's portion of any GMP savings shall not exceed the Contractor's Incentive Threshold. Any GMP savings shall be calculated and paid as part of the Final Payment.

## **11.12 Administration of Phase 2 Invoices and Payments.**

### **11.12.1 GMP Price Proposal – Progress Payments**

With respect to any approved GMP Price Proposal, the Contractor shall submit bi-monthly applications for payment on the first Day and fifteenth Day of each month for payment of the applicable portion of the Contract Price.

In conjunction with the Department's approval of any GMP Price Proposal, the Department and the Contractor will develop an agreed upon methodology to determine estimated progress payments. Such methodology shall be based upon either a Schedule of Values or other such method as agreed upon by the Parties. The terms and conditions of any approved GMP Price Proposal shall further provide for the reconciliation of estimated payments with actual costs

incurred at a minimum on an annual basis including access to all Project related accounting records on an Open Book Basis to permit the Department to validate actual cost data together with such additional terms as may be reasonably required to reconcile any estimated payments made in excess of the applicable portion of the GMP.

### **11.12.2 GMP Price Proposal – Contents of Applications for Payment**

In conjunction with the Department's approval of any GMP Price Proposal, the Department will develop with Contractor input, a form of payment application and the required contents of such application.

### **11.12.3 GMP Price Proposal—Administration of Contractor's Risk Contingency**

After the occurrence of an event triggering a Risk Register Event and the inclusion of the amounts attributable to such Risk Register Event on an updated SOV, upon the Department's approval of the pay applications submitted during the occurrence of such Risk Register Event, the Contractor may expend funds from the Contractor's Risk Contingency to pay for costs attributable to the corresponding Risk Register Event during the duration of such Risk Register Event. Contractor Risk Contingency Items which do not have defined triggering events are to be included in the Schedule of Values and will be compensated over the duration of the item.

Whenever any use of the Contractor's Risk Contingency relates to costs attributable to Risk Events that could potentially be covered by Contractor's insurance, Contractor shall pursue such insurance claims and reimburse the Department from any proceeds derived therefrom.

## 12 CONTRACT CHANGES

### 12.1 Applicability of Section 12 Change Order Process

The following information, obligations, and duties set forth in this Section 12 shall apply only for Construction Work.

This PDBC sets forth additional Change Orders for alternative purposes. Any Change Order performed for one of the following purposes has its own requirements, procedures, duties, and/or obligations contained within one of the following sections of the PDBC.

1. For any Change Order executed for the purpose of modifying the Sub-Phase 1A Project Scope, the Change Order shall be performed and executed in accordance with Section 2.3.2 (Sub-Phase 1A: BIM Proof of Concept).
2. For any Change Order executed for the purpose of progressing the PDBC from Sub-Phase 1A to Sub-Phase 1B, the Change Order shall be executed in accordance with Section 2.3.2.1 (Sub-Phase 1B: Proposal).
3. For any Change Order executed for the purpose of modifying the Sub-Phase 1B Project Scope, the Change Order shall be executed in accordance with Section 2.3.3 (Sub-Phase 1B: Project Development).
4. For any Change Order executed for the purpose of progressing the PDBC from Sub-Phase 1B to Phase 2, the Change Order shall be performed and executed in accordance with Section 2.3.3.2 (Phase 2 Proposal) and Section 2.4.1 (Phase 2 Change Order).
5. To the extent the Department has established a Department Risk Contingency, for any Change Order executed for the purpose of making a draw on the Department Risk Contingency after the occurrence of an event warranting such action.

### 12.2 Changes in the Work

At any time, and without invalidating this PDBC or releasing the surety, the Department reserves the right to make, in writing, changes, revisions, or alterations in the Work when necessary to complete the Project satisfactorily. The Contractor shall perform the Work as revised by the Department.

If the Contractor believes that the Department directed changes, revisions, or alterations in the Work are material in kind or nature from the Work indicated by the Contract Documents, the Contractor may request a Change Order prior to performing the specified Work. The Department will evaluate and determine if the request is warranted and, at its discretion, process a Contract adjustment by Change Order as described below.

All changes in the Work shall be requested and authorized before commencing such changes pursuant to the PDBC changes process set forth in this Article 12.

### 12.3 Modifications to the PDBC

This PDBC may be amended or modified only by a Change Order which upon execution by both the Department and Contractor shall become part of the Contract Documents.



## 12.4 Change Orders

A Change Order is a written instrument signed by the Department and the Contractor stating their agreement upon all of the following:

- (1) A change in the Work;
- (2) The amount of the adjustment, if any, in the Contract Price; and
- (3) The extent of the adjustment, if any, in the Contract Time.

The Change Order document shall be prepared by the Department after the evaluation and approval of a validly submitted RCO, and executed by the Contractor. Once executed by the Contractor, the Change Order will be submitted to the Department to execute and approve. Upon approval and execution by the Department, the Change Order shall become a part of the Contract Documents.

Methods used in determining adjustments to the Contract Price shall include those listed in Section 12.8 (Changes and Extra Work Price Determination) and Exhibit I (Delay Costs). Adjustments to the Contract Time, if any, shall be determined as set forth in Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) and Exhibit T (Critical Path Method Progress Schedule). The Contractor shall submit RCOs requesting changes in Contract Time separately and individually from RCOs requesting a modification in Contract Price. RCOs requesting a change in the Contract Time and Contract Price stemming from the same issue, should be considered as companions to one another and referenced as such in the RCOs. The Department reserves the right to not approve and/or not consider any RCO that is requesting both an adjustment to the Contract Time and Contract Price in the same RCO. As set forth in Section 13 and in Exhibit T, in order to warrant an increase in the Contract Time, the Contractor must demonstrate (i) that the Work affected by the change is on the Critical Path of the Project Schedule and (ii) materially adversely impacts the Completion Dates as determined in accordance with Exhibit T.

The Contractor must provide the Department with a Notice of Potential Change Order (“NPCO”), in accordance with Section 12.4.1 (Notice of Potential Change Order) and, if warranted a Request for Change Order (“RCO”) upon becoming aware of any item of Work the Contractor considers Extra Work as defined in Exhibit A (Acronyms and Definitions) or for any other item the Contractor believes warrants a Change Order affecting either: the Contract Price or the Contract Time. Any RCO that is not subject to the EDR procedure outlined in Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) shall be submitted within seven (7) Days of the Department’s Change Event Notice. Any RCO that is subject to the EDR procedures outlined in Section 13 must be submitted within seven (7) Days of the Department’s Notice, as set forth in Section 13.4.3 (Department Notice). Contractor’s failure to deliver any RCO to the Department within seven (7) Days of the date of the Department’s Change Event Notice or Department Notice, as applicable, shall be deemed a waiver by the Contractor of any claim for a change in the Contract Price or the Contract Time requested under the corresponding NPCO.

The Contractor’s Submission of the RCO shall be considered an absolute condition precedent to the issuance of a Change Order as a result of any item of Work the Contractor considers

Extra Work as defined in Exhibit A (Acronyms and Definitions) or for any other item the Contractor believes warrants a Change Order impacting either: the Contract Price or the Contract Time.

The notice(s) in Section 12.4.1 (Notice of Potential Change Order) shall satisfy the initial notice requirements as set forth in Section 18.2 for the Dispute Resolution procedures.

Notwithstanding, the Department and the Contractor agree that neither party shall pursue the Dispute Resolution procedures in Section 18.2 (Dispute Resolution) until the Contractor has either (i) received the Department's written notice with respect to its decision pertaining to any RCO or EDR pursuant to Section 12 (Contract Changes) and Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays), (ii) the Contractor has received the Department's decision after successfully mitigating or resolving an event as required under Section 12.4.1.1 (Department Mitigation / Resolution Before Written Notice), and/or (iii) the Contractor fails to execute a Change Order prepared by the Department or expressly rejects a proposed Change Order. In no event shall the Dispute Resolution Procedures begin before one of the events, (i)-(iii) has occurred.

### **12.4.1 Notice of Potential Change Order (“NPCO”)**

As a precondition to submitting any RCO, unless the RCO is the result of the process set forth in Section 12.4.4 (Procedure for Department Initiated RCOs), the Contractor must submit a NPCO to the Department in accordance with this Section 12.4.1. The NPCO process consists of the following steps:

1. the Contractor, shall provide immediate oral notification to the Department containing sufficient details for the Department to identify the circumstance(s) or event(s) requiring mitigation or resolution that may result in a change to the Contract Documents and/or Work.
2. if after two (2) Working Days following the Department's receipt of the Contractor's oral notification in under (1) above, the Department has not mitigated or resolved such circumstance(s) or event(s) identified by the Contractor, the Contractor shall provide written notice to the Department containing a sufficient description of the circumstance(s) or event(s) and a preliminary projection of the potential impacts.

The oral and written notices made under this Section 12.4.1, shall also constitute the notices required under Section 18.2 (Dispute Resolution).

#### **12.4.1.1 Department Mitigation/Resolution Before Written Notice**

Upon receipt of the Contractor's oral notice in accordance with this Section 12.4.1, the Department will attempt to mitigate and/or resolve the circumstance(s) or event(s) described in such oral notice, unless the underlying event causing the Contractor to issue the NPCO is a change in the Contract Time and/or Contract Price due to a Weather event, in which instance the Contractor shall comply with the procedures outlined in Section 15 (Weather).

In the event that the Department is able to resolve the circumstance(s) or event(s) before the receipt of Contractor's written notice, the Department will notify the Contractor of said resolution in the Department's Change Event Notice and in such may instruct the Contractor to do any or all of the following that may apply:

1. submit a RCO pursuant to Sections 12.4 (Change Orders) if the resolution and/or mitigation by the Department requires a modification in the Contract Price that is not caused by Delay Costs;
2. submit an EDR pursuant to Section 13.4 (Procedure for Requesting Delay Costs and Completion Deadlines Alterations) requesting a modification to the Contract Time, alone, in accordance with Section 13.4.1 (Excusable Delay Request); or
3. submit an EDR pursuant to Section 13.4 requesting a modification to the Contract Time and a modification in the Contract Price that is caused by Delay Costs, in accordance with Section 13.4.1.

In the event that the Department has determined that the conditions or events which are the subject of the NCPO do not warrant the issuance of a Change Order, the Contractor may elect to proceed with the Dispute Resolution Procedures pursuant to Section 18.2 (Dispute Resolution). The notices transmitted pursuant to Section 12.4.1 (Notice of Potential Change Order) shall satisfy the notice requirements necessary to initiate the Dispute Resolution Process set forth in Section 18.2 (Dispute Resolution). The Department may, in its sole discretion, issue a Construction Change Directive in accordance with Section 12.5 (Construction Change Directive).

#### **12.4.1.2 Department Unable to Mitigate/Resolve Change Event**

In the event that the Department cannot resolve the circumstance(s) or event(s) that are the subject of a NPCO within two (2) business Days of the Contractor's oral notice provided in accordance with Section 12.4.1, 1 (Notice of Potential Change Order) and the Contractor proceeds to issue a written notice in accordance with Section 12.4.1, 2, unless the underlying event causing the Contractor to issue the NPCO is a change in the Contract Time due to weather, in which case the Department shall instruct the Contractor to comply with the procedures outlined in Section 15 (Weather), the Department shall analyze the notice and monitor the corresponding circumstance(s) or event(s) giving rise to such notice. Following the Department's analysis of the circumstance(s) or event(s), the Department shall issue the Department's Change Event Notice to notify the Contractor:

1. that Department agrees that a change in the Contract Price may have occurred, in which case, the Contractor shall prepare an RCO in accordance with this Section 12.4 and Section 12.4.2 (RCO Contents); or
2. the Department has: (a) determined that time is of the essence and (b) there is not ample time to determine if a change in Contract Price or increase in Contract Time has occurred and/or is warranted, in which case the Department shall proceed under Section 12.5 (Construction Change Directive) and issues a Construction Change Directive; or
3. the Department has determined that the circumstance(s) or event(s) may have resulted in the need for: (a) a change in the Contract Time with no change in Contract Price or (b) a change in the Contract Time with a change in the Contract Price due to delay costs, regardless of whether or not the circumstance(s) or event(s) have resulted in a change in the Contract Price, not caused by delay cost, in which case, the Contractor shall submit an Excusable Delay Request in accordance with Section 13.4.1 (Excusable Delay Request); and/or
4. The Department has determined that there has not been a change in the scope of the Work that warrants a Change Order, in which case, the Contractor may elect to

proceed with the Dispute Resolution Procedures pursuant to Section 18.2 (Dispute Resolution), which the notices in Section 12.4.1 (Notice of Potential Change Order (“NPCO”)) shall satisfy the notice requirements of Section 18.2 (Dispute Resolution).

### 12.4.1.3 Change Event Mitigation Plan

The Department may require the Contractor to submit a mitigation action plan at any time after the Contractor’s oral notice has been provided in accordance with Section 12.4.1, 1 (Notice of Potential Change Order). The Contractor shall submit such mitigation action plan pertaining to the conditions or events that are the subject of a NPCO. The Contractor’s mitigation plan shall include the following unless instructed otherwise by the Department:

1. Include full details of the actions that the Contractor proposes to take to avoid, mitigate, or minimize the consequences of the event and a description of how those proposed actions will mitigate and/or minimize the effects of the event;
2. Describe any additional resources, labor, Materials, plant, or Equipment as applicable, that the Contractor proposes to dedicate to perform each of the proposed actions to avoid, mitigate, or minimize the consequences of the event, which costs must be estimated and included in the mitigation plan and may be included in any RCO requesting a change in the Contract Price due to direct costs or EDR for a change in the Contract Price if the event is a Category 2 Event;
3. State the time within which the Contractor will implement each of the actions described in the proposed mitigation plan; and
4. Include any additional information reasonably requested by the Department.

The Contractor shall submit any mitigation action plan within seven (7) days of such request, unless otherwise agreed to by the Department. Upon the submission of a mitigation action plan to the Department, in accordance with this Section 12.4.1.3 (Change Event Mitigation Plan), the Department may reject in whole or in part the mitigation action plan. In the event the Department does reject in whole or part of the mitigation action plan, the Contractor shall amend and resubmit the mitigation action plan (or the part rejected) to the Department within seven (7) Days of receiving notice of the Department’s rejection of the mitigation action plan.

If the Department accepts in whole or in part a submitted mitigation action plan, in accordance with this Section 12.4.1.3, then the Contractor shall act in accordance with the accepted mitigation plan (or the accepted part of the mitigation action plan, as applicable) in order to mitigate the effects of the event. In addition, all actions taken by the Contractor to mitigate the effects of the event and the progress of those actions shall be documented by the Contractor.

In the event that the Department has not responded to a submitted mitigation action plan (or a part of it), in accordance with this Section 12.4.1.3, within seven (7) Days of receipt, the mitigation action plan (or part of it) shall be deemed accepted by the Department, and the Contractor should act in accordance with Contractor’s proposed Change Event Mitigation Plan.

### 12.4.2 RCO Contents

At minimum, an RCO shall include, as applicable:

1. the scope of work which describes in detail all additional or changed (or both) activities to be authorized by a subsequent Change Order;

2. an initial cost estimate by utilizing the information and formulas specified in Section 12.8 (Changes and Extra Work Price Determination), Exhibit H (Force Account Provisions), and Exhibit I (Delay Costs), as may be applicable, to calculate any potential cost changes or the Detailed Cost Analysis submitted in conjunction with an EDR request as described in Section 13.4.1.1 (Detailed Cost Analysis), if applicable;
3. an impact analysis to all Baseline Schedules affected, indicating in such analysis all activities affected by the change, with activity numbers, durations, predecessor and successor activities, resources, and cost, and a narrative report, if the RCO pertains to changes in Contract Time or Contract Price caused by delay costs, which shall only be applicable for an RCO as a result of the EDR process in Section 13.4 (Procedure for Requesting Delay Costs and Completion Deadlines Alterations);
4. the approximate number of Days that the delay to the Critical Path of the affected Baseline Schedule(s) was adversely impacted utilizing Exhibit T (Critical Path Method Progress Schedule) and Section 13.4.2 (Department Decision), if the RCO pertains to changes in Contract Time or Contract Price caused by delay costs, which shall only be applicable for an RCO as a result of the EDR process in Section 13.4 (Procedure for Requesting Delay Costs and Completion Deadlines Alterations); and/or
5. any other supporting documentation that may be helpful or requested by the Department.

### 12.4.3 Department Receipt and Procedure for RCOs

Upon the receipt of any RCO that has been submitted in accordance with Section 12 (Contract Changes) and/or Section 13 (Time Extension To The Completion Deadlines and Payment For Excusable Delay), except for an RCO as a result of Section 12.4.4 (Procedure for Department Initiated RCOs), the Department shall have seven (7) Days to consider and review the RCO. This duration may be extended if during this time the Department requires additional information/clarification from the Contractor. On the seventh (7th) Day after the submittal of the RCO or the requested additional information/clarification, the Department shall notify the Contractor of the Department's acceptance or rejection of the RCO.

If the Department notifies the Contractor that the Department has rejected the RCO, the Department must include a description of the basis as to its rejection. If the Contractor decides to revise the RCO to address the basis of rejection, a new RCO will need to be submitted in accordance with Section 12 (Contract Changes) and/or Section 13 (Time Extension To The Completion Deadlines and Payment For Excusable Delay). Further, upon receipt of the notice of the rejection of the RCO, the Contractor may elect to proceed with the Dispute Resolution Procedures pursuant to Section 18.2 (Dispute Resolution) The notices transmitted pursuant to Section 12.4.1 (Notice of Potential Change Order) shall satisfy the notice requirements of Section 18.2. The Department may issue a Construction Change Directive in accordance with Section 12.5 (Construction Change Directive).

The Contractor's signature on a Change Order shall constitute a full, final, and complete waiver and settlement of any and all claims, demands, and causes of action that Contractor has, or may have in the future, arising out of or relating to the Change Order and the occurrences, acts, omissions, or events upon which the Change Order is based. No "reservation of rights" or other attempt by Contractor to preserve, notwithstanding Contractor's signature on the Change Order, present or future claims arising out of or relating to the Change Order (or arising out of or relating to the cumulative effect of the Change Order in combination with other change orders)

shall be effective unless Owner and Contractor shall both agree, to the specific terms, conditions, scope, and duration of such reservation of rights.

#### **12.4.4 Procedure for Department Initiated RCOs**

The Department may issue an RCO pursuant to the procedures set forth in Sections 12.4.4.1 (Consultation Meeting) through Section 12.4.4.3 (Contractor RCO).

##### **12.4.4.1 Consultation Meeting**

The Department shall give notice to the Contractor of its desire to initiate an RCO. Within seven (7) Days after the Contractor's receipt of the Department's notice to initiate an RCO, the Department and the Contractor shall consult to define the proposed scope of the change, including rough order of magnitude of cost and time impacts, if any, relating to the Work that is the subject of the RCO.

##### **12.4.4.2 Preparation of Estimate**

Within seven (7) Days after the consultation meeting referenced in Section 12.4.4.1 (Consultation Meeting) above, the Department shall notify the Contractor whether the Department desires the Contractor to prepare the RCO that would account for costs of the Work in the proposed scope and the impacts on the Critical Path of any of the Baseline Schedules, as applicable, or keep the existing Baseline Schedules and reflect reasonable acceleration costs, which will be determined in accordance with Section 12.8.4 (Directed Acceleration) at a later date, needed to meet the existing Completion Deadlines.

##### **12.4.4.3 Contractor RCO**

If requested by the Department, the Contractor shall prepare and submit to the Department for approval, an RCO within fourteen (14) Days after the receipt of the Department's request to Contractor to prepare an RCO. Such Contractor prepared RCO shall comply with all requirements as set forth in Section 12.4 (Change Orders) and shall include all requests made by the Department. The Contractor shall bear the costs of developing the RCO, including subsequent modifications requested by the Department.

##### **12.4.4.4 Disagreement Regarding Additional Time and/or Cost**

If the Department and Contractor disagree as to whether the change justifies an adjustment in the Contract Price or Contract Time, or the amount of such adjustment regarding Contract Time or Contract Price, the Department may, in its sole discretion, issue a Construction Change Directive in accordance with Section 12.5 (Construction Change Directive). During the performance of the Work pertaining to a Construction Change Directive, the Contractor may elect to concurrently proceed with the Dispute Resolution Procedures set forth under Section 18.2 (Dispute Resolution).

#### **12.4.5 Items Not Eligible for Change Orders**

The Contractor acknowledges and agrees that the basis for an increase in the Contract Price or Contract Time for any Completion Deadlines is limited to the conditions and events set forth in Section 12 (Contract Changes) and Section 13 (Time Extension to the Completion Deadlines

and Payment for Excusable Delays). Notwithstanding anything to the contrary set forth herein, the Contractor shall have exclusive responsibility for:

1. Errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the Design Documents prepared by the Contractor (including errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects traceable to errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects in the Design Documents);
2. Any design changes required by the Department as part of the process of making the Design Documents consistent with the requirements of the Contract Documents;
3. Defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (except to the extent that changes in the planned sequence of performance of the Work arise from causes which otherwise give rise to a right to a Change Order);
4. Action or inaction of a Subcontractor (unless arising from causes which otherwise give rise to a right to a Change Order);
5. Failure to integrate work of another contractor with the Contractor's Work which has been incorporated into the PDBC via Change Order;
6. Untimely delivery, unavailability or defectiveness of material, equipment or products specified by the Contract Documents unless otherwise applicable pursuant to Section 13.2.1, D (Category 1 Events – Excusable, Non-Compensable Delays);
7. Costs covered by insurance proceeds received by or on behalf of the Contractor;
8. Correction of Nonconforming Work and review and acceptance thereof by the Department;
9. Failure by the Contractor to comply with Contract Documents requirements;
10. Escalation in labor, equipment, or materials prices in accordance with and as described in Exhibit W (Price Fluctuation Clauses); and
11. Any situations which, while not within one of the categories delineated above, were or should have been reasonably anticipated by the Contractor based on the Contract Documents or the nature of the Work.

The Contractor hereby assumes responsibility for all such matters and acknowledges and agrees that assumption by the Contractor of responsibility for such costs and delays, and the consequences and costs resulting therefrom, is reasonable under the circumstances of the PDBC and that whatever contingencies the Contractor included in the Contract Price or Project Schedule constitute sufficient consideration for its acceptance and assumption of Contractor's risks and responsibilities as set forth herein.

Notwithstanding Section 12.4.5 (Items Not Eligible for Change Orders), Risk Register Events identified on the Risk Register by the Parties as either Department Risks or risks utilizing Provisional Sums, pursuant to Section 2.6.1.1 (Risk Register) may be eligible for a Change Order in accordance with Section 2.6.1.1.

## **12.4.6 No Release or Waiver**

### **12.4.6.1 Extension of Time for Performance**

No extension of time granted hereunder with respect to the Contract Time shall release the Contractor's Surety from its obligations set forth in the Surety's Bond. The Department shall not be deemed to have waived any rights under this PDBC as the result of any grant of an extension of any Completion Deadlines, any acceptance of performance of any part of the Work completed after a Completion Deadline, or the making of any payments to the Contractor after the Completion Deadline.

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

No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Department has been unjustly enriched shall be the basis for any claim, request for additional compensation, or extension of a Completion Deadline. Further, the Contractor shall undertake, at its risk, work included in any order or other authorization issued by a Person in excess of that Person's authority as provided herein or included in any verbal request. The Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, the Department may require the Contractor to remove or otherwise revise any such work, if not in compliance with the Contract Documents, at the Contractor's sole cost.

Contractor shall remove or otherwise revise any Work, if not in compliance with the Contract Documents, at the Contractor's sole cost and expense.

## **12.5 Construction Change Directive**

A Construction Change Directive will be primarily utilized by the Department where the completion of Work is of the essence to maintain the Project Schedule and the impact of such changes needed to complete the Work are not yet fully known or agreed upon between the Department and the Contractor preventing the processing and approval of a Change Order. In such event where time is of the essence, the Department may issue a Construction Change Directive that shall include (i) a description of the scope of work to be performed pursuant to the Construction Change Directive and (ii) the Department's estimate of the work impacted. The Construction Change Directive may or may not impact the Contract Price or Contract Time. In the event that a Construction Change Directive is issued by the Department, the Contractor shall be required to track the performance of the work to be performed under the Construction Change Directive pursuant to the force account procedures set forth in Section 12.8.2 (Force Account) until the impacts of the Construction Change Directive are known and the procedures and process outlined in Section 12.8.1 (Negotiated Prices) occur.

### **12.5.1 Effective Execution of Construction Change Directive**

The Contractor shall execute the Construction Change Directive upon receipt. An executed Construction Change Directive by the Contractor confirms the Contractor's acceptance and agreement with the scope of the Work to be performed and the methodology in which the Work and associated costs shall be tracked.



## 12.5.2 Operation Under Executed Construction Change Directive

Once a Construction Change Directive has been executed by the Contractor, the Contractor will proceed in accordance with the scope of the Work described in the Construction Change Directive. As soon as practicable after the execution of the Construction Change Directive, the Department and the Contractor shall utilize commercially reasonable efforts to agree upon a change in the Contract Price and/or a change in Completion Dates, as applicable.

If the Department and Contractor reach an agreement regarding (1) a change in Contract Price, if any, and/or (2) a change in Completion Dates, if any, the Contractor shall proceed to submit an RCO in accordance with Section 12.4 (Change Orders) and Section 12.4.2 (RCO Contents) and/or an EDR in accordance with Section 13.4.1 (Excusable Delay Request); provided however, if the Department and Contractor cannot reach an agreement regarding: a change in Contract Price or Contract Time then the Contractor may elect to proceed with the Dispute Resolution Procedures set forth under Section 18.2 (Dispute Resolution).

Notwithstanding anything to the contrary contained herein, any failure by the Contractor to perform the work specified under a Construction Change Directive shall constitute a Contractor Default under this PDBC.

## 12.6 Disputes Regarding Change Order(s)/Construction Change Directive(s)

If the Contractor and the Department cannot come to an agreement regarding amount of adjustment to the Contract Price, and/or an adjustment to the Contract Time, pursuant to the Change Order process outlined in this Section 12 and/or Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays), the Contractor or Department may elect to proceed with the Dispute Resolution Procedures outlined in Section 18.2 (Dispute Resolution). In the event the Department and Contractor cannot reach an agreement regarding a change in Contract Price, whether in response to a Construction Change Directive, as part of a Claim or Dispute, or otherwise, the Contractor shall be required to track the performance of the work to be performed pursuant to the force account procedures set forth in Section 12.8.2 (Force Account).”

## 12.7 Revisions to Contract Document

### 12.7.1 Differing Site Conditions

#### 12.7.1.1 General Obligation of Notice by Contractor and Department Investigation

Upon the Contractor’s discovery of the following Differing Site Conditions set forth in this Section 12.7.1 (Differing Site Conditions), the Contractor shall notify the Department of such condition in accordance with Section 12.4.1 (Notice of Potential Change Order). Any change in the Contract Time and/or Contract Price shall occur as a result of the procedures and processes stated in Section 12 (Contract Changes) and/or Section 13 (Time Extension To The Completion Deadlines And Payment For Excusable Delays).

Upon receipt of the Contractor's notice, the Department will investigate the claimed potential Differing Site Conditions. The Department will determine if Differing Site Conditions have been encountered and notify the Contractor of the Department's determination.

### **12.7.1.2 Procedure for Requesting Contract Price/Completion Deadline Alterations**

The Contractor recognizes and accepts, as provided in Section 12.7.1.5 (Department Provided Information for Reference and Information Only), that geotechnical and environmental information provided by the Department may, only upon the Department's written concurrence in accordance with Section 12.7.1.5 (Department-Provided Information for Reference and Information Only), be incorporated into the Design Documents and Construction Documents to supplement subsurface information that the Contractor obtains through Site investigations conducted during Phase 1. As provided in Section 12.7.1 (Differing Site Conditions), Contractor requests pertaining to differing site conditions will be considered by the Department in the event the Contractor encounters latent physical condition changes that materially differ from the subsurface conditions identified in those RIDs that the Department has agreed to have incorporated into the Design Documents and the Construction Documents and/or the additional subsurface information available to the Contractor from the Phase 1 Site investigations. The Contractor shall consider any portion of the site or excavation to be unclassified by the Department. The Contractor assumes all risk of unknown or unforeseen subsurface site conditions except as specifically provided in Section 12.7.1.3 (General Differing Site Conditions) and Section 12.7.1.4 (Unique Differing Site Conditions) and acknowledges the potential for normal geologic and/or groundwater variances throughout the Project, which variances may not constitute the basis for a request pertaining to unknown or unforeseen subsurface site conditions. Except for those RIDs to be incorporated into the Design Documents and Construction Documents based upon the Department's written concurrence, the Department expressly disclaims any representations or warranties regarding geotechnical and environmental information provided by the Department.

Notwithstanding anything to the contrary contained herein, the Contractor hereby acknowledges and agrees that the publicly accessible archived geotechnical data and the published geologic literature pertaining to the area encompassing the Project Limits indicate a variable groundwater presence and elevation throughout the Project Limits. Based upon the foregoing known subsurface conditions within the Project Limits, the Contractor covenants and agrees to develop the Design Documents and the Construction Documents to account for the presence of groundwater within the Project Limits at varying elevations and rates, including with respect to the performance of any excavation (open cut, foundation, drilled pier, or otherwise). For avoidance of doubt, the Department shall not consider the variable groundwater elevations and rates described herein to constitute a basis for a request pertaining to unknown or unforeseen site conditions.

"Differing Site Conditions" are described in Section 12.7.1.3 and Section 12.7.1.4. A request for alteration to the Contract Price/Completion Deadlines due to a Differing Site Condition as provided in this Section 12.7.1 (Differing Site Conditions) shall be made according to the following procedure:

1. The Department and Contractor shall comply with Section 12.7.1.1 (General Obligation of Notice by Contractor and Department Investigation);
2. in the event that the Department determines that the Differing Site Condition (s) exists and the Contractor believes that an adjustment in the Contract Price, due to an increase in direct costs, the Contractor shall submit an RCO in accordance with Section 12.4 (Change Orders) meeting the requirements listed therein; and/or
3. in the event that the Department determines that the Differing Site Condition (s) exists and the Contractor believes that it may be entitled to an adjusted Completion Deadline due to delays caused by the Differing Site Condition and/or additional compensation due to Delay Costs arising from the Differing Site Condition, the Contractor may submit an Excusable Delay Request in accordance with Section 13.4.1 (Excusable Delay Request).

### **12.7.1.3 General Differing Site Conditions**

The following are defined General Differing Site Conditions:

- A. Subsurface or latent physical conditions at the site differing materially from those indicated in the RIDs or within the information obtained during Phase 1 or reasonably inferred therefrom and are not reasonably discoverable from an investigation and analysis of the site by the Contractor meeting its Standard of Care obligations for such an investigation and analysis, as set forth in the Contract Documents;
- B. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site;
- C. Unknown physical conditions which are rare for the Project area and type of Project; and
- D. Unknown physical conditions which are not reasonably evident during the design by inspection, or investigations which were performed during the design, or reasonably should have been performed by the Contractor fulfilling its Standard of Care obligations as set forth in the Contract Documents during or before the final design process.

### **12.7.1.4 Unique Differing Site Conditions**

The following are Unique Differing Site Conditions:

#### **12.7.1.4.1 Differing Geotechnical/Hydrological Subsurface Conditions**

The Contractor shall be entitled to an adjustment in the Contract Time and/or Contract Price relating to subsurface geologic conditions, including bedrock, soils, or other natural conditions, only if all of the following conditions precedent exist:

- A. The subsurface conditions are materially different from conditions generally recognized as inherent in the nature of the Work in the area of the site of the Work and such conditions adversely impact Contract Price or Contract Time to complete the Work within the Completion Deadlines as set forth in the Contract Documents;
- B. The subsurface conditions were not reasonably discoverable by the Contractor from (i) an analysis of the Department approved site investigation plan developed during

Phase 1 of the Project, (ii) a reasonable investigation of the site during Phase 2, or (iii) an analysis of the site during Phase 1, Phase 2, including subsurface conditions, by the Contractor in fulfilling its obligations pursuant to the Standard of Care under the Contract Documents hereunder prior to submittal of the Contract Price Proposal; and

- C. The subsurface conditions were actually unknown to the Contractor and the Contractor -Related Entities.

#### **12.7.1.4.2 Historic and Archaeological Materials**

If the Contractor discovers any object of potential archaeological, paleontological, or other historic interest, all Work that could disturb said object shall immediately cease and shall not be resumed until an investigation of the object and related deposits have been completed and removal of articles of interest has been accomplished. Should such a deposit be discovered, the Contractor shall notify the Department immediately upon Contractor's discovery.

The Contractor shall be entitled to submit an RCO for an adjustment to the Contract Price and/or an EDR for an adjustment to the Contract Time relating to differing site conditions due to historic and archaeological materials only if all of the following conditions exist:

- A. The locations of the subsurface conditions were not described in any documents containing indications of subsurface conditions or site conditions provided to the Contractor;
- B. The subsurface conditions were not reasonably discoverable by the Contractor from (i) an analysis of the Department approved site investigation plan developed during Phase 1 of the Project, (ii) a reasonable investigation of the site during Phase 2, or (iii) an analysis of the site during Phase 1, Phase 2, including subsurface conditions, by the Contractor in fulfilling its obligations pursuant to the Standard of Care under the Contract Documents hereunder prior to submittal of the Contract Price Proposal; and
- C. The subsurface conditions were actually unknown to the Contractor and the Contractor-Related Entities and such conditions adversely impact the Cost or time to complete the Work as set forth in the Contract Documents.

#### **12.7.1.5 Department-Provided Information for Reference and Information Only**

The Department is not the designer of the Project and has no knowledge of the Contractor's anticipated use concerning any site information and its importance or lack thereof in the Contractor's design and construction approach. The Contractor shall not be entitled to rely upon the accuracy of such information, and such information shall not serve as the basis for any claim by the Contractor. The Contractor, by submitting its proposal, expressly acknowledges its acceptance of this disclaimer, and shall present no claim for differing site conditions based upon a reliance upon such information regarding site conditions. Notwithstanding the foregoing, so long as the Contractor has complied with the obligations and requirements set forth in Section 3.5.1 (Review of RIDs and Project Site), such RID information may be relied upon by the Contractor in the performance of the Work to the extent that any RID information is explicitly referenced in and/or incorporated into the Phase 2 Change Order and approved by the Department, in which case the Contractor can rely on such RID information only to the extent expressly agreed upon as set forth in the Phase 2 Change Order.

## 12.7.2 Significant Change in the Character of the Work

The Department reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities and alterations shall not invalidate the PDBC nor release the surety, and the Contractor agrees to perform the Work as altered.

If the alterations or changes in quantities significantly change the character of the Work under the PDBC, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the PDBC pursuant to the process set forth in Section 12.7.2.1 (Procedure for Requesting Contract Price/Completion Deadlines Alterations).

If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the contract, the altered Work will be paid for as provided elsewhere in the contract.

The term "Significant Change" shall be construed to apply only to the following circumstances:

- A. When the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- B. When the product of the quantity in excess of the estimated quantity of a contract item and the unit price is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

### 12.7.2.1 Procedure for Requesting Contract Price/Completion Deadlines Alterations

A request for alteration to the Contract Price/Completion Deadlines due to a Significant Change in the character of work as provided in this Section 12.7.2 (Significant Change in the Character of the Work) shall be made by the Contractor notifying the Department of the significant change in the character of work set forth in this Section 12.7.2 in accordance with Section 12.4.1 (Notice of Potential Change Order). Any change in the Contract Price or Contract Time shall occur as a result of the procedures and processes stated in Section 12 (Contract Changes) and/or Section 13 (Time Extension To The Completion Deadlines And Payment For Excusable Delays). Any change in the Contract Price or Contract Time shall occur as a result of the procedures and processes stated in Section 12 and/or Section 13 and;

1. Upon receipt of the Contractor's notice, the Department shall investigate the claimed significant change in the character of work and the Department shall determine whether there has been a significant change in the character of work;
2. If the Department determines a material change in the character of the work did occur, then the Department shall notify the Contractor of the Department's determination;
3. In the event that the Department determines that a significant change in the character of work occurred and the Contractor believes that an adjustment in the Contract Price,

due to an increase in direct costs, the Contractor shall submit an RCO in accordance with Section 12.4 (Change Orders) meeting the requirements listed therein; and/or

4. In the event that the Department determines that a significant change in the character of work occurred and the Contractor believes that it may be entitled to an adjusted Completion Deadline due to delays caused by the significant change in the character of work and/or additional compensation due to Delay Costs arising from the significant change in the character of work, the Contractor shall submit an Excusable Delay Request in accordance with Section 13.4.1 (Excusable Delay Request).

In the event that the Department and Contractor do not agree on the adjustment in the Contract Price or Contract Time pursuant to Section 12.7.2.1 (Procedure for Requesting Contract Price/Completion Deadlines Alterations) and subsequently Section 12 and/or Section 13, the Department and/or the Contractor may elect to proceed with the dispute resolutions procedures in accordance with Section 18.2 (Dispute Resolution).

### **12.7.3 Unreasonable Suspension of Work**

If the performance of all or any portion of the Work is suspended or delayed by the Department in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that such suspension adversely impacted the Contract Price or Contract Time such that the Project Schedule and Completion Deadlines are impacted, Contractor shall notify the Department as specified in Section 12.4.1 (Notice of Potential Change Order).

#### **12.7.3.1 Procedure for Requesting Contract Price/Completion Deadlines Alterations**

A request for alteration to the Contract Price/Completion Deadlines due to an unreasonable suspension in work as provided in this Section 12.7.3 shall be made according to the following procedure. Upon the occurrence of an unreasonable suspension in work, the Contractor shall notify the Department of the unreasonable suspension in work set forth in this Section 12.7.3 in accordance with Section 12.4.1 (Notice of Potential Change Order). Any change in the Contract Price or Contract Time shall occur as a result of the procedures and processes stated in Section 12 (Contract Changes) and/or Section 13 (Time Extension To The Completion Deadlines And Payment For Excusable Delays).

1. After receipt of the Contractor's notice, the Department shall investigate the claimed unreasonable suspension in work, and the Department shall determine whether there has been an unreasonable suspension in work, which shall require the Department to agree that the cost or time required for the performance of the Work has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, Subconsultant, or Subcontractors at any approved tier, and not caused by Weather;
2. If the Department determines an unreasonable suspension of work did occur, then the Department shall notify the Contractor of the Department's determination;
3. In the event that the Department determines that an unreasonable suspension in work occurred and the Contractor believes that an adjustment in the Contract Price, due to an increase in direct costs, the Contractor shall submit an RCO in accordance with Section 12.4 (Change Orders) meeting the requirements listed therein; and/or

4. In the event that the Department determines that an unreasonable suspension of work occurred and the Contractor believes that it may be entitled to an adjusted Completion Deadline due to delays caused by the unreasonable suspension in work and/or additional compensation due to Delay Costs arising from the unreasonable suspension of work, the Contractor shall submit an Excusable Delay Request in accordance with Section 13.4.1 (Excusable Delay Request).

In the event that the Department and Contractor do not agree on the adjustment in the Contract Price or Contract Time pursuant to Section 12.7.3.1 (Procedure for Requesting Contract Price/Completion Deadlines Alterations) and subsequently Section 12 and/or Section 13, the Department and/or the Contractor may elect to proceed with the dispute resolutions procedures in accordance with Section 18.2 (Dispute Resolution).

## **12.8 Changes and Extra Work Price Determination**

### **12.8.1 Negotiated Prices**

#### **12.8.1.1 Negotiated Prices Computation Methods**

Negotiated prices for changes and Extra Work shall be comparable to prices that would have resulted from a competitively bid contract. The Department and Contractor will negotiate: a) agreed unit prices, or b) Lump Sum prices with respect to the Extra Work using one or more of the following methods:

1. Original Contract prices for similar work but adjusted for:
  - a. Increased or decreased Material costs specified in Section 3 (Materials) of Exhibit H (Force Account Provisions).
  - b. Increased or decreased Labor costs specified in Section 2 (Labor) of Exhibit H.
  - c. Increased or decreased Equipment costs specified in Section 4 (Construction Equipment) of Exhibit H.
  - d. These costs and adjustments in prices shall not be subject to inflation or administrative markup by the Contractor where changes and Extra Work are undertaken in whole or in part by Subcontractors.
2. State-wide average unit price awarded for the item or items as listed in the Department's annual "Summary of Contracts Awarded." These prices may be adjusted for inflation using factors issued by the Office of Construction Administration. No markup for Subcontractor work is allowed.
3. Average price awarded on three different projects of similar work and quantity. These prices may be adjusted for inflation using factors issued by the Office of Construction Administration. No markup for Subcontractor work is allowed.
4. Prices computed by the Department's Office of Estimating.
5. Cost analysis of labor, Material, Equipment, and markups as allowed in Exhibit H.
6. The pricing process in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

7. For the cost of compensable delays as defined in Section 13.2.2 (Category 2 – Excusable, Compensable Delays), prepare a cost analysis as allowed and specified by Exhibit I (Delay Costs).

### **12.8.1.2 Contractor Justification for Negotiated Prices**

The Contractor shall provide proposed pricing and cost justification for changes or Extra Work within three Working Days after the Department's request. The Department will respond within 3 Working Days after receipt of the Contractor's proposal. The Department and the Contractor can mutually agree to extend these time limits.

If the Department negotiates with the Contractor but does not agree on a price adjustment, the Department may direct the Contractor to perform all or part of the revised Work under Exhibit H (Force Account Provisions).

### **12.8.2 Force Account**

The Department may direct the Contractor to perform revised Work or Extra Work under force account provisions. In the event that the Department instructs the Contractor to perform under force account provisions, the Contractor must submit a written proposal and estimated costs for the Work, including the planned Equipment, Materials, Labor, and a work schedule. The Contractor should Refer to Exhibit H (Force Account Provisions) for detailed processes, procedures and eligibility for compensation for force account Work.

When submitting the written proposal and estimated costs for revised Work or Extra Work performed under force account provisions, the Contractor shall not be permitted to apply the Phase 2 Markup, to such estimated costs as mark-up for such revised Work or Extra Work shall be determined in accordance with Exhibit H.

### **12.8.3 Changes in Materials**

If Department directed Changes in Material specifications result in increased cost to the Contractor, the costs shall be compensated by lump sum adjustment to the reference number. The lump sum adjustment shall be equal to the invoice supported Material cost. These costs shall not be eligible for the Contractor to apply its standard mark up for profit and overhead.

If Department directed Changes in Material result in cost savings due to a specification change, such cost savings shall be credited to the Project by a lump sum adjustment to the reference including a 15 percent markup if the originally specified Material has not been ordered. If the Material had been ordered before the Contractor was informed of the change, the savings markup allowed is 2.5 percent, in order to exclude profit on the original bid price and pay only for incurred overhead.

### **12.8.4 Directed Acceleration**

The Department may order the Contractor to accelerate the Work to avoid delay costs or to complete the Project early. The Department and the Contractor will negotiate acceleration costs. If the Contractor requests a time extension, then the Department may require Contractor to provide two several alternative requests for Change Order in accordance with Section 12.4 (Change Orders), one that provides for a time extension, and any one that provides for any



permitted additional costs, and/or another that shows all acceleration costs associated with meeting the non-extended Completion Deadlines, as well as any permitted additional costs.

### 12.8.5 Recovery Schedules

In the event that a Monthly Progress Update Schedule shows that the Opening Deadline, Interim Completion Deadline, Substantial Completion Deadline, or Completion of the Contract Deadline more than 14 Days behind schedule, or at the Department's request after it becomes apparent that the Work cannot be completed by the contractual Completion Deadline(s) the Contractor, the Contractor shall submit a proposed recovery schedule.

Such recovery schedule shall be created by the Contractor in accordance with Section 1.9, B (Recovery Schedule Preparation) and Section 1.9, C (Submission Requirements) of Exhibit T (Critical Path Method Progress Schedule) and shall be evaluated in accordance with Section 1.9, D (Recovery Schedule Review) of Exhibit T.

In any event, the Contractor shall provide additional labor, Equipment, and/or Materials, work additional shifts, and/or expedite procurement to complete the Work within the Completion Deadlines at no additional cost to the Department.

### 12.8.6 Inefficiency

The Department will compensate the Contractor for inefficiency or loss of productivity resulting from Change Orders pursuant to Section 12.4 (Change Orders), Changes and Extra Work resulting from Section 12.8 (Changes and Extra Work Price Determination), and revisions to this PDBC occurring under Section 12.7 (Revisions to the Contract Documents).

#### 12.8.6.1 Inefficiency Calculation

The Department shall use the Measured Mile analysis comparing the productivity of Work impacted by a change to the productivity of similar work performed under un-impacted conditions to prove and quantify the inefficiency. This analysis relies on such data that shall be jointly tracked by the parties. This Measured Mile analysis shall be submitted in conjunction with any RCO as additional information.

The Department shall use the following calculation for the Measured Mile analysis:

Additional Crew Hours = (Unit Productivity Unimpacted Period - Unit Productivity Impacted Period)/Unit Productivity Unimpacted Period x (Number of Units During Impacted Period/Unit Productivity Impacted Period).

#### 12.8.6.2 Inefficiency Notice

If the Contractor believes that it is suffering from inefficiency or loss of productivity from events specified in Section 12.8.6 (Inefficiency), the Contractor shall Provide notice as per Section 12.4.1 (Notice of Potential Change Order).

### 12.8.7 Unrecoverable Costs

The Contractor is not entitled to additional compensation for costs not specifically allowed or provided for in Section 12.8 (Changes and Extra Work Price Determination) including, but not limited to, the following:

1. Loss of anticipated profit;
2. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption;
3. Indirect costs; and
4. Attorney's fees, claim preparation expenses, and the costs of litigation.

## 13 TIME EXTENSION TO THE COMPLETION DEADLINES AND PAYMENT FOR EXCUSABLE DELAYS

### 13.1 Time Extensions to Completion Deadlines

The Contractor shall only be entitled to extension of the Completion Deadlines and the Department will only extend the Completion Deadlines if an “Excusable Delay”, as specified in Section 13.2.1 (Category 1 Events – Excusable, Non-Compensable Delays) or Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays), delays Work on the Critical Path shown on the accepted Baseline Schedule and impacts the Completion Deadlines. Any extension of the Completion Deadlines or increase in Contract Price due to Delay Costs will be executed by a Change Order in accordance with Section 12.4 (Change Order). Any change in the Contract Price due to delay costs will require a change in the Contract Time as a condition precedent.

### 13.2 Categories of Excusable Delays Events

Excusable Delays are classified into two subcategories, each of which are excusable for events that directly impact the Critical Path of the Baseline Schedule that adversely impacts the Completion Deadlines.

#### 13.2.1 Category 1 Events - Excusable, Non-Compensable Delays

Category 1 Events are events that cause delays that are excusable but non-compensable and that are not the Department’s fault or responsibility. The Department will not grant additional compensation or adjustment in the Contract Price for Category 1 Events as set forth herein.

The following are defined as Category 1 Events:

- A. Delays due to:
  - a. Floods;
  - b. Lightning strikes;
  - c. Tornadoes (classified as EF-2 or greater on the Enhanced Fujita Scale by the National Weather Service);
  - d. Earthquakes (classified as EF-2 or greater on the Enhanced Fujita Scale by the National Weather Service); or
  - e. Other cataclysmic phenomena of nature.
- B. Delays due to fire.
- C. Delays due to weather as specified in Section 15 (Weather).
- D. Extraordinary delays in material deliveries the Contractor or its Suppliers cannot reasonably foresee or reasonably avoid or mitigate resulting from freight embargoes, government acts, or area-wide material shortages as determined by the Department.
- E. Delays due to the Contractor’s, Subcontractor’s, or Supplier’s insolvency or mismanagement are not excusable.

- F. Delays due to local, state, or federally mandated quarantine restriction occurring within the Site.
- G. Delays due to civil disturbances.
- H. Delays from epidemics and pandemics excluding any delays caused or associated with COVID-19.
- I. Delays from labor strikes that are beyond the Contractor's, Subcontractor's, or a Supplier's power to settle and are not caused by improper acts or omissions of the Contractor, Subcontractor, or a Supplier.
- J. Added quantities directed by the Department that delay an activity on the Critical Path.
- K. All other delays not the Department's fault or responsibility, including but not limited to a Force Majeure event as described in Section 14 (Force Majeure Events).

Notwithstanding the foregoing, Category 1 Events, as described above in this Section, may be Risk Register Events identified on the Risk Register by the Parties as either Department Risks or risks utilizing Provisional Sums, pursuant to Section 2.6.1.1 (Risk Register) and may be eligible for a Change Order in accordance with Section 2.6.1.1.

### **13.2.2 Category 2 Events – Excusable, Compensable Delays**

Category 2 Events are events that cause delays in the completion of Work on the Critical Path that adversely impact the Completion Deadlines that are excusable and compensable that are: (i) not the Contractor's fault or responsibility, (ii) the Department's fault or responsibility or (iii) otherwise determined by judicial proceeding to be the Department's sole responsibility or are the fault and responsibility of a Government Entity and are listed in this Section 13.2.2, 1-9 below. Any event that is not listed in such sections shall be considered for all purposes, a Category 1 Event. The Department will extend the Completion Deadlines with respect to a Category 2 Event if the procedure specified in Section 13.4 (Procedure for Requesting Delay Costs and Completion Deadlines Alteration) is met. The following are defined as Category 2 Events.

1. Delays due to revised Work as specified in Section 12.7.1 (Differing Site Conditions), Section 12.7.2 (Significant Change in the Character of Work), or Extra Work.
2. Delays due to interference or failure by Utility owners to relocate or adjust facilities as specified in Section 7 (Utilities and Railroads) within the Project Limits.
3. Delays due to railroad interference within the Project Limits or failure by a railroad to adhere to the requirements of a Railroad Agreement as specified in Section 7.
4. Delays due to a Department-ordered suspension as specified in Section 12.7.3 (Unreasonable Suspension of Work).
5. Delays due to the failure by the Department to furnish the Project ROW in accordance with the schedule for parcel availability included in the Phase 2 Change Order or Work Package as specified in Section 5.8 (Furnishing Right-of-Way).
6. Delays due to the discovery within or adjacent to the Project Site of Unknown Regulated Materials.
7. Delays due to the discovery within or adjacent to the Project Site of a Threatened or Endangered Species.

8. Delays due to acts of the government or a political subdivision other than the Department.
9. Delays due to the neglect of the Department or its failure to act in a timely manner, including but not limited to, delays caused by the Department's failure to timely pay an undisputed payment resulting in Contractor suspension, as described in Section 19.2.1 (Contractor's Right to Stop Work If Undisputed Payment is Not Made).

Compensation for excusable, compensable delays will be determined by the Department according to Exhibit I (Delay Costs).

### **13.3 Limitations on Excusable Delays**

None of the events described in Section 13.2 (Categories of Excusable Delay Events) shall be deemed an Excusable Delay to the extent that performance of the Work would have been suspended, delayed, or interrupted by any other cause, including the negligence, reckless or willful misconduct, act or omission, or breach or violation of applicable Law, Governmental Approval, or contract (including any Contract Document) by the Contractor or any Contractor-Related Entity on any part of the Project.

With respect to Category 1 Events where the Contractor is excused from performance for a period of time and/or afforded additional time for performance, delays are measured as direct delays to the Critical Path on the affected Baseline Schedule that impacts the Completion Deadlines as determined in accordance with Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) and Exhibit I (Critical Path Method Progress Schedule).

With respect to Category 2 Events for which the Contractor is excused from performance for a period of time and/or afforded additional time for performance and granted an increase in Contract Price, the amount of the additional compensation shall be based upon the Detailed Cost Analysis set forth in Section 13.4.1.1 (Detailed Cost Analysis).

Without limiting the Contractor's general duty of mitigation, Excusable Delay Events shall be limited to the extent that the adverse effects of the Excusable Delay Events could have been avoided by the exercise of caution, due diligence, or reasonable efforts by the Contractor or any Contractor-Related Entity acting in accordance with the Standard of Care in all circumstances to the extent possible. Furthermore, the mitigation of any delay, whether caused by the Department, Contractor, third-party or an intervening event, is a shared obligation of the Contractor pursuant to the Contract Documents. Contractor's mitigation efforts include, but are not limited to, re-sequencing work activities, redesigning efforts, acceleration, and continuation of work through an otherwise planned shutdown period. The Contractor and Department must address and develop potential mitigation efforts in a timely manner.

If the Contractor seeks relief for any costs that are covered by insurance required to be placed under this Contract, then the Contractor shall only be entitled to seek adjustments to the Baseline Project Schedule and not to any increase in the Contract Price; provided, however, that nothing in this Section 13.3 (Limitations on Excusable Delays) shall be construed to preclude the Contractor's recourse to any insurance policy or coverages.

## 13.4 Procedure for Requesting Delay Costs and Completion Deadlines Alterations

### 13.4.1 Excusable Delay Request

The Contractor shall provide written notification, and such written notice shall be accompanied by supporting analysis, including a time analysis in accordance with Exhibit T (Critical Path Method Progress Schedule), and documentation related to the occurrence of an Excusable Delay Event (the “Excusable Delay Request”), to the Department within fourteen (14) Days following the Department’s issuance of the Department Change Event Notice giving rise to the EDR, or in the event of a delay caused by weather within fourteen (14) days of the Department’s confirmation of the Contractor’s eligibility for a change in the Contract Time in accordance with Exhibit T, and such notice shall be accompanied by supporting analysis, including a time analysis in accordance with Exhibit T, and documentation related to the occurrence of an Excusable Delay Event, (the “Excusable Delay Request”). In the event the Contractor contends believes that the Excusable Delay Event is a Category 2 Event under Section 13.2.2 (Category 2 Events – Excusable Compensable Delays), the Contractor shall submit a detailed cost analysis of the requested additional compensation (the “Detailed Cost Analysis”) as a part of the Excusable Delay Request for applicable delay costs outlined in Exhibit I (Delay Costs). The Excusable Delay Request shall only be considered by the Department provided the Contractor initiated the performed all required actions as requires as set forth under in Section 12.4.1 (Notice of Potential Change Order) and its subsections. If the notice(s) required under Section 12.4.1 are not properly completed and submitted to the Department, the Department is under no obligation to consider any Excusable Delay Request. The Department may, but is not obligated to, consider any EDR submitted outside of the fourteen (14) Day timeframes listed above.

#### 13.4.1.1 Detailed Cost Analysis

The Contractor’s Detailed Cost Analysis submitted with the Excusable Delay Request shall set forth: (1) an initial estimate by the Contractor utilizing the information and formulas to calculate Delay Costs as specified in Exhibit I (Delay Costs) caused by the Excusable Delay Event, if any, (2) a reasonably detailed description of the Excusable Delay Event including all relevant circumstances, (3) a time impact analysis in accordance with Exhibit T (Critical Path Method Progress Schedule) determining the number of Days of delay to the Critical Path of the affected Baseline Schedule, and (4) such supporting documents and other information that may be reasonably necessary for the Department to accurately and effectively consider the Excusable Delay Request.

### 13.4.2 Department Decision

The Department will evaluate the Contractor’s Excusable Delay Request and Detailed Cost Analysis, if any, and shall determine if a change in Contract Time, if any, and/or change in Contract Price, if any, is warranted (the “Department’s Decision”). The Department will measure all time extensions in calendar days. Time Extensions shall be calculated as defined in Exhibit T (Critical Path Method Progress Schedule).

Any compensation that the Contractor may be entitled to will be calculated in accordance with Exhibit I (Delay Costs).

### 13.4.2.1 Department Standards and Requirements

When rendering the Department's Decision, the Department reserves the right to rely on the following Department standards and requirements when determining if the Contractor is entitled to a time extension or increased compensation.

1. The Department will not grant an extension of time for delays incurred from December 1 to April 30 for Construction Work unless the Contractor's Baseline Schedule depicts Work on the Critical Path occurring during this period.
2. The Contractor's plea that insufficient time was specified is not a valid reason for an extension of time.
3. The Department will relieve the Contractor from associated liquidated damages, as specified in Section 13.7.1.1 (Liquidated Damages), if the Department extends the Completion Deadlines under this Section 13.4 (Procedure for Requesting Delay Costs and Completion Deadlines Alterations).

### 13.4.3 Department Notice

After the Department conducts its analysis in Section 13.4.2 (Department Decision) the Department shall inform the Contractor within fourteen (14) Days of the Department's Decision in writing (the "Department Notice"). In the event that the Department determines that the Excusable Delay Event should result in an extension to the Completion Deadlines for the entire Project and/or the Completion Deadlines for an individual Work Package or an increase in the Contract Price, the Department Notice shall instruct the Contractor to submit an RCO requesting a change to the Contract Time and, if applicable, an RCO requesting a change in Contract Price, as a result of delay costs. The Contractor must then submit any RCO recommended in the Department Notice within seven (7) Days of receipt of the Department Notice, in order to process any adjustment(s) based upon the Excusable Delay Event. Any adjustment to any Completion Deadlines as a result of an Excusable Delay Change Order, shall then have the same standing and effect as though it was the original Completion Deadlines. The Contractor RCO required by this section shall meet all requirements of Section 12.4 (Change Orders). To the extent required, the Contractor shall be able to repackage and/or organize the Department's Notice and/or Department's Decision and the Contractor's EDR to meet the requirements of Section 12.4.

If the Contractor fails to deliver the RCO specified in Section 12.4 above within such seven (7) Days of the required period set forth herein, the Contractor shall have irrevocably and forever waived and released any claim or right to relief for the adverse effect attributable to the Excusable Delay Event occurring before the date of actual delivery of an Excusable Delay Request.

In the event the Department has determined that the Excusable Delay Event does not warrant a Change Order, the Contractor may elect to proceed with the Dispute Resolution Procedures pursuant to Section 18.2 (Dispute Resolution), in which case the notices in Section 12.4.1 (Notice of Potential Change Order) shall satisfy the notice requirements of Section 18.2. The Department may proceed to issue a Construction Change Directive in accordance with Section 12.5 (Construction Change Directive).

## 13.5 Non-Excusable Delays

Unless listed in Section 13.2.1 (Category 1 Events – Excusable, Non-Compensable Delays) or Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays), all other causes of delay shall be considered non-excusable delays and shall be non-compensable.

## 13.6 Concurrent Delays

Concurrent delays are separate delays to the Critical Path that occur simultaneously. When a non-compensable delay is concurrent with a compensable delay, the overlapping portion of the delays is considered non-compensable. The Contractor shall be entitled to additional time provided that such event adversely impacted the Completion of the Work on the Critical Path as set forth in the Baseline Schedule and directly impacted the Completion Deadlines. In such event, the Contractor may be entitled to extension of the Completion Deadlines but not to additional compensation.

## 13.7 Failure to Complete On Time

If the Contractor fails to complete the Work by the Completion Deadlines, then the Department, has the option, subject to its discretion, to either permit the Contractor to continue working on the Project or exercise such rights and remedies as set forth in the Contract Documents.

### 13.7.1 Contractor Continued Work

If the Department is satisfied that the Contractor is making reasonable progress and deems it in the best interest of the public, the Department may allow the Contractor to continue in control of the Work, prosecute the Work, at such times, with such forces, and in such locations as the Department requests. The Department shall inform the Contractor of its decision to allow the Contractor to continue with the Work by written notice within three (3) Days after the expiration of the applicable Completion Deadlines. Within seven (7) Days of the receipt of the Department's decision to allow the Contractor to continue the Work, the Contractor shall provide and deliver a written plan for the completion of the Work (the "Continued Work Plan") to the Department.

In the event the Department permits the Contractor to continue the Work beyond the Completion Deadlines, the Department will pay the Contractor for all Work performed on the Project less any Liquidated Damages as described in Section 13.7.1.1 (Liquidated Damages).

The Department's decision to permit the Contractor to continue and complete the Work or any part of the Work after the Completion Deadlines, or after extensions to the Completion Deadlines, will in no way operate as a waiver on the part of the Department of any of its rights and remedies under the PDBC.

#### 13.7.1.1 Liquidated Damages

The Contractor understands and agrees that if the Contractor fails to complete the Work by the Completion Deadlines, then the Department will sustain damages as a result of the untimely completion.

The Contractor further acknowledges and agrees that the damages sustained by the Department in the event that Contractor fails to complete the Work by the Completion Deadlines



are and will be impracticable or extremely difficult to ascertain, due to the circumstances existing as of the date of execution and delivery of this PDBC. Thus, damages arising out of the failure by the Contractor to complete the Work by the Completion Deadlines may arise from or include:

- (i) substantial losses and damages to the Department;
- (ii) Contractor's safety violations;
- (iii) failure to implement and monitor environmental mitigation requirements;
- (iv) unreasonable inconvenience to the public and impacts to private property resulting in claims against Department;
- (v) increased costs for PDBC administration due to the lengthened time span of the Work; and
- (vi) delays and increased costs to Department's Contractors resulting in claims to Department.

The Contractor understands and agrees that (1) if it fails to timely complete the Work by the Completion Deadlines in accordance with this PDBC, the Department will suffer damages, (2) that it is and will be impracticable or extremely difficult to ascertain the actual damages that Department will sustain in the event of and by the reason of such untimely performance of the Work, and (3) the Department has stipulated the amount payable as liquidated damages as stated in Exhibit B (Contract Particulars – Liquidated Damages for Phase 2 Work) (the “Liquidated Damages”). The amount of Liquidated Damages set out in Exhibit B (Contract Particulars – Liquidated Damages for Phase 2 Work) represents a good faith estimate as to the actual potential damages that the Department would incur as a result of the untimely completion of the Work by the Completion Deadlines.

The Liquidated Damages payable under this Section 13.7.1.1 will be payable for each Day the Completion Date exceeds the Substantial Completion Deadline, subject to Section 13.7 (Failure to Complete on Time).

The Department may deduct the sum of Liquidated Damages from any progress payments due to the Contractor for the performance of the Work as a result of these losses and damages as liquidated damages. In the event that the progress payments due to the Contractor are insufficient, the Contractor or its Surety shall pay to Department any deficiency.

The Contractor understands and agrees that any Liquidated Damages imposed on the Contractor are not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of this PDBC. The Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Contractor Default, as specified in Section 19.1.1 (Breach by the Contractor), has occurred.

The accrual of Liquidated Damages will terminate upon the Department's notification to the Contractor of Substantial Completion of the Work.

The fact that the Department has agreed to accept the Liquidated Damages as compensation for its damages associated with the Contractor not completing the Work by the Completion Deadline shall not excuse the Contractor from liability for any other breach of the Contract Documents, including any failure of the Work to conform to applicable requirements set forth in the Contract Documents. Further, the assessment of Liquidated Damages shall not preclude the Department

from exercising its other rights and remedies with respect to the delay including those set forth in Section 19.1.3 (Rights of the Department) for a Default, or elsewhere in this PDBC. The Department will adjust the Completion Deadlines or other contractually mandated dates for delays specified in Section 13.2.1 (Category 1 Events – Excusable, Non-Compensable Delays) and Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays).

### **13.7.1.2 Petition to Suspend Liquidated Damages**

In the sole event where the Project is available for use as intended by the PDBC and the Work remaining will not adversely impact traffic, where the closing of a shoulder shall not be considered an impact on traffic, the Contractor may submit a petition to the Department to suspend the assessment of liquidated damages for a stated period of time.

The Contractor must submit the petition to suspend the assessment of liquidated damages in writing within thirty (30) Days of the assessment of the liquidated damages. This request to suspend the assessment of liquidated damages must be made subsequent to the delivery of the Continued Work Plan. The request must also include at a minimum, the Work left to be completed, the reason(s) the Work is incomplete or on hold, as well as, methods, resources and timelines for pursuing the same. This request must also explain in detail how the Contractor intends to diligently pursue the completion of the Work in order to be accepted by the Department.

### **13.7.1.3 Department Analysis of Contractor Petition**

The Department shall have the right, subject to its discretion, which may be exercised for any reason or no reason whatsoever, to accept the petition. Once accepted, and provided both of the following criteria of this Section 13.7.1.3 (Department Analysis of Contractor Petition) clauses 1 and 2 are met, the Department may suspend the assessment of liquidated damages. The criteria are:

1. The Contractor is diligently pursuing the remaining Work, as specified in the petition.
2. Necessary items are completed and operational to provide an appropriate level of safety to the traveling public. These items include but are not limited to: signs, pavement markings, guardrail, attenuators, signals and RPM's.

## 14 FORCE MAJEURE EVENTS

A “Force Majeure” event means the following events or circumstances, but only (i) to the extent such event or circumstance is beyond the reasonable control of Contractor, (ii) to the extent Contractor shall have taken all reasonable precaution to prevent and minimize the effect of such delays by reason of such event or circumstance if such event or circumstance was actually known in advance to Contractor, and (iii) to the extent such event or circumstance is not caused by the fault or negligence of Contractor or any of its employees, agents or contractors: (a) acts of God, including floods, hurricanes, tornadoes, earthquakes, and landslides; (b) fires or other casualties; (c) governmental moratorium; (d) acts of a public enemy, civil commotions, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation, or national or international calamities; (e) sabotage; and (f) epidemics and pandemics excluding any delays or effects caused or associated with COVID-19.

If the Contractor asserts Force Majeure as an excuse for failure to perform its obligations, then the Contractor must establish that it initiated reasonable and prudent actions to minimize the delay or damages caused by the foreseeable events flowing from the Force Majeure event, substantially fulfilled all non-excused obligations, and that the Department was timely notified of the likelihood or actual occurrence of the Force Majeure event.

In the event of a Force Majeure event, the Contractor shall be entitled only to an extension of the Contract Time associated with the Force Majeure event and not to any adjustment of the Contract Price, as Force Majeure events are classified as Category 1 Events as described in Section 13.2.1 (Category 1 Events – Excusable Non-Compensable Delays). Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) sets forth the terms and conditions applicable to Contractor’s request for an extension of Contract Time associated with a Force Majeure event.

The Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delays associated with a Force Majeure event within the control of the Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of the Contractor.

Notwithstanding the foregoing, the lack of financial resources or any other financial condition affecting Contractor shall not constitute a Force Majeure Event.

## 15 WEATHER

The Contractor shall not be entitled to an extension of time or additional compensation and the Department will not allow any extension of time for weather or resulting conditions beyond those specifically set forth herein in this Section 15 (Weather).

A Weather Day is “a Workday during which weather or seasonal conditions reduced production by more than 50 percent on items of work on the Critical Path.”

If the Contractor believes that it has suffered from Weather Days in excess of the Table T-1 (Weather and Seasonal Conditions Table) of Exhibit T (Critical Path Method Progress Schedule), resulting in a need for a potential change in the Contract Time, then the Contractor shall provide notice, in accordance with Section 12.4.1 (Notice of Potential Change Order), to the Department of the potential need for a change in the Contract Time as a result of weather. After providing written notice in accordance with Section 12.4.1, the Contractor shall perform an analysis to determine the schedule impacts due to weather per Exhibit T. The Contractor shall then proceed with the procedures outlined in Exhibit T and submit the necessary schedules in accordance with Section 1.8, C (Submissions Requirements) of Exhibit T.

The Department will then review the timely submissions by the Contractor required by Section 1.8, C of Exhibit T in accordance with Section 1.8, D (Weather Delay Schedule Review) of Exhibit T.

In the event that the Department determines and confirms the Contractor is eligible for a change to the Contract Time, in accordance with Exhibit T, then the Contractor shall submit an Excusable Delay Request (EDR) and comply with the procedures outlined in Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays).

In the event that the Department disputes the Contractor’s eligibility for a change in the Contract Time, the Contractor may then elect to proceed with Dispute Resolution Procedures set forth under Section 18.2 (Dispute Resolution).

The Department will not consider weekends and holidays as lost Workdays unless the Contractor normally works those days as set forth in the Baseline Schedule or unless the Department directs the Contractor to work those days.

Delays to the Completion Deadlines for Design Work attributable to Weather or seasonal conditions shall not be considered as permitted.

## 16 INDEMNITY

### 16.1 Indemnifications by Contractor

#### 16.1.1 General Provisions

The Contractor shall release, defend, indemnify and hold harmless the State of Ohio, the Department, the Department's consultants, the Department's attorneys, and all their respective officers, agents, and employees, their successors and assigns, and their respective board members, council members, 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, and losses incurred in connection with the enforcement of this indemnity, arising out of, relating to or resulting from the following, (each an "Indemnified Claim") only to the extent that the damages of the Indemnified Claim were caused by the Contractor:

- (1) The breach or alleged breach of any of the Contract Documents by any Contractor-Related entity; and/or
- (2) The failure or alleged failure by any Contractor-Related Entity to comply with the governmental approvals, any applicable environmental laws or other governmental rules (including governmental rules regarding Regulated Materials Management); and/or
- (3) Any actual or 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 Department or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement directly resulting from a method, process or design specifically required by the Contract Documents and by the Department's failure to comply with specific written instructions regarding use provided to the Department by the Contractor; and/or
- (4) The actual or alleged negligent culpable act, error, omission, negligence, breach or misconduct of any Contractor-Related Entity in or associated with performance of the construction Work; and/or
- (5) Any and all claims, actual or alleged, by any governmental entity or taxing authority claiming taxes based on gross receipts, purchases or sales, 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; and/or
- (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 and any other liability to Subcontractors for failure to pay sums due for their work or services, provided that the Department is not in default in undisputed payments owing to the Contractor with respect to such Work; and/or

- (7) Any actual or alleged spill or release or threatened spill or release of a Regulated Material (i) which was brought onto the Site by any Contractor-Related Entity, or (ii) attributable to the negligence, willful misconduct, or breach of contract, Governmental Approval or governmental rule by any Contractor-Related Entity; and/or
- (8) Any actual or alleged 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, or failure of any Contractor-Related Entity to cooperate reasonably with other contractors in accordance therewith; and/or
- (9) Any actual or alleged Contractor Related Entity's breach of or failure to perform an obligation that the Department owes to a third person, including governmental entities, under law or under any agreement between the Department and a third person, where the Department has delegated performance of the obligation to the Contractor under the Contract Documents or (ii) the acts or omissions of any Contractor-Related Entity which render the Department unable to perform or abide by an obligation that the Department owes to a third person, including governmental entities, under any agreement between the Department and a third person, where the agreement was expressly disclosed to the Contractor; and/or
- (10) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any Contractor-Related Entity to comply with the Standard of Care, requirements of the Contract Documents or governmental approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Contractor-Related Entity, or (iii) the actual physical entry onto or encroachment upon another's property by any Contractor-Related Entity.

In addition to the Indemnified Parties, the Contractor will indemnify and hold harmless municipalities, counties, public utilities, any affected railroad or railway company, and any fee owner from whom a temporary Right-of-Way was acquired for the Project for any Indemnified Claim set forth in Section 16.2 (Defense and Indemnification Procedures).

### **16.1.2 Restrictions on Indemnities**

The following restriction shall apply to the indemnities set forth in this Section 16.1:

Contractor's indemnity obligation shall not extend to any Loss, damage or cost to the extent that such Loss, damage or cost was caused by the either acts or omissions of the Department resulting in gross negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

Such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Contractor for the active gross negligence or willful misconduct of the Department, or to relieve the Department of liability for such active gross negligence or willful misconduct.

### **16.1.3 Not Limited by Workers' Compensation, Disability, or Employee Benefits Laws**

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

obligation under this Section 16.1 shall not be limited by a 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.

## **16.2 Defense and Indemnification Procedures**

### **16.2.1 Department's Notice of Indemnified Claim**

If any of the Indemnified Parties receives notice of a claim, action, suit or other matter covered under Section 16.1 (Indemnifications by Contractor) or otherwise has actual knowledge of an Indemnified Claim that it believes is within the scope of the indemnities under Section 16.1, the Department shall by writing as soon as practicable after receipt of the Indemnified Claim: (a) inform the Contractor of the Indemnified Claim, (b) send to the Contractor a copy of all written materials the Department has received asserting such Indemnified Claim and (c) notify the Contractor that should no insurer accept defense of the Indemnified Claim, the Indemnified Party will conduct its own defense unless the Contractor accepts the tender of the Indemnified Claim in accordance with Section 16.2.4 (Tender of Defense to Contractor). As soon as practicable after the Contractor receives notice of an Indemnified Claim or otherwise has actual knowledge of an Indemnified Claim, it shall tender the Indemnified Claim in writing to the insurers under all potentially applicable insurance policies. The Department and other Indemnified Parties also shall have the right to tender such Indemnified Claims to such insurers.

### **16.2.2 Cooperation in the Insured Defense**

If the insurer under any applicable insurance policy accepts the tender of defense, of any claim, action or suit or other matter covered under Section 16.1 (Indemnifications by Contractor) or otherwise covered under such policy, the Department and the Contractor shall cooperate in the defense as required by the insurance policy.

### **16.2.3 Rejection of Defense By Insurer/Reservation of Rights by Insurer**

If the insurer(s) under potentially applicable insurance policy(ies) refuses to provide defense of any claim, action, suit or other matter covered under Section 16.1 (Indemnifications by Contractor) or otherwise, then this Section 16.2.3 shall apply. If the insurer(s) under potentially applicable insurance policy(ies), agree to provide a defense of any claim, action, suit or other matter covered under Section 16.1 or otherwise, that the insurer(s) accept the defense subject to a "reservation of rights," Section 16.2.2 (Cooperation in the Insured Defense) shall apply until such time that the insurer(s) may subsequently deny further defense and coverage for such claim, action, suit or other matter, where upon Section 16.2.4 (Tender of Defense to Contractor) shall apply.

### **16.2.4 Tender of Defense to Contractor**

If the defense is tendered to the Contractor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that the Contractor:

- A. Accepts the tender of defense and confirms that the Indemnified Claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

- B. Accepts the tender of defense but with a "reservation of rights" in whole or in part; or
- C. Rejects the tender of defense based on a determination that it is not required to indemnify against the Indemnified Claim under the terms of this Contract.

### **16.2.5 Acceptance of Tender/Control of Defense by Contractor**

If the Contractor accepts the tender of defense under Section 16.2.4, A (Tender of Defense to Contractor), the Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and the Contractor shall otherwise control the defense of such Indemnified Claim, including settlement, and bear the fees and costs of defending and settling such Indemnified Claim. During such defense:

- (1) The Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and
- (2) The Indemnified Party shall fully cooperate in said defense, provide to the Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and the Contractor concerning such defense.

### **16.2.6 Control of Defense by Indemnified Party**

If the Contractor responds to the tender of defense as specified in Section 16.2.4, B or Section 16.2.4, C (Tender of Defense to Contractor), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such Indemnified Claim, including settlement.

### **16.2.7 Control of Defense if Conflict**

The Indemnified Party may assume its own defense by delivering to the Contractor written notice of such election and the reasons therefore, if the Indemnified Party, at the time it gives notice of the Indemnified Claim or at any time thereafter, reasonably determines that:

- (1) A conflict exists between it and the Contractor which prevents or potentially prevents the Contractor from presenting a full and effective defense;
- (2) The Contractor is otherwise not providing an effective defense in connection with the Indemnified Claim; or
- (3) The Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

### **16.2.8 Reimbursement of Expenses**

If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of an Indemnified Claim for which it is entitled to indemnification, the Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

- A. In the case of a defense conducted under Section 16.2.4, A (Tender of Defense to Contractor) it shall have the right to settle or compromise the Indemnified Claim with



the Contractor 's prior written consent, which shall not be unreasonably withheld or delayed;

- B. In the case of a defense conducted under Section 16.2.4, B, it shall have the right to settle or compromise the Indemnified Claim with the Contractor 's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to the Contractor and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by the Contractor; and
- C. In the case of a defense conducted under Section 16.2.4, C, it shall have the right to settle or compromise the Indemnified Claim without the Contractor 's prior consent (but with prior notice to the Contractor) and without prejudice to its rights to be indemnified by the Contractor.

### **16.2.9 Management of Claim Involving Shared Responsibility**

The Parties acknowledge that while Section 16.1 (Indemnifications by Contractor) contemplates that the Contractor will have responsibility for certain Indemnified Claims and liabilities arising out of its obligations to indemnify, defend and hold harmless, circumstances may arise in which there is no insurance coverage and in which there may be shared liability of the Parties with respect to such Indemnified Claims and liabilities. In such case, where either Party believes an Indemnified Claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the Indemnified Claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of this Section 16.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the Indemnified Claim.

### **16.2.10 Additional Factors Regarding Defense of Suits**

In determining responsibilities and obligations for defending suits pursuant to this Section 16.2, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the Indemnified Claim.

## **16.3 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 an Indemnified Party hereunder.

## **16.4 Contractor Held Harmless Regarding Certain Regulated Materials**

Except for conditions attributable to Contractor-Generated Regulated Materials or the negligence or misconduct of the Contractor or any Component Firm, the Department shall hold

the Contractor and its Subcontractors, Subconsultants, suppliers and the officers, directors, partners, employees, agents, other consultants and Subcontractors and Subconsultants of each and any of them from and against all claims, causes of action, suits, judgments, legal or administrative proceedings, and losses incurred in connection with, arising out of, relating to or resulting from any actual or alleged spill or threatened spill or release of a Regulated Material.

## 17 INSURANCE REQUIREMENTS

### 17.1 Responsibility for Damage Claims and Liability Insurance

The Contractor shall indemnify and save harmless the State and all of its representatives, municipalities, counties, public utilities, any affected railroad or railway company, and any fee owner from whom a temporary Right-of-Way was acquired for the Project from all suits, actions, claims, damages, or costs of any character brought on account of any injuries or damages sustained by any person or property on account of any negligent act or omission by the Contractor or its subcontractors or agents in the prosecution or safeguarding of the Work.

The Contractor shall procure and maintain insurance for liability for damages imposed by law and assumed under this Contract, of the kinds and in the amounts hereinafter provided from insurance companies authorized to do business in the State by the Ohio Department of Insurance. The cost of insurance is incidental to all contract items. Before the execution of the Contract by the Director, furnish to the Department a certificate or certificates of insurance in the form satisfactory to the Department demonstrating compliance with this subsection. Provide an insurance certificate or certificates that show that the Contractor's liability and auto policies coverage are not reduced, restricted, or canceled until 30 days written notice has been given to the Department by the insurer. Mail all certificates and notices to: Administrator, Office of Contracts, Ohio Department of Transportation, 1980 West Broad Street, Columbus, Ohio 43223. Upon request, the Contractor shall furnish the Department with a certified copy of each policy, including the provisions establishing premiums.

Maintain the types and minimum limits of insurance as defined in Section 17.1 (Responsibility for Damage Claims and Liability Insurance).

#### 17.1.1 Workers' Compensation Insurance

Comply with all provisions of the laws and rules of the Ohio Bureau of Workers' Compensation covering all operations under Contract with the Department whether performed by it or its subcontractors. In addition, if a portion of the Work is performed from a barge or ship or requires unloading material from a barge or ship on a navigable waterway of the United States, it is the responsibility of the Contractor to arrange coverage for that portion of the Work under the Longshore and Harborworkers' Compensation Act [33 USC Section 901 *et seq.*] and the Jones Act [5 USC Section 751 *et seq.*] and provide proof of coverage to the Department.

#### 17.1.2 Commercial General Liability Insurance

The minimum limits for liability insurance are as follows:

General Aggregate Limit	\$2,000,000
Products - Completed Operations Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

Obtain the above minimum coverages through primary insurance or any combination of primary and umbrella insurance. In addition, the Department will require the General Aggregate Limit on a per project basis.

Ensure that the Commercial General Liability Insurance policy names the State of Ohio, Department of Transportation, its officers, agents, and employees as additional insureds with all rights to due notices in the manner set out above. Obtain Explosion, Collapse, and Underground (XCU) coverage at the same limits as the commercial general liability insurance policy. Submit proof of insurance, endorsements, and attachments to the Engineer prior to starting the Work.

### **17.1.3 Comprehensive Automobile Liability Insurance**

The Comprehensive Automobile Liability policy shall cover owned, non-owned, and hired vehicles with minimum limits as follows:

Bodily Injury and Property Damage Liability Limit	
Each Occurrence	\$1,000,000

Insurance coverage in the minimum amounts set forth neither relieves the Contractor from liability in excess of such coverage, nor precludes the Department from taking such other actions as are available to it under any other provisions of this Contract or otherwise in law.

Clearly set forth all exclusions and deductible clauses in all proof of insurance submitted to the Department. The Contractor is responsible for the deductible limit of the policy and all exclusions consistent with the risks it assumes under this Contract and as imposed by law.

If the Contractor provides evidence of insurance in the form of certificates of insurance, valid for a period of time less than the period during which the Contractor is required by terms of this Contract, then the Department will accept the certificates, but the Contractor is obligated to renew its insurance policies as necessary. Provide new certificates of insurance from time to time, so that the Department is continuously in possession of evidence that the Contractor's insurance is according to the foregoing provisions.

If the Contractor fails or refuses to renew its insurance policies or the policies are canceled or terminated, or if aggregate limits have been impaired by claims so that the amount available is under the minimum aggregate required, or modified so that the insurance does not meet the requirements of Section 17.1.3 (Comprehensive Automobile Liability Insurance), the Department may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the Contractor and the Department. The Department in its sole discretion may use monies retained pursuant to this subsection to renew or increase the Contractor's insurance as necessary for the periods and amounts referred to above. Alternatively, should the Contractor fail to comply with these requirements, the Department may default the Contractor and call upon the Contractor's Surety to remedy any deficiencies. During any period when the required insurance is not in effect, the Engineer may suspend performance of the Contract. If the Contract is so suspended, the Contractor is not entitled to additional compensation or an extension of time on account thereof.

Nothing in the Contract Documents and insurance requirements is intended to create in the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

### **17.1.4 Professional Liability Insurance**

The DBT must secure and maintain professional liability insurance as specified in Section 17.1.5 (Practice Professional Liability Insurance), for the minimum limits indicated. Policies written on a claims-made basis shall have a retroactive date which covers the period in which the design work began. The insurance policy shall be written by an insurance company authorized to transact business in the State of Ohio and licensed by the Department of Insurance as either admitted or non-admitted insurers and shall be rated A- or better by A.M. Best at the time the contract is executed by the Director.

The DBT must immediately notify the Department in writing if it, the Designer, or any of its subconsultants fails or refuses to renew its Professional Liability Insurance, or Workers' Compensation Insurance. Furthermore, the DBT must notify the Department in writing if it's, the Designer's, or any of its subconsultants' policies are canceled, lapse, terminated or modified so that the insurance does not meet the requirements set forth here-in.

The failure to comply with any of the provisions contained here-in shall be considered a breach of contract.

### **17.1.5 Practice Professional Liability Insurance**

The Contractor providing in-house professional services shall carry Practice Professional Liability Insurance in the amount of not less than \$1,000,000.00 per claim and \$1,000,000.00 annual aggregate to protect against claims arising from the performance of its professional services caused by the negligent acts, errors, or omissions for which the Contractor is legally liable. The coverage shall be maintained for a minimum of 3 years after substantial completion of the project as long as it is commercially available. A certificate of insurance evidencing such coverage must be submitted for the entity providing professional services prior to the execution of the Contract.

When the DBT retains the Designer and subconsultants to provide professional services, the DBT shall ensure that the Designer and subconsultants maintain Practice Professional Liability Insurance in the amount of \$1,000,000.00 per claim and \$1,000,000.00 annual aggregate for a period of 3 years after substantial completion of the project, as long as it is commercially available. A certificate of insurance evidencing such coverage must be submitted for the entity providing professional services prior to the execution of the Contract.

Prior to the payment of the first invoice, the DBT shall provide the Department with one copy of the required insurance policy.

The cost of this policy will be incidental to the Work

## **17.2 Reporting, Investigating, and Resolving Motorist Damage Claims.**

The Contractor and the Department are required to report, investigate, and resolve motorist damage claims according to Section 5.10 (Damage to the Work and Maintenance During Construction) and Section 17.1 (Responsibility for Damage Claims and Liability Insurance) and as follows.

When a motorist reports damage to its vehicle either verbally or in writing to the Contractor, the Contractor shall within 3 days make and file a written report to the District's construction office. In the event that the Department directly receives the motorist's claim, the Department shall within 3 days send the claim report to the Contractor. In the event the Contractor has not agreed to resolve the motorist claim, the District's construction office shall forward the report to the Department's Court of Claims Coordinator in the Division of Chief Legal Counsel who, as a co-insured party, may then contact the Contractor's insurance company and request that the insurance company investigate and resolve the claim. If the Contractor or their insurance company does not resolve the claim in a timely manner, the Department may advise the motorist of the option of pursuing the claim through the Tort Claims Program with the Office of Risk Management in the Department of Administrative Services (claims other than non-injury pothole claims) or in the Ohio Court of Claims (non-injury pothole claims) in accordance with ORC 2743.15.

In the event of a claim filed against the Department with the Office of Risk Management (ORM) or a lawsuit filed against the Department in the Ohio Court of Claims by the motorist, the Department, as co-insured party, may request the Contractor's insurance company to defend this claim or lawsuit and hold the Department harmless according to Section 17.1 (Responsibility for Damage Claims and Liability Insurance).

If the ORM claim or Court of Claims lawsuit claim amount is \$10,000 or less and the Court of Claims Coordinator in the Division of Chief Legal Counsel determines that the Contractor is responsible for the claimed damages then the Department's Court of Claims Coordinator in the Division of Chief Legal Counsel may, after notifying the Contractor, determine that it would be in the best interest of the Department to settle the claim or lawsuit. Any compromise or settlement amount including court costs may be assessed to the Contractor and deducted from the project. The Engineer will notify the Contractor prior to executing the deduction. The Contractor or the Contractor's insurance company may within 14 days appeal the assessment decision of the Court of Claims Coordinator to the District Construction Engineer. The decision of the District Construction Engineer will be made within 14 days. Should the District Construction Engineer decision differ from the Court of Claims Coordinator, the District Construction Engineer will forward the decision to the District Deputy Director or Capital Program Administrator for final determination.

## 18 PARTNERING AND DISPUTE RESOLUTION

### 18.1 Partnering

The Department intends to encourage the use of an extensive partnering program among the Department, the Contractor, its Subcontractors and Subconsultants, 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 with a commercially reasonable profit and completion on schedule, within budget and in accordance with the Contract Documents. The Parties covenant and agree to conduct partnering efforts in accordance with the applicable provisions of the Technical Requirements, including Section 7.4 (Partnering Agreement).

### 18.2 Dispute Resolution

#### 18.2.1 Intent

The provisions of this Section 18.2 shall apply to all Disputes arising out of the Work.

#### 18.2.2 Dispute Resolution Procedures

Except as otherwise provided herein, all Claims or Disputes between the Department and the Contractor relating to the Contract Documents or the Project shall follow the process outlined below in this Section 18.2.2. The Contractor shall continue the Work and adhere to the updated Project Schedule during all Disputes provided that the Department performs its obligations under this Section 18.2 and the Department makes payments to the Contractor in accordance with the PDBC. Subject to the foregoing, no Work, including any Work relating to the underlying Dispute, shall be delayed or postponed pending resolution of any Disputes, except as the Contractor and the Department may otherwise agree in writing.

Consideration of a Dispute and Claim in accordance with the Dispute Resolution Procedures set forth under this Section 18.2 and the exhaustion of all the processes set forth herein with respect to such Dispute or Claim shall be a CONDITION PRECEDENT to the filing of action in the Ohio Court of Claims. Further provided, that the consideration of a Dispute or Claim in accordance with the Dispute Resolution Procedures pertaining to the subsequent Step shall require the exhaustion of the processes pertaining to the preceding Step.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. Do not contact Department personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. Department personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Failure to meet any of the timeframes outlined below or to request an extension will terminate further review of the dispute and serve as a waiver of the Contractor's right to file a claim.

The timeframes for the Department to respond to a Dispute or Claim will be strictly construed and the Department's failure to respond to a Dispute or Claim within the corresponding time periods set forth in this Section 18 shall result in the Department being responsible for those

portions of the Contractor's increased costs incurred in pursuing the Dispute or Claim but only to the extent that (a) the Contractor's incremental increased costs are actually incurred and documented and directly attributable to that specific time period associated with the Department's failure to timely respond to the Dispute in accordance with the provisions of Section 18.2, and (b) the Contractor's increased costs are determined to be justified. Notwithstanding anything to the contrary contained herein, no Dispute shall be considered unless the Contractor has submitted a Notice of Potential Change Order to the Department as outlined in Section 12.4.1 (Notice of Potential Change Order) before beginning the Disputed Work.

The Dispute Resolution Procedures shall consist of the following Steps as set forth herein:

- A. STEP 1: Mitigation and On-Site Determination
- B. STEP 2: District Dispute Resolution Committee (DDRC)
- C. STEP 3: Director's Claims Board Hearing or Alternative Dispute Resolution

### **18.2.3 Matters Ineligible for Dispute Resolution Procedures**

The Dispute Resolution Procedures set forth in this Section 18.2 shall not apply to the following (collectively, "Ineligible Claims"):

- A. Any matters that the Contract Documents expressly state are final, binding, or not subject to Dispute resolution;
- B. Any matters relating to the applicability of indemnities provided under the Contract Documents;
- C. Any Claim for injunctive relief;
- D. Any Claim against an insurance company, including any Subcontractor dispute that is covered by insurance;
- E. Any Claim arising solely in tort;
- F. Any Claim between or among the Contractor, the Department, and a third party in which the third party is a necessary or appropriate party to such Dispute (excluding Claims by Subcontractors or Suppliers that meet the requirements of Subcontractor Demands under Section 18.8 below), including any related Claims between the Parties arising therefrom;
- G. Any Claim or Dispute that is the subject of litigation in a lawsuit filed in court to which the Dispute Resolution Procedures established in this Section do not apply, including any effort to interplead a Party into such a lawsuit in order to make the Dispute Resolution Procedures established in this Section applicable;
- H. Any Claim for, or Dispute based on, remedies expressly created by statute; and
- I. Any Dispute that is actionable only against a Surety.

### **18.2.4 Step 1: Mitigation and On-Site Determination**

The Contractor covenants and agrees that mitigation of any issue that may give rise to a Dispute, whether caused by the Department, the Contractor, third-party, or an intervening event, is a shared legal requirement under this PDBC. Upon the identification of any issue that may



give rise to a Dispute, both Parties covenant and agree to cooperate with each other to undertake mitigation efforts, including but not limited to resequencing Work activities, acceleration, differing design concepts, and submission of materials. Both Parties further covenant and agree to explore mitigation efforts in a timely manner.

Within fourteen (14) Days of receiving the Department's written notice with respect to its decision pertaining to any RCO or EDR pursuant to Section 12.4.1.2 (Department Unable to Mitigate/Resolve Change Event) and Section 13.4.3 (Excusable Delay Change Order), respectively, should the Contractor disagree with said notice, Contractor shall be obligated to deliver written notice (the "Contractor's Early Written Dispute Notice") of its intent to utilize the Dispute Resolution Procedures set forth herein. Contractor's failure to submit an Early Written Dispute Notice within such timeframe shall constitute a waiver of Contractor's rights with respect to such potential Dispute.

In conjunction with the evaluation of any Early Written Dispute Notice, the Department and Contractor shall maintain records of labor, equipment, and materials used on the Work relating to the potential Dispute or any Work made necessary by the circumstances, provided however such records shall not constitute an acknowledgement or representation on the part of the Department that it accepts responsibility for payment relating to the Dispute or the granting of any extension of time with respect to the Dispute.

Within two (2) Working Days of receiving the Contractor's Early Written Dispute Notice, the Department will meet with the Contractor to review all pertinent information and relevant provisions of this PDBC to resolve the issues giving rise to the Dispute. Within fourteen (14) Days of the aforementioned meeting, the Department will issue its written Step 1 decision. If the Step 1 decision does not resolve the corresponding Dispute to the Contractor's satisfaction, then the Contractor may elect to either (i) abandon the Dispute, (ii) elect to escalate the Dispute to Step 2, or (iii) with the Department's consent, pursue an advisory recommendation of the DRB.

## **18.3 District Dispute Resolution Committee (DDRC)**

### **18.3.1 Submission of Step 2 Dispute**

Within fourteen (7) Days of receipt of the Step 1 decision, the Contractor must submit a written request for a Step 2 meeting to the District Construction Engineer (DCE) or the corresponding Dispute will be waived. Upon timely receipt of written notice that any Dispute shall be escalated, the DCE will assign the Dispute a number.

### **18.3.2 District Dispute Resolution Committee (DDRC) Composition**

The DDRC shall be comprised of the District Deputy Director, District Construction Engineer and the

Capital Program Administrator or designees (other than the project personnel involved in the dispute). In the event a Dispute pertains to design-related issues, the DDRC may include the District Design Engineer in addition to the four primary members of the DDRC.

### 18.3.3 Dispute Documentation and Rebuttal

The procedure for consideration of Disputes by the DDRC shall be as follows: within fourteen (14) Days of submitting Contractor's written request for the escalation to Step 2, the Contractor shall submit three (3) complete copies and one electronic copy of the Dispute documentation to the DCE, which shall contain the following information (collectively, the "Dispute Documentation"):

- A. Identification of Project, Contractor, and if applicable Subcontractors or Subconsultants relevant to the Dispute.
- B. Identification of each item for which additional compensation and/or time is requested, along with the requested compensation/time.
- C. Detailed narrative of the disputed work or portion of the Project, including the dates of the disputed work and the date of the initial notice to the Department.
- D. References to the applicable provisions of the Contract Documents relevant to the Dispute.
- E. Supporting documentation to support any request for additional compensation.
- F. Include the dollar amount of additional compensation and length of contract time extension requested.
- G. For any Dispute pertaining to Contract time or actual or constructive acceleration provide a detailed schedule analysis that includes the updated Baseline Project Schedule immediately preceding the occurrence of the Dispute. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's Dispute.
- H. Copies of relevant correspondence and pertinent documents.

Within fourteen (14) Days of receipt of the Contractor's Dispute Documentation, the Department will provide the Contractor and the DDRC with all documentation it intends to rely on at the DDRC meeting to rebut the Contractor's Dispute.

### 18.3.4 DDRC Meeting

Within fourteen (14) Days after the date that the Department submits the rebuttal information, the DDRC will conduct a Step 2 meeting with Contractor personnel who are authorized to resolve the Dispute. The DDRC will issue a written Step 2 decision to the Contractor and the Department within 14 Days of the meeting. If the Dispute is not resolved, the Contractor may either (i) abandon the Dispute, (ii) escalate the Dispute to Step 3, or (iii) Alternative Dispute Resolution (ADR).

## 18.4 Reserved

## 18.5 Alternative Dispute Resolution (ADR)

In lieu of the Director's Claim Board hearing, the parties may opt to proceed through an Alternative Dispute Resolution (ADR) Process. The parties will then choose either mediation in the manner in which those methods are practiced by the Department and allowed by law.

The Dispute Resolution Coordinator will coordinate the agreement of the parties to the ADR method, and the selection of a neutral third-party or technical expert. The fees of the neutral third-party or technical expert will be shared equally between the Department and the Contractor. The Dispute Resolution Coordinator will obtain a written agreement, signed by both parties, that establishes the ADR process. The neutral third-party or technical expert will have complete control of the claim upon execution of the ADR agreement.

Prior to any ADR meeting, certify the claim in writing and under oath using the following certification:

"I, (Name and Title of an Officer of the Contractor) certify that this claim is made in good faith, that all supporting data is accurate and complete to the best of my knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (Contractor Company name) believes the Department is liable"

## 18.6 Limitations on Consequential Damages

Under no circumstances shall the Contractor (or any Subcontractor) be entitled to consequential damages arising out of the performance (or failure to perform) of the Department, and the Contractor releases the Department from any such liability.

Consequential damages shall be recoverable by the Department only in the following limited categories:

1. Any component of the Liquidated Damages figure provided in Exhibit B (Contract Particulars) that may be consequential in nature.
2. To the extent recoverable from insurance by the Contractor, any damage that may be deemed "consequential" but is nonetheless covered by insurance purchased by the Contractor or others on the Project, or for which this PDBC requires the Contractor to purchase insurance coverage, is not waived up to the limits of such coverage. However, any consequential damages outside the insurance coverage limits required by this PDBC are waived except as provided in this Section 18.5.

The Department does not waive consequential damages for any injuries suffered by the Department due to fraud, intentional misconduct, or criminal acts by the Contractor or entities for whom the Contractor is responsible.

The term "consequential damages" shall mean those special, indirect, or incidental damages that do not flow directly and immediately from an injurious act but that result indirectly from an action or failure to act, such as revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, loss of bonding capacity, lost opportunity, claims of taxpayers, and other indirect damage. Liabilities, costs, and losses incurred by either

party due to failure by the other to procure and maintain insurance policies required hereunder, as well as any amounts that this PDBC expressly states are to be reimbursed from one party to the other (including interest, late charges, fees, penalties, and similar charges), shall be considered direct damages. This provision shall apply to limit liability under actions brought under any theory of law, including actions in tort (including negligence) as well as in contract.

## 18.7 Statute of Limitations

The statute of limitations for any breach of this PDBC shall be consistent with Ohio statutes. This provision shall not relieve the Contractor of its obligation to timely comply with all notice provisions for claims, nor shall it alter the requirements of the Contractor to comply with Sections 18.3.1-18.3.3 or the administrative claims process in this Section 18.

## 18.8 Additional Requirements for Subcontractor Demands

For purposes of this Section 18.8, a “Subcontractor Demand” means any claim by a Subcontractor or Supplier of any tier against the Contractor that results directly from Work provided by any such Subcontractor under the Contract Documents. If the Contractor pursues a Claim against the Department that includes a Subcontractor Demand, the following additional conditions shall apply:

1. The Contractor shall identify clearly in all submissions pursuant to this Section 18.8 that portion of the Claim that involves a Subcontractor. Any Claim under this Section 18.8 involving Subcontractor Demands shall be considered incomplete if it is not accompanied by such analysis and the following documents and certificates.
2. The Contractor shall include, as part of its submission pursuant to this Section 18.8, a certification in a form provided by or acceptable to the Department 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 Demand asserting the factual and contractual basis of the Subcontractor Demand, justification as to entitlement, and amount of money and time sought.
3. The Contractor shall also provide written confirmation that:
  - a. The Contractor has reviewed the basis of the Subcontractor Demand and has determined that all such Subcontractor claims or demands are justified as to entitlement and amount of money and time requested, and has reviewed the adequacy of all back-up documentation;
  - b. The Subcontractor Demand has been prepared and submitted in accordance with the terms of the Contract Documents and contains all information required by the Contract Documents; and the Contractor has no reason to believe and does not believe that the factual basis for the Subcontractor Demand is falsely represented.
  - c. The Contractor shall verify that the Subcontractor has certified the Subcontractor's portion of the claim.
4. At any informal hearing on a Dispute that includes one or more Subcontractor Demands, the Contractor shall require that each Subcontractor that is involved in the Dispute make available an authorized representative with actual knowledge of the facts underlying the Subcontractor Demand to assist in presenting the Dispute and to answer questions raised by the Department's representatives. Such Subcontractor assistance shall be limited to presenting the specific facts underlying the

Subcontractor Demand and the answering of questions raised by the Department and Contractor's Representative.

5. Failure of the Contractor to assert timely and completely a Subcontractor Demand as part of any Claim and 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 Department by the Contractor on account of such Subcontractor Demand.
6. The Contractor shall require in all Subcontracts that all Subcontractors and Suppliers of any tier:
  - a. Agree to submit Subcontractor Demands to the Contractor in a proper form and in sufficient time to allow processing by the Contractor in accordance with this Section 18.8;
  - b. Agree to be bound by the terms of this Section 18.8 to the extent applicable to Subcontractor Demands;
  - c. Agree that, to the extent a Subcontractor Demand is involved, completion of all steps required under this Section 18.8 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law; and
  - d. Agree that the existence of the Dispute Resolution Procedures for Disputes involving Subcontractor Demands shall not be deemed to create any claim, right, or cause of action by any Subcontractor or Supplier against the Department.

Notwithstanding the foregoing, this Section 18.8 shall not apply to the following:

- a. Any Subcontractor claim between Subcontractors and the Contractor that is not actionable by the Contractor against the Department;
- b. Any Subcontractor Demand or claim based on remedies expressly created by statute;
- c. Any Subcontractor Demand that is covered by insurance; or
- d. Any Subcontractor claim that is actionable only against a Surety.

## 18.9 Cooperation

The Parties hereby covenant and agree to diligently cooperate with one another and to perform such acts as may be necessary to obtain a prompt and expeditious resolution of any Claim or Dispute.

## 18.10 Participation in Other Proceedings

The Contractor agrees that, at the Department's request, the Contractor will allow itself to be joined as a participant in any arbitration, court, or other legal proceeding that involves the Department and any other third-party participant as relates to the Project. This provision is for the benefit of the Department and not for the benefit of the Contractor or any other Person.

## 18.11 Waiver of Non-Monetary Relief

Except as to relief otherwise provided for in this PDBC, to the maximum extent permitted under applicable Law, the Contractor shall have no right to seek, shall not seek, and irrevocably waives and relinquishes any right to, non-monetary relief against the State, and in particular the Department and any of its respective employees, officers, directors, commissioners and

officeholders, agents, representatives, consultants, attorneys, successors, and permitted assigns.

## 19 BREACH AND DEFAULT

### 19.1 Breach and Contractor Default

#### 19.1.1 Breach by the Contractor

The Contractor shall be in breach under this PDBC upon the occurrence of any one or more of the following events or conditions (each a “Contractor Breach”):

- (1) The Contractor fails to promptly begin the Work under the Contract Documents following issuance of a Notice to Proceed authorizing such Work;
- (2) The Contractor fails to perform the Work with sufficient resources to ensure the prompt completion thereof;
- (3) The Contractor fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected Materials or Nonconforming Work, or fails to remove and replace workers as directed by the Department;
- (4) The Contractor discontinues or suspends the prosecution of the Work (exclusive of Work stoppage due to (i) termination by the Department, (ii) compliance with stoppage requirements due to Regulated Materials, (iii) a Force Majeure Event; (iv) suspension by the Department, or (v) nonpayment by the Department 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 Department to do so or (if applicable) after cessation of the event preventing performance;
- (6) The Contractor materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, warranty, obligation, term or condition required to be observed or performed by the Contractor under the Contract Documents; provided that such actions shall not be considered a Contractor Default if they are the direct result of the Department 's breach of its obligation to make payments to the Contractor;
- (7) The Contractor fails to obtain, provide and maintain in full force and effect any insurance or Bonds (including the Payment Bond and Performance Bond) as and when required under this PDBC for the benefit of the Department or other relevant parties, or fails to comply with any requirement of this PDBC pertaining to the amount, terms or coverage of the same;
- (8) The Contractor makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of the Contract Documents or any right or interest therein;
- (9) Subject to the Department paying the Contractor pursuant to Section 11 (Contractor’s Compensation), the Contractor fails, absent a valid Dispute, to make payment when due for labor, Equipment or Materials in accordance with its agreements with Subcontractors, Subconsultants and/or Suppliers and applicable Law, fails to comply with any law or governmental approvals; or fails reasonably to

comply with the instructions of the Department consistent with the Contract Documents;

- (10) The Contractor fails to discharge or obtain a stay within 10 Days of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order or the filing of an appeal with respect to such judgment or order shall be deemed an effective stay);
- (11) The Contractor does not comply with public safety and public convenience requirements of this PDBC or fails to correct any safety hazards promptly;
- (12) The Contractor or any Major Participant in which the Contractor holds an ownership interest 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;
- (13) Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against the Contractor or any Major Participant in which the Contractor holds an ownership interest and not dismissed within 60 Days;
- (14) Any representation or warranty made by the Contractor in the Contract Documents or in any certificate, schedule, instrument or other document delivered as part of the Proposal or pursuant to the Contract Documents shall have been false or materially misleading when made or becomes inaccurate in any material respect during the Contract Term; or
- (15) The Contractor is a party to fraud in any way relating to the Project.

### **19.1.2 Right to Cure**

The Department shall notify the Contractor and the Sureties of any event constituting a Contractor Breach under this PDBC. Upon receipt of the notice of any Contractor Breach the Contractor shall have ten (10) Days from receiving the Department's Initial Notice to send confirmation that the Contractor will cure the corresponding Contractor Breach within thirty (30) Days of the date of such confirmation notice; provided however, upon a showing of good cause by the Contractor that such cure will require more than thirty (30) Days, the Department may elect, in its sole and reasonable discretion, to extend such cure period for additional time; provided further that, if the Department determines that a condition caused by a Contractor Breach poses an immediate and imminent danger to public health or safety, the Department may, without prior notice and without awaiting the expiration of any cure period, rectify the condition at the Contractor's sole cost and expense. The Department's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Provided that the Department is not in material default of its obligations as set forth in Section 19.2 (Department Defaults), which such default, the Department has not commenced to cure as set forth in Section 19.2, then the failure of the Contractor to cure the Contractor Breach in accordance with this Section shall empower the Department to declare a Contractor Default and pursue any or all of the remedies set forth under Section 19.1.3 below.

### 19.1.3 Rights of the Department

Upon the Department's declaration of a Contractor Default in accordance with Section 19.1.2 (Right to Cure) herein, then, in addition to all other rights and remedies provided by law or equity or available under this PDBC or otherwise, including the rights to recover liquidated damages and to seek recourse against the Payment Bond and Performance Bond, and/or other performance security, the Department shall have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing the Contractor or Sureties from any of their respective obligations, and the Contractor shall have the following obligations (as applicable):

- (1) The Department may order the Contractor to suspend or discontinue the Work or any portion of the Work;
- (2) The Department may terminate this PDBC or a portion thereof;
- (3) If and as directed by the Department in writing, the Contractor shall withdraw from the Project Site; and shall remove such Materials, Equipment, tools and instruments used by, and any debris or waste materials generated by, any Component Firm entity in the performance of the Work;
- (4) The Contractor shall deliver or cause to be delivered to the Department exclusive possession of the Project Site and any or all of the Contractor's facilities located on the Project Site as well as any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings and other documents, that the Department deems necessary for completion of the Work;
- (5) If the Department requests the Contractor to assign to the Department specific Subcontracts, the Contractor shall execute such documents as may be required to confirm the assignment of those Subcontracts to the Department and shall terminate, at its cost, all other Subcontracts;
- (6) The Department may deduct from any amounts payable by the Department to the Contractor such amounts payable by the Contractor to the Department, including Liquidated Damages or other damages payable to the Department under the Contract Documents;
- (7) The Department shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required;
- (8) The Department, without incurring any liability to the Contractor, shall have the rights (i) to take the performance of all or a portion of the Work from the Contractor and enter into an agreement with another entity for the completion of such Work; or (ii) to use such other methods, as in the opinion of the Department, will be required for the completion of the Project;
- (9) If the Department exercises any right to perform any obligations of the Contractor, in the exercise of such right the Department may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as the Department deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain Materials and Equipment as may be required for the purpose of completing such



work; (iii) execute all applications, certificates and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole and reasonable discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work; and/or

- (10) The Department shall also have the right, but not the obligation, to require the Contractor to comply with the obligations in Section 21.2 (Contractor Responsibilities Upon Termination).

## **19.1.4 Opportunity for Sureties to Complete Work after Contractor Default**

### **19.1.4.1 Rights of Sureties Prior to Department's Termination of PDBC**

Prior to the Department's termination of this PDBC in whole or in part after a Contractor Default, the Department shall deliver written notice of such Contractor Default to the Surety or Sureties holding the Performance Bond (or, the Lead Surety on behalf of such Sureties). After receiving the foregoing notice from the Department, the Surety or Sureties (or, the Lead Surety on behalf of such Sureties) may elect within ten (10) Days of receiving the Department's notice to notify its or their intention to enter upon the Project Site and complete the remaining Work under this PDBC. In the event the Surety or Sureties give the Department notice of their election to proceed, then, subject to an extension given by the Department for good cause, the Surety or Sureties shall be permitted thirty (30) Days from the date of the Department's receipt of such election to enter upon the Project Site and commence the remaining Work under this PDBC. If the Surety or Sureties (or the Lead Surety on behalf of such Sureties) elects or elect to undertake the Work in accordance with the PDBC then the Department shall perform its PDBC obligations, including but not limited to any and all payment obligations under this PDBC, in favor of Surety or Sureties in place and instead of Contractor.

### **19.1.4.2 Proposal of Surety or Sureties Use of Defaulting Contractor**

The Surety or Sureties holding the Performance Bond (or the Lead Surety on behalf of such Sureties) shall have the option, in the Surety's or Sureties' reasonable discretion, subject to the review and approval of the Department, which approval shall not be unreasonable withheld or delayed, to utilize the defaulting Contractor and/or by and through any or all of the Contractor's Joint Venture constituent entities, their parents, subsidiaries, or affiliates, and/or by and through any or all of the Major Participants and Component Firms (the "Defaulting Contractor") to complete the remaining Work under this PDBC in accordance with Section 19.1.4.1 above. At the time of the Surety's or Sureties' determination to use determination to use the Defaulting Contractor to complete the remaining Work the following factors, in addition to the interests of the Department and other related considerations, shall be considered in determining the reasonableness of the Surety's or Sureties' utilization of the Defaulting Contractor: (a) the underlying basis for the Contractor Breach that led to the Contractor Default; (b) the Defaulting Contractor's overall performance of the Work through the date of the Defaulting Contractor's Contractor Default; (c) the Defaulting Contractor's record in achieving completion of the Work in accordance with the Project Schedule; (d) the Defaulting Contractor's Organization and Key Personnel being proposed to complete the Work; (e) the Defaulting Contractor's management of the Work in compliance with the requirements set forth in the Contract Documents; (f) the Defaulting Contractor's ability to complete the remaining Work in a timely and expeditious manner in accordance with the Contract Documents; (g) the Defaulting Contractor's working relationship with its Subcontractors, of all tiers, and Suppliers; (h) the Department's assessment of the Contractor's competence and qualifications to complete the remaining Work in

accordance with the Contract Documents in the best interests of the Department and the Project; and (i) the Contractor's prequalification in the appropriate State for the scope of the remaining Work to be completed.

#### **19.1.4.3 Department's Performance After Election of Sureties to Perform Remaining Work**

If the Surety or Sureties holding the Performance Bond (or the Lead Surety on behalf of such Sureties) elect to undertake the Work in accordance with this PDBC, then, subject to the performance of all of the material obligations of the Contractor under this PDBC, the Department shall perform its PDBC obligations, including but not limited to any and all payment obligations under this PDBC, in favor of the Surety or Sureties in place and instead of Contractor; provided however, if the Surety or Sureties elect to undertake the remaining Work under accordance with this PDBC and then fail or refuse to so complete such remaining Work, any additional costs reasonably incurred by the Department as a result of such failure or refusal shall be computed by the Department and become the liability of such Surety or Sureties, which is not limited by the amount of the Performance Bond; provided further, that if the Surety fails to pay such amount, the Department shall certify to the attorney general, who shall proceed to collect such additional costs from the Surety or Sureties and the amount so collected shall be paid into the State treasury to the credit of the fund from which the excess cost was originally paid.

#### **19.1.4.4 Re-Procurement of Remaining work**

If the Surety or Sureties holding the Performance Bond elect not to proceed with performing the remaining Work, either by notifying the Department of such non-election or not providing notice within the ten (10) day period, or if after making an election to complete the remaining Work under this PDBC, the Surety or Sureties (a) do not carry such remaining Work forward with reasonable progress, or (b) improperly perform, abandon or fail to complete the remaining Work covered by this PDBC, then the Department may proceed with procuring other parties to perform the remaining Work covered by this PDBC in accordance with the requirements applicable to the original bids, or proceeding with any other remedy or course of action available to the Department under this PDBC.

#### **19.1.5 Liability of Contractor and Surety/Occurrence of a Contractor Breach**

If a Contractor Breach has occurred and the Contractor has not cured such Contractor Breach within the corresponding timeframes set forth herein, and the Department has declared a Contractor Default in accordance with Section 19.1.3 (Rights of the Department) herein, then the Contractor shall be liable to the Department in accordance with the terms and conditions of the PDBC, and the Sureties shall be jointly and severally liable to the Department in accordance with the terms and conditions of the Performance Bond for all costs reasonably incurred by the Department or any party acting on the Department's behalf in completing the Work or having the Work completed by another entity (including any re-procurement costs and, throw away costs for unused portions of the completed Work), provided that under no circumstances, except as otherwise considered by ORC 5525.17, shall the liability of the Sureties exceed the penal sum of the Performance Bond, which shall remain the absolute limit of the liability of Surety. Notwithstanding anything to the contrary in the PDBC, the penal sum of the Performance and Payment Bonds shall not be increased under any circumstances without the written consent of the Contractor and its Sureties in the form of an executed Rider to the Bonds.

Upon the occurrence of a Contractor Default, subject to Department's obligations to Surety under Section 19.1.4 (Opportunity for Sureties to Complete Work after Contractor Default) herein, including but not limited to Department's obligations to make payment to Surety, the Department shall be entitled to withhold all or any portion of further payments to the Contractor until such time as the Department is able to determine how much (if any) remains owing to the Contractor after all sums due and owing to Sureties pursuant to Section 19.1.4 herein have been paid. For the avoidance of doubt, the foregoing solely addresses the priority of payment by the Department. Promptly upon such determination, the Department shall notify the Contractor in writing of the amount, if any, that the Contractor shall pay the Department or that the Department shall pay the Contractor with respect thereto. All costs and charges incurred by the Department, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any moneys due or which may become due to the Contractor. If such expense exceeds the sum which would have been payable to the Contractor under the PDBC, then the Contractor and the Sureties if, Sureties did not elect to perform pursuant to Section 19.1.4 herein, shall be liable and shall pay to the Department the amount of such excess.

Notwithstanding anything in this Section 19 to the contrary, in the event there are multiple Sureties holding an interest in the Performance Bond, then such Sureties may elect to designate one Surety as the "Lead Surety" under the terms of the Performance Bond, after which the Department shall be entitled to (i) send any notices required hereunder or under applicable Law to such Lead Surety in lieu of the other sureties, (ii) rely on the responses or lack of responses of such Lead Surety in response to any Department notice pertaining to a Contractor Breach, and (iii) accept the actions and commitments of such Lead Surety pursuant to Section 19.1.4 herein as being made on behalf of all other Sureties. For avoidance of doubt, the designation of any Surety as "Lead Surety" shall not reduce the joint and several obligations of any other Surety holding an interest in the Performance Bond to perform in accordance with the terms and conditions of the Performance Bond or this PDBC, provided further, that the Performance Bond's designation of a "Lead Surety" shall constitute a waiver of any non-Lead Surety's rights to receive any notices from the Department.

### **19.1.6 Assurance of Future Performance**

It is recognized that if a Contractor Breach under Section 19.1.1 (Breach by the Contractor) clauses 12 or 13 occurs, such event could impair or frustrate the Contractor's performance of the Work. Accordingly, upon the occurrence of any such event, the Department is entitled to request the Contractor, or its successor in interest, to provide adequate assurance of future performance in accordance with the terms and conditions hereof. The Contractor shall comply with such request within fifteen (15) Days of the Department's delivery of the request. In the case that the Contractor does not comply with the Department's request, the Department may terminate the PDBC in accordance with Section 21 (Termination for Convenience). Pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Department shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from the Department's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the PDBC, the Payment Bond and the Performance Bond.

### **19.1.7 Alternative to Terminating the Contract and Completing the Work**

In lieu of the provisions of this Section 19 for terminating this PDBC and completing the Work, the Department 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 this PDBC. No claim under this provision will be allowed by the Contractor for prospective profits on, or any other compensation relating to, Work uncompleted by the Contractor.

### **19.1.8 Termination Deemed to Constitute a Termination for Convenience**

If this PDBC is terminated for grounds which are later determined not to justify a termination for Contractor Default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 21 (Termination for Convenience).

### **19.1.9 Damages Resulting From Contractor's Breach or Failure to Perform**

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

### **19.1.10 Cumulative Remedies**

The exercise or beginning of the exercise by the Department of any one or more rights or remedies under this Section 19 shall not preclude the simultaneous or later exercise by the Department of any or all other rights or remedies, each of which shall be cumulative.

### **19.1.11 Continued Liability of Contractor and Surety**

The Contractor and Surety holding the Performance Bond shall not be relieved of liability for continuing Liquidated Damages on account of an Event of Default by the Contractor hereunder or by the Department's declaration of a Contractor Default, or by actions taken by the Department under this Section 19.

## **19.2 Department Defaults**

### **19.2.1 Contractor's Right to Stop Work If Undisputed Payment Is Not Made**

The Contractor shall have the right to stop Work if the Department fails to make an undisputed payment due under this PDBC within 30 Days after receipt of notice of nonpayment. Any such Work stoppage shall be considered a suspension. The Contractor shall not have the right to terminate this PDBC for default as the result of any failure by the Department to make an undisputed payment due hereunder, but the Contractor shall have the right to declare a termination for convenience under Section 21 (Termination for Convenience) upon meeting the requirements of Section 21.

### **19.2.2 Notice and Opportunity to Cure Other Types of Department Breaches**

In the event of any breach of this PDBC by the Department other than a failure to make payments to the Contractor, the Contractor shall deliver written notice describing the breach and providing the Department with 30 Days to cure any such breach from the date it receives the corresponding notice; provided that if such breach is capable of cure but by its nature cannot be cured within 30 Days, the Department shall have a reasonable period of time as may be reasonably necessary under the circumstances to cure the breach so long as the Department 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 (as the same may be extended) expires without the Department's cure of the breach.

## 20 SUSPENSION OF WORK

### 20.1 Department Suspension for Convenience

The Department may, at any time and for any reason, by written notice, direct the Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that the Department deems appropriate for the convenience of the Department.

In the event that any Department ordered suspension of Work is not due to a breach of Contractor's obligations under this PDBC and Contractor asserts that it is otherwise entitled to (i) reimbursement of its direct costs incurred as a result of the Department ordered suspension of Work and/or (ii) an extension of Contract Time as a result of any Department ordered suspension of Work, then the Contractor may, pursuant to Section 12.4.1 (Notice of Potential Change Order), submit one or more NPCOs to the Department for consideration. Thereafter, provided the Department elects to advance any NPCO and approve an RCO or an EDR, any change in the Contract Price and/or Contract Time due to any Department ordered suspension of Work shall be finalized in accordance with the procedures in Section 12 (Contract Changes) and/or Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays).

### 20.2 Department Suspension for Cause

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

- (1) Correct conditions unsafe for the Project personnel or general public;
- (2) Comply with any Governmental Approval, Law, or otherwise carry out the requirements of the PDBC;
- (3) Carry out orders of the Department; or
- (4) Comply with the NEPA Documents and other environmental requirements or requirements for developing and implementing the BIM Execution Plan.

### 20.3 Contractor Responsibilities during Suspension

The Contractor shall promptly comply with any written suspension order under this Section 20. The Contractor shall promptly recommence the Work upon receipt of written notice from the Department directing the Contractor to resume Work. 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 Department, the Contractor shall continue to be responsible for traffic control in accordance with Section 19 (Traffic Control) of Exhibit E (Technical Requirements) and for maintenance during construction in accordance with Section 5.11.1 (Maintenance During Construction). If only part of the Work is suspended, for the Work not suspended, the Contractor shall be entitled to payment for the costs allocated thereto as set forth in the cost and resource loaded schedule per Exhibit T (Critical Path Method Progress Schedule).

## 20.4 Contractor Suspension of Work

The Contractor will have the right to suspend performance of the Work only in the event that:

- (1) The Department fails to make any undisputed payment by its due date in accordance with the Contract;
- (2) The Contractor provides written notice of such non-payment and the Department fails to make such payment within 30 Days following receipt of the Contractor's notice;
- (3) The Contractor provides subsequent written notice that it will suspend performance of the Work unless such payment is made within 30 Days following such subsequent notice; and
- (4) The Department fails to make such payment within 30 Days following receipt of such subsequent notice from the Contractor.

Such right will not be available to the Contractor if there is a good faith Dispute concerning the Contractor's entitlement to the payment under the Contract.

## 21 TERMINATION FOR CONVENIENCE

### 21.1 Notice of Termination

The Department may terminate, at any time, the PDBC and the performance of the Work by the Contractor for its own convenience if the Department determines, in its sole discretion, that a termination is in the best public, State, or national interest. The Department shall notify the Contractor of its decision to terminate by delivering to the Contractor a written Notice of Termination specifying the extent of termination, its effective date and any remaining Work necessary to place the Project in an acceptable condition, as determined by the Department in its sole discretion. Termination of the PDBC shall not relieve any Surety of its obligation for any claims arising out of the Work performed. Termination may occur before or after Work has begun.

### 21.2 Contractor Responsibilities Upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by the Department, the Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting amounts due under this Section 21:

- (1) Stop Work as specified in the notice.
- (2) Communicate to all affected Subcontractors and Subconsultants such notice of termination and that their Subcontracts are not to be further performed unless otherwise authorized in writing by the Department.
- (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.
- (4) Terminate all Subcontracts to the extent that they relate to the Work terminated.
- (5) Assign to the Department in the manner, at the times, and as and to the extent directed by the Department, all of the right, title, and interest of the Contractor under the Subcontracts so terminated, in which case the Department will have the right, in its sole discretion, to accept performance, settle, or pay any claims arising out of the termination of such Subcontract.
- (6) Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of the Department, to the extent it may be required, which approval or ratification shall be final.
- (7) Provide the Department with an inventory list of all materials previously produced, purchased, or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder, which is either in the process of development or previously completed but not yet delivered to the Department, and such other information as the Department may request; and transfer title and deliver to the Department, in the manner, at the times, and as and to the extent, if any, directed by the Department of:
  - a. Fabricated or unfabricated parts, the Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated; and



- b. The Design 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 Department 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 reasonably necessary, or that the Department may direct, for the safety, protection, and preservation of:
  - a. The public, including public and private vehicular movement;
  - b. The Work; and
  - c. The Equipment, machinery, Materials, and property related to the Contract Documents that is in the possession of the Contractor and in which the Department has or may acquire an interest.
- (10) As authorized by the Department in writing, use its best efforts to sell, in a manner at the times, to the extent, and at the price or prices directed or authorized by the Department, any property types referred to in Section 21.2(7); provided however, that the Contractor:
  - a. Is not required to extend credit to any purchaser; and
  - b. May acquire the property under the conditions prescribed and at prices approved by the Department.
- (11) The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Department under the Contract Documents or paid in any other manner directed by the Department.
- (12) If requested by the Department, withdraw from the portions of the Project Site designated by the Department and remove such materials, equipment, tools and instruments used by, and any debris or waste generated by, the Contractor and any Subcontractor in the performance of the Work as the Department may direct.
- (13) Assign and transfer to the Department all of the Contractor's right, title and interest in and to the following: (a) all Design Documents, completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, surveys, and other documents and information pertaining to the design or construction of the terminated Work; (b) all samples, borings, boring logs, geotechnical data and similar data and information relating to the terminated Work; (c) all books, records, reports, test reports, studies and other documents of a similar nature relating to the terminated Work; and (d) all other work product used or owned by the Contractor or any Contractor-Related Entity relating to the terminated Work.
- (14) Take other actions directed by the Department.

## 21.3 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 shall end when the Department certifies that those materials have been stored in the manner and at the locations directed by the Department.
- (2) The Contractor's responsibility for damage to materials purchased by the Department subsequent to the Notice of Termination shall end when title and delivery of those materials has been taken by the Department.

Immediately after the Department determines that the Contractor has completed the Work directed to be completed in accordance with the Notice of 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. Subsequent to the determination that all materials have been stored in the manner and at the locations directed by the Department, further handling of such materials shall be the responsibility of the Department.

## 21.4 Negotiated Termination Settlement

### 21.4.1 Settlement Proposal

After receipt of a Notice of Termination, the Contractor shall submit a final termination settlement proposal to the Department in the form and with the certification prescribed by the Department. The Contractor shall submit the proposal promptly, but no later than 90 Days from the effective date of termination, unless the Contractor has requested a time extension in writing within such 90-Day period and the Department has agreed in writing to allow such an extension. The Department 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 Department may determine, on the basis of information available to it, the amount, if any, due to the Contractor because of the termination, and shall pay the Contractor the amount so determined.

### 21.4.2 Negotiated Settlement Amount

The Contractor and the Department may agree, as provided in Section 21.3 (Responsibility After Notice of Termination) upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of termination of Work pursuant to this Section 21. Such negotiated settlement may include a reasonable allowance for profit solely on Work that has been completed as of the termination date and subsequently accepted by the Department but not an amount for lost, anticipated or unearned profit or other costs disallowed in Section 21.5.2 (Maximum Compensation). 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 cost of the Work not terminated. Upon determination of the settlement amount, the PDBC will be amended accordingly, and the Contractor will be paid the agreed amount. If parties are unable to reach a settlement on all termination costs, compensation for those costs not agreed upon will be determined in accordance with Section 21.5 (Determination of Termination Amount if Negotiations Fail). Unless otherwise agreed to by the parties as a part of a negotiated settlement, the Department's execution and delivery of any settlement 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 Department's rights under the Payment and Performance Bonds and payment as to such completed or non-terminated Work.

## 21.5 Determination of Termination Amount if Negotiations Fail

If the Contractor and the Department fail to agree, as provided in Section 21.4 (Negotiated Termination Settlement) upon the amount to be paid to the Contractor in whole or in part by reason of the termination of Work pursuant to this Section, the amount payable (exclusive of interest charges) shall be determined by the Department in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section 21.4 (Negotiated Termination Settlement):

### 21.5.1 Payment Amount

Subject to the limitations in Section 21.5.2 (Maximum Compensation), the Department 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 Department:

- (1) The Contractor's actual reasonable out-of-pocket cost (without profit, and including Equipment costs only to the extent permitted by Section 11 (Contractor's Compensation)) 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 Department'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 Department, the cost of an item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents, and the excessive actual cost will be disallowed.
- (2) As profit on the actual out-of-pocket cost permitted in (1) above, a sum determined by the Department to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire PDBC had it been completed, no profit shall be included or allowed under this Section 21.5, 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 21.2 (Contractor Responsibilities Upon Termination), 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 21.2 (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 Department or otherwise disposed of as directed by the Department, 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.

### **21.5.2 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 21.5.1 (Payment Amount)) plus its settlement costs, and that items such as lost, anticipated or unearned profit, unabsorbed overhead, opportunity costs or consequential or other damages shall not be recoverable by the Contractor for itself or for its Subcontractors on account of the termination of the PDBC. However, the total amount to be paid to the Contractor, exclusive of costs described in Sections 21.5.1 (3) and (4), may not exceed the total Contract Price less the amount of payments previously made and less the cost of the Work not terminated. Furthermore, if any refund is payable with respect to Project-specific insurance or bond premiums, deposits, or similar items which were previously passed through to the Department by the Contractor, such refund shall be paid directly to the Department or otherwise credited to the Department.

### **21.5.3 Excluded Items**

Except for normal spoilage, and except to the extent that the Department will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under Section 21.5.1 (Payment Amount), the fair value, as determined by the Department, of Equipment, machinery, Materials and property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Department, or to a buyer pursuant to Section 21.2 (Contractor Responsibilities Upon Termination). 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.

## **21.6 Payment of Termination Amount**

Upon determination of the amount of the termination payment, the PDBC shall be amended via Change Order to reflect the agreed termination payment, and the Contractor shall be paid the agreed amount.

## **21.7 Reduction in Amount of Claim**

The amount otherwise due the Contractor under this Section 21 shall be reduced by:

- (1) All unliquidated payments for Work or materials not yet performed on or supplied to the Project at the time of the payment, excluding payments made to or on behalf of the Contractor applicable to the terminated portion of the PDBC;
- (2) The amount of any claim which the Department may have against any Contractor-Related Entity in connection with the PDBC;
- (3) 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 21, and not otherwise recovered by or credited to the Department;

- (4) Amounts that the Department reasonably deems advisable to retain to cover any existing or threatened claims, Liens, and stop notices relating to the Project, including claims by Third-Parties;
- (5) The cost of repairing, replacing or otherwise correcting any Nonconforming Work; and
- (6) Any amounts due or payable by the Contractor to the Department.

## 21.8 Partial Payments

The Department may, from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by the Contractor in connection with the terminated portion of the PDBC, whenever, in the opinion of the Department, the aggregate of such payments shall be within the amount to which the Contractor will be entitled under this Section 21. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 21, such excess shall be payable by the Contractor to the Department upon demand, together with interest at a rate equal to the average rate at the time being received from the investment of state funds, as determined by the State Treasurer, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to the Department.

## 21.9 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 Department in accordance with this Section 21 and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

## 21.10 Limitation on Payments to Subcontractor

For the purposes of Sections 21.4.2 (Negotiated Settlement Amount) and 21.5 (Determination of Termination Amount if Negotiations Fail), upon termination under Section 21.2 (Contractor's Responsibilities Upon Termination) 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 lost, anticipated or unearned profit, unabsorbed overhead, opportunity costs or consequential or other damages on account of the termination.

## 21.11 No Unearned Profit or Consequential Damages

Under no circumstances shall the Contractor be entitled to lost, anticipated or unearned profit, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination under this Section 21. The payment to the Contractor determined in accordance with this Section 21 constitutes the Contractor's sole and exclusive remedy for a termination under this Section 21.

## 21.12 No Waiver

Anything contained in the PDBC to the contrary notwithstanding, a termination under this Section 21 shall not waive any right or claim to damages, which the Department may have, and the Department may pursue any cause of action, which it may have at law or in equity or under the PDBC.

### **21.13 Dispute Resolution**

The failure of the parties to agree on amounts due under this Section 21 shall be a Dispute to be resolved in accordance with Section 18 (Partnering and Dispute Resolution).

### **21.14 Allowability of Costs**

All costs claimed by the Contractor under this Section 21 shall, at a minimum, be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

### **21.15 Suspension of Work**

In the event of any suspension of all or part of the Work by the Department, after issuance of NTP, for more than 180 consecutive days, the Contractor shall have the right to consider the PDBC to have been terminated or partially terminated by the Department for convenience under this Section 21. The Contractor shall notify the Department of such election by delivering to the Department a written notice of termination (or partial termination) due to such suspension specifying its effective date. Upon delivery by the Contractor to the Department of a notice of termination due to suspension, the provisions of this Section 21 shall apply.

### **21.16 Partial Termination**

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

If the Department exercises any termination right after the execution of the Phase 2 Change Order, the Department will have the right in its discretion to require continued performance of the applicable Phase 2 Work and terminate only the remaining Phase 1 Work and any other Phase 2 Work. In such event, the PDBC will remain in full force and effect only with respect to the Phase 2 Work that is not terminated by the Department, and the Contract Price established in the Phase 2 Change Order will continue to apply to such Phase 2 Work.

## 22 PROJECT WARRANTIES

### 22.1 Contractor Project Warranties

The Contractor hereby represents and warrants to the Department that subject to the provisions of the Contract Documents that:

1. All design and technical services for the Work furnished pursuant to the Contract Documents shall conform to professional standards identified in the Contract Documents and all professional principles and the Standard of Care applicable to the design and scope of the Work, to the extent that such principles are not more restrictive than the professional standards specifically identified in the Contract Documents;
2. The Construction Work furnished pursuant to the Contract Documents shall be performed in a workmanlike manner and shall conform to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State;
3. Goods, materials, and equipment furnished under the Contract Documents shall be of the quality specified or, if not specified, of good quality and, except if not otherwise expressly set forth in the Contract Documents, when installed, shall be new;
4. The Work shall meet all requirements of the Contract Documents;
5. The specifications and/or drawings selected or prepared for use during construction are suitable for their intended use;
6. Any work that does not meet the standards referenced in (1) through (5) above is Nonconforming Work;
7. The Project will be free from defects (whether latent or patent) in workmanship and materials furnished or installed by the Contractor;
8. All material and equipment incorporated into the Work will be new and free from any and all claims, liens, and security interest of any third parties;
9. The Work will be fully and finally completed in accordance with the terms of the Contract Documents at a cost not to exceed the Contract Price;
10. The Contractor possesses expertise in the administration, construction, management and superintendence of projects of the type, nature, and general locality of the Project, and will perform the Work with the care, skill and diligence of such a contractor;
11. The Contractor and, to the best of Contractor's actual knowledge, its Subcontractors are financially solvent, able to pay debts as they mature, and the financial statements and information furnished to the Department by Contractor present fairly the Contractor's and, if applicable, to the best of Contractor's actual knowledge, its Subcontractors' respective financial conditions, and they are possessed of sufficient working capital to complete the Contract;
12. The Contractor is able to furnish the plant, tools, labor, materials, and equipment necessary to complete the Work; and
13. The Contractor and its Subcontractors are qualified to perform the Work, authorized to transact business in the jurisdictions in which the Project is located, and possesses or

have obtained and shall possess all necessary licenses, permits, and approvals required to perform the Work.

The Contractor will promptly notify the Department of the occurrence of any event or circumstances which renders the foregoing representations or warranties materially untrue. The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to Contractor's duties, obligations and performance hereunder. The Contractor's liability hereunder shall survive the Department's final acceptance of and payment for the Work. All representations and warranties set forth in the Contract Documents shall survive the final completion of the Work or the earlier termination of the Contract. If the Department finds the materials furnished, Work performed, or the finished product are not in reasonably close conformity with the Contract Documents and have resulted in an unacceptable finished product, the affected Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Department's written orders. The term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the Work in accordance with the Contract Documents, plans, and specifications. For the purpose of this Section 22.1, the term "reasonably close conformity" is intended to allow the Department to use good engineering judgment in its determinations as to acceptance of Work that is not in strict conformity but will provide a finished product equal to or better than that intended by the requirements of the Contract Documents.

## **22.2 Obligations of Contractor**

The Contractor shall promptly correct or cause to be corrected promptly any defect in the Work. The Contractor shall and does hereby assign to the Department the benefits of any warranties of all Subcontractors, materialmen and suppliers, or other third parties, but such assignment shall not relieve the Contractor of its warranty obligations to the Department under the Contract Documents. No payment made by the Department to the Contractor, nor any acceptance, use or occupancy of the Work by the Department or any other person, shall constitute acceptance of any defective Work or any Work not in compliance with the Contract Documents. Nothing contained herein shall be construed to define or limit any rights or remedies provided the Department by the Contract Documents, at law, equity, or otherwise in the event any defect in the Work occurs.

## **22.3 Correction of Work**

Prior to Substantial Completion, in a time frame determined by the Department, the Contractor shall correct Work rejected by the Department or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Department made necessary thereby. If prior to the date of Substantial Completion, the Contractor, a Subcontractor, or anyone for whom either is responsible, uses or damages any portion of the Work, the Contractor shall cause such damage to be restored so that the damaged portion of the Work to "like new" condition at no expense to the Department.

If at any time after the date of Substantial Completion of the Work any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Department to do so unless the Department



has previously given the Contractor a written acceptance of such condition. This obligation under this Section 22.3 shall survive acceptance of the Work under the PDBC and termination of the PDBC. The Department shall give such notice promptly after discovery of the condition.

The obligations under Section 22.2 (Obligations of Contractor) shall cover any repairs and replacements to any part of the Work or other property caused by the defective Work.

### **22.3.1 Removal of Portion Not in Accordance with Contract Documents**

Subject to the provisions of Section 5.9 (Unauthorized and Nonconforming Work) the Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Department.

### **22.3.2 Failure to Correct Non-Conforming Work**

Prior to Substantial Completion, if the Contractor fails to correct the Work that has been rejected by the Department or fails to conform to the requirements of the Contract Documents within the time frame determined by the Department, the Department may correct or remedy such Work. To the extent necessary to complete corrective and remedial action, the Department may: (i) exclude the Contractor from all or part of the site; (ii) take possession of all or part of the site; (iii) subject to Section 20 (Suspension of Work), suspend the Contractor's services related thereto; (iv) take possession of the Contractor's Equipment and machinery at the site; (v) incorporate in the Work material stored at the site or for which the Department has paid the Contractor but which has been stored elsewhere. The Contractor shall allow the Department, its representatives, contractors, agents, and employees such access to the site as may be necessary to exercise the rights under this paragraph. All direct and indirect costs in exercising such rights will be charged against the Contractor and a Change Order will be executed, pursuant to Section 12 (Contract Changes), incorporating the necessary revisions to the PDBC and a reduction in the GMP. The Contractor will not be allowed an extension of the Contract Time due to any delay in performance of the Work attributable to the exercise of the Department's rights under this Section.

After Substantial Completion, if the Contractor fails to correct the Work that has been rejected by the Department or fails to conform to the requirements of the Contract Documents within the time frame determined by the Department, the Department may correct or remedy such Work. All direct and indirect costs from the Contractor's failure to correct the Nonconforming Work and the Department's correction of such Work will be the sole expense of the Contractor.

### **22.3.3 Destroyed or Damaged Construction**

The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Department or other Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

#### **22.3.4 No Limitation of Obligations Unless Stated in Otherwise in Contract Documents**

Nothing contained in this Section 22.3 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. The Contractor's express warranties in this Section 22.3 shall be in addition to, not in lieu of, any other warranties, guaranties, or remedies the Department may have under the Contract Documents, at law, or in equity for defective work.

## 23 SECURITY FOR PERFORMANCE AND WARRANTIES

### 23.1 Performance and Payment Bonds

As a part of the consideration and to assure the faithful performance of this PDBC in every respect, the Contractor shall provide a performance bond and a payment bond each with surety or sureties in a sum not less than One Hundred percent (100%) of the applicable Contract Price, each with a surety or sureties approved by the Department, and in the form provided in Exhibit K (Form of Payment and Performance Bonds). These bonds shall remain in effect, at a reduced penal sum in the amount of 30% of the total penal sum, at least until one year after the date when final payment becomes due, except as provided otherwise by applicable laws or regulations or as required by the Contract Documents.

When the Contractor delivers the executed PDBC to the Department, the Contractor shall also deliver to the Department such bonds as the Contractor may be required to furnish in accordance with this Section 23. Upon request, the Contractor shall also provide copies of such bonds to its subcontractors and other entities providing labor, Equipment, or Materials on the Project.

The Contractor shall deliver the foregoing Bonds to the Department according to the following schedule:

1. Concurrent with the execution of this PDBC in the amount equal to 100% of the Phase 1 Contract Price.
2. Concurrent with the execution of the Phase 2 Change Order, Bond Riders (issued on forms acceptable to the Department in its reasonable discretion) increasing the amounts of the Bonds in an amount equal to 100% of the Phase 2 Contract Price (so that the Bond amounts shall be maintained in the full amount of the Contract Price and shall secure the full scope of the Phase 1 Work and Phase 2 Work.
3. Following the Department's acceptance of the Phase 1 Work, the Contractor may request to reduce the amount secured to 100% of the Phase 2 Contract Price.

If a surety or co-surety on any bond furnished by the Contractor: (1) is declared a bankrupt; (2) is placed into receivership; (3) becomes insolvent or its right to do business is terminated in any state where any part of the Project is located; or (4) ceases to meet the requirements of the Contract Documents, the remaining sureties on the Bond shall each re-verify their financial limits with the Department of the Treasury, utilizing the same standards and processes required to be listed as an acceptable surety on a federal bond under 31 USC §§ 9304-9308 and Circular 570, evidencing to the Department the remaining sureties' respective capacities to continue to bond the Contract Price. If all of the remaining sureties are unable to provide evidence to the Department of their respective and collective capacities to continue to bond the Contract Price, the Contractor shall within 20 Days thereafter substitute another Bond issued by a surety or sureties acceptable to the Department, both the substitute Bond and the surety or sureties shall comply with the requirements of the Contract Documents.

All bonds and insurance required by the Contract Documents to be purchased and maintained by the Department or the Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance

companies shall also meet such additional requirements and qualifications as may be provided in the Contract Documents.

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be the Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **23.2 Parent Company Guarantee**

If the Contractor (in such capacity as Offeror) proposed in its response to the Request for Proposals an Affiliate or Principal Participant to serve as a Guarantor of the Contractor, or submitted financial information of an Affiliate or Principal Participant in its response to the Request for Proposals to demonstrate the financial qualifications of such Offeror, such Affiliate or Principal Participant must guarantee, through a separate guaranty agreement in a form reasonably acceptable to the Department, all of the Contractor's obligations under this PDBC. Each guaranty shall assure the performance of the Contractor's obligations under this PDBC and must be maintained in full force and effect so long as the Contractor has any obligations under this PDBC.

## 24 CONTRACTOR REPRESENTATIONS AND COVENANTS

### 24.1 Maintenance of Professional Qualifications; Performance By Qualified Personnel

The Contractor and its Subcontractor(s) have maintained, and throughout the Term shall maintain, all required authority, license status, applicable licensing standards, certification standards, accrediting standards and accreditations, professional ability, skills and capacity to perform the Work, and shall perform the Work in accordance with the requirements of the Contract Documents.

All Work furnished by the Contractor will be performed by or under the supervision of Persons that hold all necessary, valid licenses to practice in the State of Ohio by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents, and other documents prepared or checked by them, as and when applicable.

The Contractor acknowledges and agrees that the award of this PDBC by the Department to the Contractor was based, in part, on the qualifications and experience of the personnel listed in the Proposal, and the Contractor's commitment that such individuals would be available to undertake and perform the Work. In addition to ratifying the representations, warranties, and covenants set forth in the "Key Personnel Commitments" attached to Exhibit D (Key Personnel and Principal Participants), the Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Key Personnel shall commit the amount of time to their applicable roles as set forth in the Contract Documents.

### 24.2 Performance of the Work

The Contractor covenants and agrees to perform all Work and furnish all Materials in reasonably close conformity with the lines, grades, cross-sections, dimensions and material requirements as set forth in the applicable Contract Documents. If the Department determines the Work is not in reasonably close conformity with the Contract Documents, then such Work shall be addressed pursuant to Section 5.9 (Unauthorized and Nonconforming Work).

### 24.3 Compliance with Applicable Laws

The Contractor has familiarized itself with the requirements of any and all applicable Laws prior to entering into this Contract. The Contractor further covenants and agrees to stay fully informed of all Applicable Laws and all amendments to Applicable Laws that affect those engaged or employed on the Work, or that affect the conduct of the Work.

The Contractor shall comply with, and ensure that all of its Subcontractors comply with all applicable Laws, including but not limited to sub-sections A & B below:

- A. Contractor shall ensure that it and all of its Subcontractors observe and comply with all of the following that affect the conduct of Work on the Project, have jurisdiction or authority over the Work, or that affect individuals engaged or employed on the Project.

1. Ohio and Federal laws;
  2. All local laws, ordinance and regulations;
  3. All orders and decrees of authorities having jurisdiction or authority that affect those engaged or employed on the Work or that affect the conduct of the Work;
  4. Health and safety officials and regulations; and
- B. Comply with Federal, State, and local Laws, rules, and regulations that enumerate unlawful employment practices.

The Contractor has complied and shall comply with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, Equipment or Materials not expressly provided for in the Contract Documents, except, and only to the extent, of any express entitlement to seek relief hereunder.

## 24.4 Governmental Approvals

The Contractor has no reason to believe that any Governmental Approval required to be obtained by the Contractor under the Contract Documents will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

## 24.5 Progression of Work

The Contractor shall at all times provide for an orderly progression of the Work in accordance with the Project Schedule to thereafter achieve all Completion Deadlines, all at the Contractor's own expense as required by Section 5.10.1 (Prosecution and Progress), except as otherwise specifically provided in Section 12.4 (Change Orders).

## 24.6 Feasibility of the Work, Project; Reasonable Investigation

As of the Effective Date, the Contractor represents and warrants that it has evaluated the constraints affecting delivery of the Project and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints and has reasonable grounds for believing and does believe that performance of the Work is feasible and practicable.

The Phase 2 Change Order will incorporate a representation that the Contractor:

1. has evaluated the constraints affecting design and construction of the Project, as well as the terms and conditions of the NEPA Documents, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints; and
2. has conducted a reasonable investigation and otherwise examined the Site as well as surrounding locations, and as a result of such review, inspection, examination, and other activities the Contractor is familiar with, and has satisfied itself as to, the character of the Site, and accepts the physical requirements of the Work, subject only to the Contractor's express rights and bases to seek relief under this PDBC.

## 24.7 Power and Authority

The Contractor has the requisite power (a) to carry on its business as now conducted or proposed, and (b) to own its properties and assets.

The Contractor has full power, right and authority to execute and deliver the Contract Documents and to perform each and all of the obligations of the Contractor provided for herein and therein.

The Contractor has all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted.

## 24.8 Good Standing

The Contractor and each of the Major Participants is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under the Contract Documents.

## 24.9 Authorization

The execution, delivery, and performance of this PDBC 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.

## 24.10 Legal, Valid, and Binding Obligation

This PDBC constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor, enforceable against the Contractor (and, if applicable, each member), in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

NTD: [Each]/[The] individual person executing this PDBC and all other such Project related documents, on behalf of the Contractor has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of the Contractor; and the Contract Documents, and all such other Project related documents have been (or will be) duly executed and delivered by the Contractor.

## 24.11 No Breach

As of the Effective Date, no event that, with the passage of time or the giving of notice, would constitute a breach hereunder has occurred and has not yet been cured.

## 24.12 No Conflicts

Neither the execution and delivery by the Contractor of this PDBC, the Contract Documents, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be):

1. In conflict with or has resulted or will result in a default under or a violation of the governing instruments of the Contractor or any agreement, judgment, or decree to which the Contractor is a party or is bound; or
2. In conflict with any Applicable Laws applicable to the Contractor that are valid and in effect on the Effective Date.

### **24.13 No Violation of Law**

As of the Effective Date, the Contractor is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the Contract Documents.

### **24.14 No Suits**

There is no action, suit, proceeding, investigation or litigation pending and served on the Contractor that challenges the Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the Contract Documents, or that challenges the authority of the Contractor's official executing the Contract Documents; and the Contractor has disclosed to the Department prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Contractor is aware. The Contractor has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the Department or the State of Ohio, and agrees that it will immediately notify the Department of any such actions.

### **24.15 No Organizational Conflicts of Interest**

The Contractor has disclosed and shall disclose to the Department in writing all Organizational Conflicts of Interest of the Contractor and its contractors and subcontractors of which the Contractor was actually aware; and the Contractor has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to the Contractor or its contractors and subcontractors identified in its Proposal that have not been approved in writing by the Department.

### **24.16 No Debarment, Suspension Ineligibility, Exclusion**

As of the Effective Date, neither the Contractor, nor its principals, contractors and subcontractors identified in the Proposal are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering this PDBC by any federal agency or by any department, agency or political subdivision of the State of Ohio. For purposes of this Section 24.16, the term "principal" for purposes of this PDBC means a member, manager, officer, director, share/stockholder, partner, employee, Key Personnel, employee, or other individual person with primary management or supervisory responsibilities, or an individual person who has a critical influence on or substantive control over the operations of the Contractor.

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

The Contractor recognizes and acknowledges that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and the USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R., Part 31, apply to contracts funded with Federal funds. Accordingly, by signing this Contract, the Contractor certifies or affirms the truthfulness



and accuracy of any statement it has made, it makes, or it may make pertaining to this 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.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **24.18 Certification Regarding Lobbying & Solicitation**

The Contractor certifies that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any 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 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 Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 Section 1352, title 31, U.S. Code. 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.

## **24.19 Findings for Recovery**

By entering into this PDBC with the Department, the Contractor affirmatively represents to the Department that it is not subject to an unresolved Finding for Recovery under ORC 9.24, or that it has taken the appropriate remedial steps required under ORC 9.24, or otherwise qualifies under that section. The Contractor agrees that if this representation is deemed to be false, then the PDBC will be void ab initio as between the parties to the PDBC, and any funds paid by the

Department hereunder shall be immediately repaid to the Department, or the Department may immediately commence an action for recovery of said funds.

## **24.20 Ohio Ethics Law Requirements**

The Contractor agrees that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

## **24.21 NEPA Disclosure Statement**

By entering into this PDBC with the Department or accepting any subsequent assignment of Work under this PDBC, the Contractor hereby certifies that, in accordance with 40 CFR 1506.5, it has no financial or other interest in the execution or outcome of this Project.

## **25 OTHER CONTRACTOR OBLIGATIONS**

### **25.1 Maintenance of Records**

The Contractor shall maintain at the Project Manager's office in the State a complete set of As-Built Construction Record-Drawing Model and Plans and a complete set of all books, records and documents prepared or employed by the Contractor with respect to the Project.

### **25.2 Audit and Inspection Rights**

The Contractor and its Subcontractors at all tiers shall grant to the Department, FHWA, and the U.S. Comptroller General and their respective authorized representatives, access, audit and inspection rights, with right to copy, any books and records of the Contractor as such Persons may reasonably request from time to time in connection with the issuance of Change Orders, Claims, the resolution of disputes and other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the PDBC and Applicable Laws. The Contractor shall grant to Utility Owners and their respective authorized representatives such audit and inspection rights, access and the right to copy such books and records as such Persons may request in connection with the resolution of disputes or other matters, as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Utility-related contractual or Utility Agreement requirements. The Contractor shall also allow the Department access to all Subcontracts and records regarding Subcontracts.

### **25.3 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, the Department and its representatives have the right to examine all books, records, documents, and other data of the 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.

### **25.4 Claims Audits**

All Claims filed against the Department shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of the Department, FHWA, U.S. Comptroller General, or by an auditor under contract with any of them. No notice is required before commencing any audit within 60 Days after Completion of the Contract. Thereafter, the Department 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 Department, 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) Insurance, welfare, and benefits records;
- (3) Payroll registers;
- (4) Earnings records;
- (5) Payroll tax forms;
- (6) Material invoices and requisitions;
- (7) Material cost distribution worksheet;
- (8) Equipment records (list of company equipment, rates, etc.);
- (9) Subcontractors' (including Suppliers) and agents' invoices;
- (10) Subcontractors' and agents' payment certificates;
- (11) Canceled checks (payroll and Suppliers);
- (12) Job cost report;
- (13) Job payroll ledger;
- (14) General ledger;
- (15) Cash disbursements journal;
- (16) E-mail, letters, and correspondence;
- (17) Network servers, data storage devices, backup media;
- (18) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and
- (19) Work sheets used to prepare the Claim establishing the cost components for items of the Claim.

Full compliance by the Contractor with the provisions of this Section 25.4 is a contractual condition precedent to the Contractor's right to seek relief under this Section 25. The Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 25.4.

## 25.5 Retention of Records

The Contractor shall maintain all records and documents relating to the PDBC (including copies of all original documents delivered to the Department) at the Project Manager's office in the State, or as otherwise agreed by the Department in writing, until five years after the earlier to occur of:

- (1) The date Completion of the Contract is achieved; or
- (2) The termination date.

If Approved by the Department, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. The Contractor shall notify the Department where such records and documents are kept.

Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until three years after 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 by the Department and/or FHWA, at the Contractor's office, during reasonable business times, without charge, and shall allow such Persons to make copies of such documents (at no expense to the Contractor).

## 25.6 Public Records

The Contractor acknowledges that any Work Product the Department owns and any document the Department obtains a copy that relates to the Project may be considered public records under ORC 149.43 (the "**Public Records Act**"), and as such may be subject to public disclosure. In the event of a request for disclosure of any such information, the Department will comply with applicable law. The Department recognizes that certain Work Product that the Department owns, and certain documents that the Department obtains a copy that relate to the Project may contain information exempt from disclosure under the Public Records Act, may constitute trade secrets as defined in ORC 1333.61(D), and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. The Department will keep such information confidential, provided that the Contractor comply with the following procedure (the "**ORR Procedure**"): (i) the Contractor shall independently determine, and be solely responsible for, whether any portion/entirety of any document, data, or record submitted meets an exception under Applicable Law preventing its disclosure (the "**Determination Basis**"); (ii) the Contractor shall (a) prominently mark each and every page of its document, data, or record with "Trade Secret," "Confidential," or any other Determination Basis, and (b) redact all information from any document, data, or record that has a Determination Basis (the "**Redacted Copy**"); (iii) the Contractor shall accompany any label made in accordance with (ii) with a concise statement supporting the label and determination, including Applicable Law supporting the claim (the "**Supporting Law**"); and (iv) the Contractor shall submit the Redacted Copy of any document, data, or record to the Department, while the unredacted version of any document, data, or record shall be submitted through the Escrow of Documents procedure addressed in [Section 25.7](#) (Escrow Documents). If the foregoing procedures are met by the Contractor and such labeled/redacted records become the subject of a request for public disclosure, then the Contractor herein agrees and assents that the Department shall take the following actions with regard to all or part of any subject document(s), data, or record(s): (a) endeavor to notify the Contractor of the request and respond to such request with the Redacted Copy to the requestor (the "**Department Response**") and/or (b) notify the Contractor of such request and the date by which the Department anticipates responding and will consider the determinations received from the Contractor in advance of such date, redact and/or unredact document(s), data, or record(s) in collaboration with the Contractor, and draft a response accordingly (the "**Cooperative Response**").

If the foregoing procedure is not followed by the Contractor, then the Department will release versions of any document, data, or record that the Department determines to be responsive to the request and do not violate Applicable Law, with all satisfaction and payment of such expense(s) incurred in such determination and release being the full responsibility of the Contractor.

In the event that the requestor asserts a right to any redacted information in the Department Response with regard to any complete or partial document(s), data, or record(s), the Department shall notify the Contractor of the assertion of right(s) (the “**Notice of Rights**”), and from the date the Contractor receives the Notice of Rights, the Contractor shall have the responsibility to respond to the requestor asserting that the information requested is exempt from disclosure under Applicable Law.

In the event of litigation concerning the Department’s failure to disclose any material submitted by the Contractor to the Department, the Department’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 and fully responsible for paying any costs, fees, including attorney’s fees, and civil penalties assessed against the Department for failing to disclose such documents in accordance with the Contractor’s directions. Under no circumstances, however, will the Department 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 Department. Nothing in this Section 25.6 shall modify or amend any requirement(s) and obligation(s) imposed on the Department by the Public Records Law or other applicable Law, and the provisions of the Public Records Law or other Laws shall control in the event of conflict between the procedures described above and the applicable law. The Contractor is advised to contact legal counsel concerning the Ohio Open Records Act and its application to the Contractor.

## 25.7 Escrow Documents

### 25.7.1 General

In conjunction with the submission of any Contract Price, the Contractor shall upload the Heavy Construction Systems Specialist (HCSS) files, or any other programs utilized to calculate prices, in their native format that were utilized to develop said Contract Price (the “Escrow Documents”). Additional types of information may also be included as Escrow Documents with the agreement of both the Department and the Contractor. All other information utilized in the generation of the Contract Price, including exports from the HCSS files (or others) with pricing data down to the bid item level, will be distributed to the Department and its representatives as part of the Open Book Pricing methodology outlined in Exhibit G and other relevant PDBC Sections and will not be considered Escrow Documents.

### 25.7.2 Stipulation and Acknowledgements

The Department stipulates and expressly acknowledges that the Escrow Documents constitute proprietary information. This acknowledgement is based on the Department’s expressed understanding that the information contained in the Escrow Documents is not known outside the

Contractor's business, is known only to a limited extent and by a limited number of the Contractor's employees and is safeguarded while in the Contractor's possession. The Department further acknowledges that the Escrow Documents and the information they contain are provided for the joint use of the Contractor and the Department. The Contractor agrees, as a requirement of the Contract, that the Escrow Documents, as updated from time to time, constitute all the information used in the development of the Contract Price that was not otherwise distributed through the Open Book Pricing methodology. The Contractor acknowledges that the purpose of this Section 25.7 is to develop the Contract Price through open-book negotiations and that the Contractor's prompt and transparent provision of the Escrow Documents is vital to the development of the Contract Price. The Contractor also agrees that nothing in the Escrow Documents shall change or modify the terms or conditions of the Contract Documents. Subject to Section 25.6 (Public Records), the Department further agrees to safeguard the Escrow Documents, and all information they contain, against disclosure to the fullest extent permitted by law. Ultimately, it will be the responsibility of the Contractor to demonstrate that information is proprietary in nature and to file any required Protection Requests.

### **25.7.3 Format and Contents**

- A. The Contractor may submit Escrow Documents in their usual cost estimating format; provided that all information is clearly presented and ascertainable and submitted in accordance with the requirements of this Section 25.7. It is not the intention of this Section 25.7 to cause the Contractor extra work, but to ensure that the Escrow Documents will be adequate to enable complete understanding and proper interpretation for their intended use.
- B. The Escrow Documents will be submitted in English and clearly itemize the estimated costs of performing each item of the Project, including financing, administrative and related costs. Cost items will be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review.
- C. The Escrow Documents will include, to the extent obtained, procured or in the possession of the Contractor and to the extent not distributed to the Department and its representatives as part of the Open Book Pricing model: estimates for costs of the design professionals and consultants itemized by discipline both for development of the design, all quantity take-offs, crew size and shifts, Equipment, calculations of rates of production and progress, copies of quotes from Contractors and suppliers, and memoranda, narratives, drawings and sketches showing site or work area layouts and Equipment, add/deduct sheets, geotechnical reviews and consultant reports, all other information used by the Contractor to arrive at the estimated prices for the Project, and all information and formulae used by the Contractor in developing the Guaranteed Maximum Price or Lump Sum Amount. Estimated costs will be broken down into estimate categories for items such as direct labor, repair labor, Equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and Equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed. The Contractor's allocation of indirect costs, contingencies, and mark-up will be identified.
- D. The Escrow Documents in combination with the documents distributed based on the Open Book Pricing model will identify all costs. If detailed costs are not available to the Contractor, estimated unit costs are acceptable without a detailed cost estimate, if

labor, Equipment, Materials and subcontracts, as applicable, are specified, and provided further, that indirect costs, contingencies, and mark-up, as applicable, are allocated.

#### **25.7.4 Submittal**

- A. All Escrow Documents shall be electronically uploaded to a SharePoint site (“Escrow Site”) and the Owner will be provided the specific URL.
- B. Electronically stored Escrow Documents will be uploaded in their native digital format.

#### **25.7.5 Updating of the Escrow Documents**

In the event that there are updates (adding, deleting, revisions) to information on the Escrow Site, all users with access to the Escrow Site will receive an automated email notification informing them that an update has been made and which document has been impacted. For revisions of existing documents, an agreed to file naming convention will be utilized to clearly identify version control. Previous versions of the documents will be accessible to the approved representatives; however, the most recent version of the documents will always be the one shown first.

#### **25.7.6 Storage**

The Escrow Documents will be stored electronically on the Escrow Site. The Escrow Site must be PN40 compliant. Unless, by agreement, the information is stored in Department servers (SharePoint), the Contractor shall be solely responsible for managing the Escrow Site and the cost for storing the Escrow Documents is not reimbursable to the Contractor.

#### **25.7.7 Examination and Copying**

All Escrow Documents shall be controlled, read-only, and prohibited from download for use offline. Access to the Escrow Site will be restricted. The Contractor shall provide the Department with the names of the individuals within the organization that they have chosen to grant access to the Escrow Site, as well as the type of access they are given. Updates to this list shall be provided to the Department should changes be made. The Department will provide the Contractor with names of staff members or Department Authorized Representatives for which access shall be granted. Updates to this list will be provided to the Contractor. The Escrow Documents may be examined jointly by the Department and the Contractor at any time deemed necessary by the Department or the Contractor and for any reason. The Department may delegate review of the Escrow Documents to members of its staff or to Department Authorized Representatives, each of which shall be subject to all applicable confidentiality undertakings. Access to the Escrow Site is subject to monitoring and audit by both the Contractor and the Department.

#### **25.7.8 Ownership**

The Escrow Documents are, and will always remain, the property of the Contractor, subject to joint review by the Department, if applicable, Department Authorized Representatives and the Contractor, as provided herein and with the following exception. To the extent that any



document on the Escrow Site is a Design Document for temporary or permanent Work, it shall be the property of the Department.

### **25.7.9 Final Disposition and Return of Escrow Documents**

The Department's access to the Escrow Site may be terminated upon the earlier to occur of (i) completion of the Work, including tender of final payment and resolution of all claims or disputes arising under the PDBC or (ii) termination of this PDBC and resolution of all claims or disputes arising pursuant to this Contract.

## **25.8 Coordination with Other Contractors of the Department**

The Department reserves the right to perform and to contract with others to perform other or additional work on or near the Project Site. The Contractor shall coordinate with the Department, such other contractors, any other third-parties working on or adjacent to the Site, and any other contractors working with such parties to the extent reasonably necessary for the performance by the Department and such other contractors of their work, and shall cause its employees, agents, officers, and Contractor-Related Entities to so coordinate. If other separate contracts are awarded by the Department, the Contractor shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

If the Department exercises its right under Section 12 (Contract Changes) to contract with other contractors to perform outstanding Work on the Project, the Contractor shall coordinate with such other contractors in good faith to facilitate completion of the Project in a timely and effective manner.

## **25.9 Interference by Other Contractors of the Department**

If the Contractor asserts that any of the Department's other contractors have hindered or interfered with the progress or completion of the Work, the Contractor shall follow the requirements of Section 12 (Contract Changes). The Contractor shall have the right to ask the Department to resolve such dispute, provided the other contractor and its sureties have agreed to submit the dispute to the Department, and provided that such proceeding shall be conducted at no cost to the Department.

## **25.10 Assignment of Causes of Action**

The Contractor hereby offers and agrees to assign to the Department all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15), arising from purchases of goods, services or materials pursuant to this PDBC or any Subcontract. This assignment shall be made and become effective at the time the Department tenders Final Payment to the Contractor, without further action of the Parties.

## **25.11 Payroll Records**

The Contractor shall keep payroll records as specified in ORC 4115.07 or as required by Federal law.

Department Authorized Representatives may inspect the certified payroll and other payroll records. Upon completion of the Work and before receiving payment for the Final Estimate and

when required by ORC 4115.07, submit an affidavit stating that wages have been paid according to the minimum rates specified in the Contract Documents.

## 26 MISCELLANEOUS

### 26.1 Waiver

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

#### 26.1.2 Custom Does not Constitute Waiver

No act, delay, or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such Party under any Contract Document, or to relieve the other Party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of the Contract Documents.

#### 26.1.3 Waivers Must be in Writing

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the Party providing the waiver.

### 26.2 Successors and Assigns

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

#### 26.2.1 Reserved

#### 26.2.2 Assignment by the Contractor; Changes of Control; Change of Organization

Without limiting Section 8 (Subcontracting Requirements), the Contractor shall not otherwise sublet, transfer, assign, or dispose of any portion of this Contract, delegate any of its duties hereunder, or suffer a voluntary or involuntary change of control, except in each case, with the Department's prior written approval, in the Department's sole discretion. Except and after any Approval only, any of the foregoing actions shall be null and void ab initio and otherwise ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated.

The Contractor shall not change the legal form of its organization in a manner that adversely affects the Department's rights, protections and remedies under the Contract Documents without the prior written approval of the Department, in the Department's sole discretion.

### 26.3 Limitation on Liability for Non-Performance

The Contractor's aggregate liability under the PDBC with respect to damages payable to the Department arising out of the performance or unexcused non-performance of the Work, including for delay liquidated damages, will not exceed the aggregate value of the Phase 1 Work and Phase 2 Change Order.

The Department has the right to terminate the PDBC and exercise its remedies in respect of a Contractor event of default if the Contractor's liability to the Authority exceeds such limitation on liability.

Such limitation on liability applies only to damages payable by the Contractor to the Department for non-performance under the PDBC and will not apply if the Contractor abandons the Project or to any of the following:

- A. Any loss, cost or expense incurred by any Contractor team member in the performance of the PDBC or in seeking to cure or prevent any breach of the PDBC by the Contractor;
- B. Any fines or penalties levied or imposed by any Governmental Agency;
- C. Any claims, losses or penalties incurred by any Contractor team member to third parties in any legal proceedings;
- D. Any indemnity payment (resulting from third party claims) made by the Contractor to any Indemnified Party;
- E. Payment of any defense costs, including attorney's fees, to, for, or on behalf of any Indemnified Party with respect to any third-party claim;
- F. Any payments made in connection with any insurance required under the Contract, including the proceeds of such insurance and the payment of any deductible or self-insured retention; and/or
- G. Any claims, losses, penalties or settlement payments paid to the Department in connection with any tort claim by the Department against any Contractor team member based on gross negligence, willful misconduct or fraud.

### 26.4 Title and Risk of Loss

Title to the structures, improvements, fixtures, machinery, materials constituting the Project will pass to Department upon incorporation in the Project or payment therefor by the Department, whichever first occurs, free and clear of all liens, claims, security interest or encumbrances. Except with respect to certain uninsurable events to be specified in the Contract, the Contractor will nonetheless bear all risk of loss concerning such structures, improvements, fixtures, machinery, materials until the Substantial Completion Deadline, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

### 26.5 Survival

The dispute resolution provisions contained in Section 18 (Partnering and Dispute Resolution), the warranties in Section 22 (Project Warranties), all of the indemnification provisions, and all other provisions, which by their inherent character should survive Contract Completion or termination of the PDBC, shall survive Contract Completion or the termination of the PDBC.

## 26.6 No Personal Liability

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

## 26.7 Reserved

## 26.8 Severability

If any clause, provision, Section or part of this PDBC is ruled invalid under Section 18 (Partnering and Dispute Resolution) or otherwise by a court of competent jurisdiction, then the parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the applicable compensation and Completion Deadline(s) to account for any change in the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section or part shall not affect the validity or enforceability of the balance of this PDBC, which shall be construed and enforced as if this PDBC did not contain such invalid or unenforceable clause, provision, Section or part.

## 26.9 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State of Ohio. Venue for any legal action in connection with this PDBC shall lie in Columbus, Franklin County, Ohio in the Ohio Court of Claims.

## 26.10 Counterparts and Electronic Signatures

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be made and delivered electronically.

## 26.11 Further Assurances

The Contractor shall promptly execute and deliver to the Department all such instruments and other documents and assurances as are reasonably requested by the Department to further evidence the obligations of the Contractor hereunder.

## 26.12 Headings

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

## 26.13 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the parties with respect to its subject matter.

## 26.14 Construction and Interpretation of the Contract Documents

The language in all parts of the Contract Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party.

Wherever the word “including,” and variants, shall be deemed to be followed by the words “without limitation”. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. “Or” means the inclusive connotation of “or” (i.e., meaning one, some, or all of a number of possibilities). “May,” when used in the context of a power or right exercisable by the Department (or either’s designee) means the power to exercise that right or power in its sole discretion, with no obligation to any Contractor-Related Entity to do so. “May,” when used in all other contexts, indicates permission by the Department for the Contractor to do (or refrain from doing) an action.

All references to time are to prevailing Eastern time. Reference to a right include any benefit, remedy, discretion, authority, or power associated with such right.

There shall be no double counting in any calculation of any amount payable by a Party, such that the receiving Party would receive more than owed or payable. All monetary amounts and obligations (including use of the symbol “\$”) are expressed and payable in U.S. dollars.

Inconsistent or conflicting provisions of the Contract Documents shall not be treated as erroneous provisions under this Section 26.14 (Construction and Interpretation of the Contract Documents), but instead shall be governed by Section 1.3 (Contract Documents Order of Precedence). The Contractor shall not take advantage of, or benefit from, any apparent or actual error in the Contract Documents, and the Contractor shall request in writing such further explanations from the Department as may be necessary to clarify any such apparent or actual error. The Contractor agrees to abide by the explanation, and correction of errors shall not in itself be the basis for any contractual relief, or other claim at law or in equity.

The fact that the Contract Documents omit or misdescribe any detail of the Work that is otherwise necessary to carry out the intent of the Contract Documents and delivery of the Project, or that are customarily performed, shall not relieve the Contractor from its obligation to perform such omitted or misdescribed details as if fully and correctly set forth in the Contract Documents, which omissions, correction of misdescriptions, or performance of those aspects customarily performed shall not in itself be the basis for contractual relief, or other claim at law or in equity.

## 26.15 Ownership and Copyright of Submittals

Subject to limitations for use of proprietary software, all data, sketches, charts, plans, specifications, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents shall be considered “works made for hire” for which the Department owns the copyright. Subject to Section 25.6 (Public Records) and Section 25.7 (Escrow Documents), Design Documents shall become the Department’s property upon preparation; Construction Documents shall become Department’s property upon delivery to the Department; and other documents prepared or obtained by the Contractor in connection with the performance of its obligations under the Contract Documents, including studies, manuals, technical and other reports and the like, shall become the property of the Department upon the Contractor’s preparation or receipt thereof. Copies of all Design Documents and Construction

Documents shall be furnished to the Department upon preparation or receipt thereof by the Contractor. The Contractor shall maintain all other documents described in this Section 26.15 (Ownership and Copyright of Submittals) in accordance with the requirements of Section 25.1 (Maintenance of Records) and shall deliver copies in accordance with Section 25.7 to the Department as required by the Contract Documents or upon request if not otherwise required to be delivered, with all such documents delivered to the Department as a condition to Contract Completion.

## **26.16 Intellectual Property**

### **26.16.1 Owner Intellectual Property**

Except for Proprietary Intellectual Property, all Intellectual Property ("Owner Intellectual Property") has been specially ordered and commissioned by the Department and shall be considered "works made for hire" as such term is defined in Section 101 of Title 17 of the U.S. Code, and accordingly for which the Department owns the copyright.

### **26.16.2 Obligation to Assign to Department**

If any such work product and related materials, is/are determined by a court of competent jurisdiction, the U.S. Copyright Office, or the U.S. Patent & Trademark Office not to be a work-made-for-hire or where the Department is not the owner or author, Contractor agrees to assign to Department, or cause all Subcontractors to assign to the Department, if applicable, all rights, title and interest in all Intellectual Property, excluding Proprietary Intellectual Property, in such work product and related materials.

### **26.16.3 Creation**

Design Documents shall become Owner Intellectual Property upon preparation in accordance with Section 26.15 (Ownership of Copyright Submittals). Construction Documents shall become Owner Intellectual Property upon receipt by the Department preparation in accordance with Section 26.15. All other submittals and other documents prepared or obtained by Contractor or any Contractor-Related Entity in connection with the Project shall become Owner Intellectual Property upon Contractor's or any such Contractor-Related Entity's preparation or receipt thereof.

### **26.16.4 Restricted License; Restricted Use**

Department hereby grants to Contractor an irrevocable, non-exclusive, non-transferable, non-sub-licensable (without Department's prior written consent), fully paid up license to use and implement, solely in connection with the performance of the Work and for the Term (including any period of Contractor's performance of post-termination or post-expiration obligations), the Owner Intellectual Property; provided that Contractor may sub-license any Owner Intellectual Property solely in connection with the performance of the Work to any Subcontractor performing the Work (but without right to further sub-license).

If Contractor or any Contractor-Related Entity creates or develops any improvements, modifications, enhancements or derivative works to or of the Owner Intellectual Property, any and all such improvements, modifications, enhancements or derivative works created or developed by any Contractor-Related Entity will be deemed to be Owner Intellectual Property under the terms of this Contract.

### **26.16.5 Patented Devices, Materials and Processes**

Before employing any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for its use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement of patented design, device, material, process, or any trademark or copyright, and shall indemnify the State for any costs, expenses, and damages that it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

### **26.17 OBM Certification and Taxes**

This PDBC is subject to ORC Section 126.07, which provides, in part, that orders under State Agreements shall not be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations.

The Department represents that it is exempt from all State and local taxation. As long as the Department is exempt, the Department does not agree to pay any of these taxes. The Contractor, not the Department, shall pay any taxes levied upon the Contractor's net income.

### **26.18 Independent Contractor**

Nothing in the Contract Documents shall be construed as constituting any relationship with the Department other than that of Project owner (the Department) and independent contractor (the Contractor), nor any employer/employee relationship between the Department and the Contractor's employees. 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 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. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Department and a Subcontractor or any other Person except the Contractor.

### **26.19 Drug-Free Work Place**

Throughout the Term, the Contractor and all its Subcontractors and Subconsultants, that provide the Work, must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC and the Department of Worker Claims Drug Free Workplace Program.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable program approved by the OBWC, the Department requires each Contractor and Subcontractor that provides labor, to subject its employees who perform labor on the Project Site to random drug testing of 5 percent of its employees. The random drug testing percentage must also include the on-site supervisors of the Contractors and Subcontractors. Upon request, the Contractor and Subcontractor shall provide evidence of required testing to the Department.

Each Subcontractor shall require all lower-tier Subcontractors that provides labor on the Project Site with whom the Subcontractor is in contract for the Work to be enrolled in and be in good



standing in the OBWC-approved DFSP prior to a lower-tier Subcontractor providing labor at the Site.

The Department will declare a proposal non-responsive and ineligible for award if the Contractor is not enrolled and in good standing in the Ohio Bureau of Workers' Compensation's Drug-Free Safety Program (DFSP) Discount Program or a similar program approved by the Bureau of Workers' Compensation within 8 days of the proposal opening. Furthermore, the Department will deny all requests to sublet when the Subcontractor does not comply with the provisions of this section.

Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the an OBWC-approved DFSP prior to the time that the Subcontractor provides labor at the Site, shall result in the Contractor being found in breach of this PDBC and that breach shall be used in the responsibility analysis of that Contractor or the Subcontractor who was not enrolled in a program for future contracts with the Department for five years after the date of the breach.

## **26.20 Conflicts of Interest**

Prior to execution of a Change Order for any Work Package, the Contractor shall identify and evaluate potential Organizational Conflicts of Interest or develop recommended actions for known organizational conflicts of interest. The Contractor is directed to FAR 2.101, 9.504(a), OAC 4733.35-05, 23 CFR 636.116(a)(1), and 40 CFR 1506.5(c) (as amended) for guidance as to when a conflict of interest arises.

The Contractor shall not employ any person currently employed by the Department for any Phase 1 Work. The Contractor may have other contracts with other clients (e.g., utility companies, other units of government, or abutting land owners) whose interests may be in conflict with the objectives of a particular Department-initiated project. It is the Contractor's responsibility to avoid conflicts of interest in these circumstances and to disclose them as soon as they arise.

## **26.21 Department Property**

Under this PDBC, the Department acquires title to all property to which the Contractor is entitled to reimbursement. The Contractor shall create and maintain records of all Department property accountable to the PDBC, including Department-furnished and Contractor-acquired property.

The Department retains title to all Department-furnished property or equipment. The Contractor shall notify the Department of damages and/or other discrepancies discovered upon receipt of Department-furnished property or equipment. The Contractor shall be responsible to correct damage to Department-furnished property or equipment caused by the Contractor's actions.

[signature page to follow]

**IN WITNESS WHEREOF**, the Parties have executed this PDBC as of the Effective Date.

**STATE OF OHIO**

**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Jack Marchbanks

Director of Transportation

\_\_\_\_\_  
Date

**[CONTRACTOR]**

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Name

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Title

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Date

## EXHIBIT A: ACRONYMS AND DEFINITIONS

<b>AAN</b>	American Association of Nurserymen
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>AC</b>	Asphalt Cement (pavement), Alternating Current (traffic)
<b>ACBFS</b>	Air Cooled Blast Furnace Slag (aggregate)
<b>ACFA</b>	Actual Cost of Force Account
<b>ACI</b>	American Concrete Institute
<b>ACIA</b>	Asynchronous Communications Interface Adapter (traffic controller)
<b>ADR</b>	Alternative Dispute Resolution
<b>ADT</b>	Average Daily Traffic
<b>ADTT</b>	Average Daily Truck Traffic
<b>AIC</b>	Amps Interrupting Capacity
<b>AISC</b>	American Institute of Steel Construction
<b>AISI</b>	American Iron and Steel Institute
<b>AMRL</b>	AASHTO Material Reference Library
<b>ANFO</b>	Ammonium Nitrate and Fuel Oil
<b>ANSI</b>	American National Standards Institute
<b>AOS</b>	Apparent Opening Size (fabric)
<b>AREA</b>	American Railway Engineering Association
<b>ASCE</b>	American Society of Civil Engineers
<b>ASD</b>	Allowable Stress Design
<b>ASME</b>	American Society of Mechanical Engineers
<b>ASTM</b>	American Society for Testing and Materials
<b>ATC</b>	Alternative Technical Concept
<b>AWG</b>	American Wire Gauge
<b>AWPA</b>	American Wood Preservers' Association
<b>AWS</b>	American Welding Society
<b>AWWA</b>	American Water Works Association
<b>BBR</b>	Bending Beam Rheometer (asphalt binder test)
<b>BIM</b>	Building Information Model
<b>BMP</b>	Best Management Practice (erosion)
<b>BOF</b>	Basic Oxygen Furnace (aggregate)
<b>BSG</b>	Bulk Specific Gravity
<b>BTEX</b>	Benzene, toluene, ethyl benzene, and xylene (a soil test)
<b>BUSTR</b>	Bureau of Underground Storage Tank Regulations (Division of Fire Marshal)
<b>C&amp;MS</b>	Construction and Material Specifications
<b>CAPWAP</b>	Case Pile Wave Analysis Program
<b>CBAE</b>	Cut Back Asphalt Emulsion
<b>CCRL</b>	Cement and Concrete Reference Laboratory
<b>CCS</b>	Crushed Carbonate Stone

<b>CECI</b>	Contractors Erosion Control Inspector
<b>CFR</b>	Code of Federal Regulations
<b>CIE</b>	Commission Internationale d'Eclairage (illumination)
<b>CM</b>	Construction Manager
<b>CPESC</b>	Certified Professional in Erosion and Sediment Control
<b>CQAE</b>	Construction Quality Assurance Engineer
<b>CQCE</b>	Construction Quality Control Engineer
<b>CRS</b>	Cationic Rapid Set (asphalt emulsion)
<b>CRSI</b>	Concrete Reinforcing Steel Institute
<b>CSS</b>	Cationic Slow Set (asphalt emulsion)
<b>CSXT</b>	CSX Transportation, Inc.
<b>CUF</b>	Commercially Useful Function
<b>CVN</b>	Charpy V-notch (steel test)
<b>CWT</b>	Hundred Weight (100 lbs.)
<b>DB</b>	Design-Build
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DBT</b>	Design-Build Team
<b>DCE</b>	District Construction Engineer
<b>DDD</b>	District Deputy Director
<b>DDRC</b>	District Dispute Resolution Committee
<b>DET</b>	District Engineer of Tests
<b>DGE</b>	District Geotechnical Engineer
<b>DLS</b>	Data Logging System (traffic markings)
<b>DNR</b>	Department of Natural Resources
<b>DRB</b>	Dispute Resolution Board
<b>DRC</b>	Dry Rodded Condition (asphalt aggregate test)
<b>DSR</b>	Dynamic Shear Rheometer (asphalt binder test)
<b>DZA</b>	Deficient Zone Average (concrete test)
<b>EA</b>	Electric Arc Furnace
<b>ECFA</b>	Estimated Cost of Force Account
<b>EDA</b>	Earth Disturbing Activity
<b>EI</b>	Edison Electric Institute
<b>EIA</b>	Electronic Industries Alliance
<b>EPA</b>	Environmental Protection Agency
<b>EQS</b>	Exceptional Quality Solids (compost)
<b>FAA</b>	Fine Aggregate Angularity (asphalt aggregate)
<b>FAR</b>	Federal Accounting Regulations
<b>FCM</b>	Fracture Critical Member (steel test)
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	Federal Highway Administration, Department of Transportation

<b>FRP</b>	Fiber Reinforced Polymer
<b>FSS</b>	Federal Specifications and Standards, General Services Administration
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GGBFS</b>	Ground Granulated Blast Furnace Slag
<b>GMP</b>	Guaranteed Maximum Price
<b>GS</b>	Granulated Slag
<b>HDPE</b>	High Density Polyethylene
<b>HMWM</b>	High Molecular Weight Methacrylate
<b>ICEA</b>	Insulated Cable Engineers Association
<b>IEEE</b>	Institute of Electrical and Electronic Engineers
<b>IES</b>	Illuminating Engineering Society
<b>IMP</b>	Traffic Incident Management Plan
<b>IMSA</b>	International Municipal Signal Association
<b>IPCEA</b>	Insulated Power Cable Engineers Association
<b>IPS</b>	International Pipe Standard
<b>ISSA</b>	International Slurry Seal Association
<b>ITE</b>	Institute of Transportation Engineers
<b>ITO</b>	Instructions to Offerors
<b>ITS</b>	Intelligent Transportation System
<b>IZEU</b>	Inorganic Zinc Epoxy Urethane
<b>JMF</b>	Job Mix Formula
<b>JV</b>	Joint Venture
<b>LAM</b>	List of Approved Materials
<b>LED</b>	Light Emitting Diode
<b>LOD</b>	Level of Development
<b>LWT</b>	Loaded Wheel Test (asphalt test)
<b>MALD</b>	Model as a Legal Document
<b>MBF</b>	Thousand Board Feet (wood)
<b>MC</b>	Medium Cure (asphalt emulsion)
<b>MCB</b>	Microchannel Bus (traffic controller)
<b>MOT</b>	Maintenance of Traffic
<b>MOV</b>	Metal Oxide Varistor (traffic controller)
<b>MPI</b>	Magnetic Particle Inspection (steel test)
<b>MSG</b>	Maximum Specific Gravity (asphalt)
<b>MTD</b>	Maximum Theoretical Density (asphalt)
<b>N/A</b>	Not applicable
<b>NACE</b>	National Association of Corrosion Engineers
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NCR</b>	Nonconformance Report
<b>NEMA</b>	National Electrical Manufacturers Association

<b>NEPA</b>	National Environmental Policy Act
<b>NHI</b>	National Highway Institute
<b>NIST</b>	National Institute of Standards and Technology
<b>NOI</b>	Notice of Intent
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NTP</b>	Notice to Proceed
<b>OAC</b>	Ohio Administrative Code
<b>ODOT</b>	Ohio Department of Transportation
<b>OEPA</b>	Ohio Environmental Protection Agency
<b>OH</b>	Open Hearth (aggregate)
<b>OHWM</b>	Ordinary High Water Mark
<b>OJT</b>	On the Job Training
<b>OMM</b>	Office of Materials Management (the Central Office Laboratory)
<b>OMUTCD</b>	Ohio Manual of Uniform Traffic Control Devices
<b>ORC</b>	Ohio Revised Code
<b>ORDC</b>	Ohio Rail Development Commission
<b>OSHA</b>	Occupational Safety and Health Administration
<b>OTE</b>	Office of Traffic Engineering
<b>OWPCA</b>	Ohio Water Pollution Control Act
<b>OZEU</b>	Organic Zinc Epoxy Urethane
<b>PAT</b>	Project Average Thickness (concrete test)
<b>PAV</b>	Pressure Aging Vessel (asphalt binder test)
<b>PB</b>	Polybutylene (conduit)
<b>PCC</b>	Portland Cement Concrete
<b>PCS</b>	Petroleum Contaminated Soil
<b>PDA</b>	Pile Dynamic Analysis (steel piling)
<b>PDB</b>	Progressive Design-Build
<b>PDBC</b>	Progressive Design-Build Contract
<b>PE</b>	Polyethylene (conduit)
<b>PG</b>	Performance Grade (asphalt binder grading system)
<b>pH</b>	Potential of Hydrogen
<b>PI</b>	Public Information
<b>PLS</b>	Pure Live Seed
<b>PML</b>	Probable Maximum Loss
<b>PVC</b>	Polyvinyl chloride
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>QCFS</b>	Quality Control Fabricator Specialist (structures)
<b>QCP</b>	Quality Control Program, or Plan, or Points (steel test)
<b>QPL</b>	Qualified Products List

<b>RAP</b>	Reclaimed Asphalt Pavement
<b>RAS</b>	Reclaimed Asphalt Shingles
<b>RC</b>	Rapid Cure (asphalt emulsion)
<b>REA</b>	Rural Electrification Act
<b>RFC</b>	Released for Construction
<b>RFI</b>	Radio Frequency Interference (traffic controller)
<b>RFP</b>	Request for Proposal
<b>RH</b>	Relative Humidity
<b>RID</b>	Reference Information Document(s)
<b>RMMP</b>	Regulated Materials Management Plan
<b>RMS</b>	Root Mean Square (traffic controller)
<b>ROD</b>	Record of Decision
<b>ROW</b>	Right(s)-of-Way
<b>RPCC</b>	Recycled Portland Cement Concrete
<b>RPM</b>	Raised Pavement Marker (traffic)
<b>RS</b>	Rapid Set (asphalt emulsion)
<b>RTFO</b>	Rolling Thin-Film Oven (asphalt binder test)
<b>RUS</b>	Rural Utilities Service
<b>SAE</b>	Society of Automotive Engineers
<b>SBA</b>	Styrene Butadiene Amine
<b>SBR</b>	Styrene Butadiene Rubber
<b>SBS</b>	Styrene Butadiene Styrene
<b>SCD</b>	Standard Construction Drawing
<b>SDS</b>	Safety Data Sheets
<b>SF</b>	Standard Fabricated members (structures)
<b>SI</b>	International System of Units (Metric)
<b>SMA</b>	Stone Matrix Asphalt
<b>SPD</b>	Surge Protection Device (traffic controller)
<b>SPST</b>	Single Pole / Single Throw (traffic controller)
<b>SS</b>	Slow Set (asphalt emulsion)
<b>SSD</b>	Saturated Surface Dry (aggregate)
<b>SSPC</b>	Society for Protective Coatings
<b>SWPPP</b>	Storm Water Pollution Prevention Plan
<b>TAP</b>	Traffic Authorized Product
<b>TCE</b>	Trichloroethylene
<b>TCP</b>	Temporary Traffic Control Plan
<b>TMP</b>	Traffic Management Plan
<b>TMPTA</b>	Tri-methylpropane Tri-acrylate (paint)
<b>TNP</b>	Total Neutralizing Power
<b>TODS</b>	Tourist-Oriented Directional Signs



<b>TSEC</b>	Temporary Sediment and Erosion Control
<b>TSR</b>	Tensile Strength Ratio (asphalt mix test)
<b>UF</b>	Unique Fabricated members (structures)
<b>UL</b>	Underwriters' Laboratories, Inc.
<b>USACE</b>	United States Army Corps of Engineers
<b>USCG</b>	United States Coast Guard
<b>USC</b>	United States Code
<b>VA</b>	Verification Acceptance
<b>VAC</b>	Volts Alternating Current
<b>VCA</b>	Volume of Coarse Aggregate (asphalt mix test)
<b>VMA</b>	Voids in the Mineral Aggregate
<b>VME</b>	VersaModule Eurocard (traffic controller)
<b>WDT</b>	Watchdog Timer
<b>WEAP</b>	Wave Equation Analysis (steel piling)
<b>WPS</b>	Welding Procedure Specification (steel test)
<b>WTS</b>	Worksite Traffic Supervisor
<b>WZRPM</b>	Work Zone Raised Pavement Marker (traffic)
<b>XCU</b>	Explosion, Collapse and Underground

**AASHTO Uniform Audit & Accounting Guide** means the guide published by AASHTO that includes detailed information regarding techniques for cost allocation, application of Federal procurement regulations, and the proper treatment of operating costs incurred by organizations for engineering and design-related services performed on various Federal, State, and Local transportation projects.

**Addenda/Addendum** means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP up to the Proposal Due Date.

**Administrative Proposal** means the proposal materials submitted by an Offeror providing the information requested in ITO Section 6.7 (Administrative Proposal).

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

**Allowance Item** means Contract Items that the Department determines require an allowance based upon the Design Documents then available to the Department.

**As-Built Construction Record-Drawing Model and Plans** means documents that depict the final completed Project, including all changes from RFC Documents and data showing all items such as the electrical systems, drainage systems, lighting systems, underground Utilities, traffic controls, intelligent transportation system, signing placement, highway alignment and grade revisions, bridge detail changes, bridge settlement reference elevations and joint seal measurements, typical sections, cross sections, and all other relevant data. As-Built Drawings also refer to the final BIM received that includes all field changes.

**Audit or Financial Review** is a formal examination of accounting systems, cost records, and other cost presentations to verify their reasonableness, allowability, and allocability for negotiating fees and for determining costs for Federal, Department, and Local participation and reimbursement. Audits and Financial Reviews may include, but are not limited to, an evaluation of the Contractor's policies, procedures, controls, and actual performance. Objectives of Audits and Financial Reviews include the identification and evaluation of all activities that contribute to, or have an impact on, proposed or incurred costs under the PDBC. Audits and Financial Reviews may include inquiries conducted electronically (by correspondence or email) and also may involve fieldwork (the examination of financial records at the Contractor's business offices).

**Authorized Representative** has the meaning set forth in ITO Section 4.2 (Authorized Representatives and Offeror Registration).

**Baseline Schedule** has the meaning assigned in Section 1.4.1 (Interim Baseline and Baseline Schedules) of Exhibit T (Critical Path Method Progress Schedule).

**BIM Execution Plan (BEP)** means the plan addressing BIM management, deliverable requirements, and workflows as described in Exhibit F (BIM Execution Plan Requirements).

**Building Information Model (BIM)** is a three-dimensional (3D) digital representation of physical and functional characteristics of a facility.

**Best Management Practices or BMP** has the meaning set forth in *Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92 005).

**Betterment** means any upgrade of a utility company's facility being relocated that is not attributable to the Construction Work and is made solely for the benefit of and at the election of the utility company.

**Blue Book** has the meaning assigned in Exhibit H (Force Account Provisions).

**Bridge** means a structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of 10 feet (3.048 m) or more between undercopings of abutments or extreme limits of openings for multiple boxes.

- A. Length. The length of a bridge structure is the overall length measured along the centerline of the roadway surface.
- B. Roadway Width. The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curbs, between the bottoms of the lower risers. For curb widths of 1 foot (0.3 m) or less, the roadway width is measured between parapets or railings.

**Buildable Unit** means a unit of Work that is suitable to be packaged as a Submittal because the unit of Work is capable of being designed, reviewed, and constructed independently from other units of Work or with clearly identified controls, constraints and assumptions governing the interfaces with other units of Work. A Buildable Unit may be defined by a geographic area, by types of Work or by construction stages.

**Category 1 Events** means excusable, non-compensable delays as defined in Section 13.2.1 (Category 1 Events – Excusable, Non-Compensable Delays) of the PDBC.

**Category 2 Events** means excusable compensable delays as defined in Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays) of the PDBC.

**Certificate of Current Cost or Pricing Data** means a certificate in the form in paragraph (a) of 48 CFR 15.406-2.

**Certified Test Data** means test report from a manufacturer's or an independent laboratory approved by the Department listing actual test results of samples tested for compliance with specified Department requirements. The Department will accept certified test data from manufacturers' laboratories if their products have been used satisfactorily on prior Department contracts and their test data has been confirmed. Include a statement that the test data furnished is representative of the material furnished to a Department project or to a supplier. The report is identified by number or date and identifies the Department project or supplier to which the material is shipped. Submit reports signed by a person having legal authority to act for the manufacturer or independent laboratory.

**Change Order** means a written order issued by the Department to the Contractor, covering changes to the terms and conditions, and/or contract quantities, within or beyond the scope of the Contract and establishing the basis of payment and time adjustments for the Work affected by the changes.

**Claim** means a Dispute that is not settled through Steps 1 or 2 of the Dispute Resolution Procedures. A Dispute becomes a Claim when the Contractor submits a notice to escalate to Step 3 of the Dispute Resolution Process.

**Claims Documentation** shall have the meaning assigned to such term under Section 18.4.9 (Procedures for Consideration of Disputes) of the PDBC.

**Clean Hard Fill** has the meaning assigned in CA-EW-20 (ODOT Beneficial Reuse Form).

**Closure** means that all or part of any traffic lanes, ramps, cross roads, shoulders or sidewalks are closed or blocked, or that the use thereof is otherwise restricted.

**Commencement Date** means the commencement date for the performance of the Sub-Phase 1A Work, the Sub-Phase 1B Work, or the Phase 2 Work which shall be the date described as the 'Commencement Date' in the Notice to Proceed applicable to the Work.

**Completion Deadline** means the date shown in the Contract Documents upon which a Milestone is scheduled to be achieved as such date may be extended in accordance with the Contract Documents.

**Completion of the Contract** has the meaning set forth in Section 5.14.4 (Completion of the Contract and Continuation of Contractor's Responsibilities) of the PDBC.

**Completion of the Contract Date** means the date of the Department's letter confirming Completion of the Contract.

**Completion of the Contract Deadline** means the date to be established by the Parties by which Completion of the Contract shall be achieved, which shall be a specified number of days after the Substantial Completion Date.

**Component Firm** means any firm that is contemplated by the Contractor to perform Work on the Project for or on behalf of the Contractor, including the Contractor, DBT, Principal Participants, Major Participants, Designers, Subcontractors and Subconsultants.

**Construction and Materials Specifications (C&MS)** means the Department's Construction and Materials Specifications.

**Construction Documents** means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples developed by the Contractor and necessary or desirable for construction of the Project and/or the Utility Relocations included in the Construction Work, in accordance with the Contract Documents and the Special Provisions.

**Construction Period** means the period beginning on the date the Department authorizes the commencement of Construction Work per Section 5.2 (Phase 2 Preconstruction and Progress Meetings) of the PDBC and ending on the Substantial Completion Date.

**Construction Work** means all Work related to the construction of the Project including furnishing all Materials, goods, and Equipment and performing all construction, installation, inspection, testing, and other services required to complete the fully functional Project and the Phase 2 Work, whether temporary or permanent but excluding the Design Work.

**Contingency** means monetary set-asides by the Contractor for cost and time and duration set-asides by the Contractor for schedule included (or proposed to be included, as the context requires) within the Contract Price or the Project Schedule.

**Consumer Price Index or CPI** means the Consumer Price Index All items (BES Series ID CUUR0000SA), as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index selected by the Department and approved by the Contractor, acting reasonably. If such index is revised so that the base year differs from that set forth above, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

**Contract** means the PDBC (the written agreement between the Department and the Contractor setting forth the obligations of the Parties, including, but not limited to, the performance of the Work and the basis of payment).

**Contract Completion Time** means the time assigned in the Baseline Schedule accepted by the Department to achieve Substantial Completion.

**Contract Documents** means the PDBC and its exhibits, general and detailed plans, Plan notes, Standard Construction Drawings identified in the Plans, Phase Change Orders, Change Orders, Supplemental Agreements, "Accepted" and "Accepted as Noted" Working Drawings, and (i) any other document designated by the Department as a Contract Document, prior to the submission date of the Offeror's Proposal and (ii) any other documents designated by the Department as a Contract Document and accepted by the Contractor subsequent to the submission date, all of which constitute one instrument.

**Contract Item (Pay Item)** means a specifically described unit of Work for which a price is provided in the Contract.

**Contract Price** means the amount of compensation to be paid by the Department to the Contractor for the Phase 2 Work or for a Work Package or Buildable Unit (depending on the context) as such amount may be modified pursuant to the Contract Documents.

**Contract Time** means the number of Workdays or Days, including authorized adjustments, allowed for completion of the Project. When a specified Completion Deadline is shown in the Contract Documents instead of the number of Workdays or Days, completion of the Project shall occur on or before that date. Specified Completion Deadline shall be completed on or before the day indicated even when that date is a Saturday, Sunday, or holiday.

**Contractor** means the individual, firm, corporation or joint venture, which may include the Designer if qualified under the provisions of ORC 5526.04, contracting with the Department for performance of prescribed Work, acting directly or through a duly authorized representative and qualified under the provisions of ORC 5525.02 to 5525.09 inclusive, and any amendments thereto.

**Contractor Default** has the meaning assigned in Section 19.1.1 (Breach by the Contractor) of the PDBC.

**Contractor Generated Regulated Material** means (a) Release(s) of Regulated Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Contractor or any Affiliate, provided that the performance of Regulated Materials Management in respect of Regulated Materials by the Contractor or any Affiliate in accordance with the requirements of the PDBC shall not be a “Contractor Release of Regulated Material” (b) Release(s) of Regulated Materials arranged to be brought onto the Site or elsewhere by the Contractor or any Affiliate, regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Regulated Materials by the Contractor or any Affiliate in violation of the requirements of the Contract Documents or any Applicable Law or Governmental Approval.

**Contractor-Related Entity** means:

- (a) the Principal Participants and Major Participants;
- (b) the Subcontractors and Subconsultants (including Suppliers);
- (c) any other Persons performing any of the Work for or on behalf of the Contractor;
- (d) in respect of any of the foregoing:
  - (i) the officers, directors and employees;
  - (ii) agents and representatives to the extent engaged in connection with the Project;
  - (iii) consultants and contractors to the extent engaged in connection with the Project;  
and
  - (iv) successors and assigns,

excluding the Department, and in respect of any Utility Relocation Work, the relevant Utility Owner.

**Contractor Risk** is a Risk Register Event for which the Contractor is only eligible for financial relief to the extent amounts are available in the Contractor’s Risk Contingency.

**Contractor Submittals Listing & Schedule** is defined in Section 4.7 (Contractor Submittals Listing & Schedule) of the PDBC.

**Contractor’s Representative** means the person assigned with full authority to represent and act for the Contractor as set forth in Section 10.1.2 (Contractor’s Representative) of the PDBC.

**Contractor’s Risk Contingency** means the aggregate sum of the Risk Events for which the Contractor has assumed financial responsibility under the then-current Risk Register.

**Controlling Board** means the State Controlling Board as defined in ORC Chapter 127.

**Corrective Action** means the action taken by which the Nonconforming Work is made compliant with the Contract Documents.

**Cost Accounting Standards (CAS)** are issued by the Cost Accounting Standards Board (CASB), a section of the Office of Federal Procurement Policy within the U.S. Office of Management and Budget. The CASB has the exclusive authority to issue and amend cost accounting standards and interpretations designed to achieve uniformity and consistency in the cost accounting practices governing the measurement, assignment, and allocation of costs to contracts that involve Federal funds. The CAS are codified at 48 CFR Chapter 99.

**Cost Accounting System** means a type of accounting system that allows for the systematic and timely classification, recording, allocation, presentation, and interpretation of costs, either actual or proposed, as paid or required to be paid in the performance of the applicable portion of the Work. For each FAR Participant, the Cost Accounting System shall articulate with, and/or be integrated with, the organization's general ledger and financial management system. The use of a Cost Accounting System is required by FAR Participants, as these systems provide for the consistent allocation of costs to cost objectives (direct and indirect activities). Cost Accounting Systems generally involve a higher level of accountability and detail than is present in simple financial accounting systems that merely track and accumulate costs by category (expense type), rather than by both categories and cost objectives. For specifics regarding the proper design and maintenance of Cost Accounting Systems, see the AASHTO Uniform Audit & Accounting Guide, Chapters 5 through 8.

**Cost Model** means the open and transparent model that the Contractor develops and uses with respect to the applicable portion of the Work so that estimates and assumptions are communicated to the Department, and the Department's Office of Estimating prepared in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

**County** means the designated county or counties in which the Work specified is to be done.

**Critical Activities** means the activities that make up the Critical Path of activities.

**Critical Path** means the longest path of activities in the Project Schedule that controls the time of completion of a Milestone.

**Critical Path Method (CPM)** means a scheduling method that utilizes the precedence diagram approach to calculate each activity's early dates, late dates and float values in order to establish the Critical Path through the activity network.

**Culvert** means any structure not classified as a Bridge that provides an opening under the roadway.

**Day** means every day shown on the calendar.

**DBE Outreach Plan** means the outreach and communication plan regarding DBE participation described in Exhibit O (Disadvantaged Business Enterprise Performance Plans and Good Faith Efforts) as may be amended.

**DBE Performance Plan** means the performance plan for achievement of DBE compliance described in Exhibit O (Disadvantaged Business Enterprise Performance Plans and Good Faith Efforts) as may be amended.

**DBT Model Construction Manager** means the Key Personnel of that name identified in Exhibit D (Key Personnel).

**DBT Model Design Manager** means the Key Personnel of that name identified in Exhibit D (Key Personnel).

**DBT Project Manager** means the Key Personnel of that name identified in Exhibit D (Key Personnel).

**Daily Force Account Record** means the record prepared and signed by the Parties on a daily basis to record labor and Equipment used on the force account Work as further described in Exhibit H (Force Account Provisions).

**Debarment Regulations** means (a) Federal Executive Order no. 12549 (Feb. 18, 1986), (b) Federal Executive Order no. 12689 (Aug. 16, 1989), (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327) and (d) 49 CFR Part 29 “Government wide Debarment and Suspension (Non-procurement)”.

**Delay Schedule** has the meaning assigned in Section 1.7 (Revision and Delay Schedules) of Exhibit T (Critical Path Method Progress Schedule).

**Department** means the Ohio Department of Transportation and may be used interchangeably with State or ODOT. Each reference to the Department shall be deemed to include the Department’s Authorized Representatives.

**Department Authorized Representative** means one or more individuals having specified authority under the PDBC to be provided to the Contractor in a written notice as described in Section 10.1.1 (Department Authorized Representatives) of the PDBC.

**Department-Provided Approvals** means each of the Governmental Approvals for the Project to be provided by the Department.

**Department Release(s) of Regulated Material** means the introduction in on or under the Project Right of Way of Regulated Material directly by the Department, or by its contractors, Subcontractors, Subconsultants agents or employees acting in such capacity (other than the Contractor, its Subcontractors, Subconsultants or Affiliates), excluding, however, any Regulated Materials that are Contractor-Generated Regulated Materials.

**Department’s Change Event Notice** means a written communication by the Department sent to the Contractor after the Contractor’s oral notice of a potential Change Order event as required by Section 12.4.1 (Notice of Potential Change Order (NPCO)) and either (i) before Contractor’s written notice required by Section 12.4.1, or (ii) after Contractor’s written notice required by Section 12.4.1, and such Notice shall include a statement disclosing the successful or unsuccessful mitigation of the event, and may, but is not required to, include a summary of the Department’s mitigation efforts, instructions to the Contractor to submit a RCO and/or an EDR, the Department’s decision to issue a Construction Change Directive, Department’s decision that such event is not entitled to a Change Order, and a statement requiring the Contractor to submit a Change Event Mitigation Plan in accordance with Section 12.4.1.3 (Change Event Mitigation Plan).

**Department’s Decision** means the Department’s decision regarding the Contractor’s request for an extension of any Completion Deadline and/or the applicable portion of the Contract Price due to Delay Costs in accordance with Section 13 (Time Extension To The Completion Deadlines And Payment For Excusable Delays) of the PDBC.

**Department’s Risk Contingency** means any contingency established by the Department to manage the aggregate sum of Risk Events for which the Department has assumed financial responsibility under the then-current Risk Register.

**Design-Build Team (DBT)** means the Contractor and its Subconsultants and Subcontractors.



**Design Documents** means all drawings (Plans), specifications, calculations, records, reports or other documents, including shop drawings and working drawings, prepared by the Contractor, which may be used for design, manufacture, fabrication, installation, testing, examination and certification of items and which give a detailed and precise representation of the configurations and arrangements of the materials and items being constructed in connection with the Project based on the Contract Documents. The BIM and all supporting documentation will also be considered Design Documents.

**Design Work** means all Phase 1 Work or Phase 2 Work related to the design, redesign, engineering, or architecture of the Project, development of all required Design Documents and applicable Construction Documents required by the PDBC.

**Design and Construction Work** means the Design Work and Construction Work, including those obligations of the Contractor pertaining to design and construction set forth in the Project Scope.

**Designer** means the individual, firm, or corporation that the Contractor designates to prepare the Design Document(s) and is otherwise charged with the Design Document(s) portions of the PDBC Contract (not necessarily including Work incorporated in the preparation of Working Drawings) who prior to such undertaking receives the written consent of the Department, provided such individual, firm or consultant must hold a Certificate of Authorization from the Ohio State Board of Registration for Professional Engineers and Surveyors and has fulfilled the Prequalification requirements under ORC 5526.04.

**Detailed Cost Analysis** means a detailed cost analysis performed by the Contractor in accordance with Section 13.4.1.1 (Detailed Cost Analysis) of the PDBC and submitted in conjunction with an Excusable Delay Request.

**Deviation** See “Standards Deviation”.

**Direct Cost** is any labor or non-labor cost that can be traced to a specific Project, task, program, activity or contract (final cost objective). All direct labor costs allocable to design and engineering contracts (regardless of the contract type, e.g., lump sum versus actual cost) shall be properly allocated to final cost objectives, and all direct labor costs shall be included in the direct labor base, regardless of whether the costs are billable to a client.

**Director** means the Director of the Ohio Department of Transportation or authorized designee.

**Disadvantaged Business Enterprise (DBE)** has the meaning set forth in 49 CFR Part 26.

**Dispute** means any Claim, dispute, disagreement or controversy between the Department and the Contractor concerning their respective rights and obligations under the Contract Documents, including concerning any alleged breach or failure to perform and remedies.

**Dispute Documentation** shall have the meaning assigned to such term under Section 18.3.3 (Dispute Documentation and Rebuttal) of the PDBC.

**Dispute Resolution Coordinator** shall mean the Department official given such title by the Director.

**Disputed Work** means any portion of the Work that is the subject of a Dispute or Claim filed by the Contractor in accordance with the Dispute Resolution Procedures.

**Dispute Resolution Procedures** means the procedures for resolving disputes set forth in Article 18 of the PDBC.

**Effective Date** is defined in the preamble of this PDBC.

**Emergency** means any unforeseen event affecting the Project, whether directly or indirectly, which (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public, (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment or to property adjacent to the Project or to the Safety of the Users or the traveling public; (c) is recognized by the Ohio Department of Public Safety as an emergency; or (d) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

**Engineer of Record** means an individual, or individuals, employed by the Contractor or a Component Firm and properly registered as a Professional Engineer with the Ohio State Board of Registration for Professional Engineers and Surveyors, who seals the construction plans and associated documents/calculations. Also known as Designer of Record.

**Engineered Drawings** means a type of working drawing that requires the practice of engineering as defined in ORC 4733.01(E), as applicable. Examples of Engineered Drawings include: Excavation Bracing Plans, Demolition Plans, Erection Plans, Falsework Plans, Cofferdam Plans, Causeway Plans, Jacking and Temporary Support Plans, Plans for Heavy Equipment on Structures, and Plans for structures for Maintaining Traffic.

**Environmental Commitments** means the compliance measures, documentation, timing, and responsibilities described in Section 8 (Environmental) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**Environmental Compliance Specialist (ECS)** means the individual retained or employed by Contractor who has the authority and responsibility for monitoring, documenting and reporting environmental compliance for the Work as more particularly described in the Project Scope.

**Environmental Monitoring and Compliance Plan (EMCP)** means the Contractor's plan for documenting and verifying compliance with the Environmental Commitments, prepared in accordance with the Project Scope.

**Equipment** means all machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper design, construction, and acceptable completion of the Work.

**Environmental Site Assessment (ESA)** is a study used to determine if any Regulated Materials are present on a property or parcel. The Department uses these studies to determine the potential involvement of a Project's earth-disturbing construction activities with documented environmental releases from adjacent properties.

**Escrow Agent** means the banking institution or other bonded document storage facility agreed by the Parties to be responsible for the escrow of the Escrow Documents under the Escrow Agreement.

**Escrow Agreement** means the agreement executed and delivered by the Contractor, the Departments and the Escrow Agent pursuant to Section 25.7 (Escrow Documents) of the PDBC.

**Escrow Documents** has the meaning set forth in Section 25.7.1 (General) of the PDBC.

**Escrow Documents Submission Date** means the date on which any Escrow Documents are scheduled to be submitted by the Contractor to the Escrow Agent to be held pursuant to the Escrow Agreement.

**Excess GMP** means all Cost of Work in excess of any approved GMP Contract Price that is not approved in accordance with a Change Order.

**Excusable Delay Request** has the meaning set forth in Section 13.4.1 (Excusable Delay Request) of the PDBC.

**Extra Work** means an item of Work not provided for in the Contract as awarded but found essential to the satisfactory completion of the Contract within its intended scope.

**FAR Participant** means a Component Firm that has an indirect cost rate approved by ODOT's Office of External Audits and establishes and maintains acceptable, fully articulated Financial and Cost Accounting Systems that track, classify, and allocate costs in accordance with the requirements of FAR Part 31 and applicable Cost Accounting Standards.

**FHWA** refers to the Federal Highway Administration of the United States Department of Transportation.

**Fabricator** means the individual, firm, or corporation that fabricates structural metals or prestressed concrete members as an agent of the Contractor.

**Federal Requirement** means those requirements set forth in attached Exhibit N (Contract Provisions for Federal Aid Construction Projects).

**Field Design Change (FDC)** means design changes initiated by the Contractor to documents approved and Released for Construction (RFC) are completed under a Field Design Change (FDC). FDCs are subject to quality check or review activities.

**Final Completion** means the satisfaction of all requirements in Section 5.14.3.1 (Requirements for Final Completion) by the Contractor and issuance of Notice of Final Completion by the Department pursuant to Section 5.14.3.2 (Notice of Final Completion).

**Final Design** means, depending on the context: (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents, or (c) the process of development of the Final Design Documents.

**Final Design Documents** means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, specifications, reports, studies, calculations, electronic files, records and submittals prepared by the Contractor, necessary or related to construction and maintenance of the Project or any portion thereof and any utilities included in the Design Work or the Construction Work.

**Final Engineering and Construction Phase** means Phase 2.

**Final Invoice** means the estimate for payment prepared by the Contractor and approved by the Department, prepared in accordance with Section 11.4 (Phase 1 Estimates and Payments) of the PDBC.

**Final Payment** means the final payment of the Contract Price payable after Final Completion in accordance with the terms of this PDBC.

**Financial Proposal** means the financial proposal submitted by an Offeror providing the information requested in ITO Section 6.9 (Financial Proposal).

**Float** means the length of time along a given network path that the actual start and finish of activity(s) can be delayed without delaying the Substantial Completion Deadline.

**Force Majeure Event** has the meaning assigned in Section 14 (Force Majeure Events) of the PDBC.

**General and Administrative (G&A) Expenses** the Contractor's auditable general and administrative costs and expenses that are allocated among all of the Contractor's projects (inclusive of the Project) as further detailed under Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process), Part B.

**Good Faith Efforts (GFE)** means efforts to achieve a DBE or goal, that by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the requirements of the goal, in accordance with 49 CFR 26.53 and Appendix A to Part 26.

**Governing Regulations** means the governing regulations set forth in Section 7.1 (Governing Regulations) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**Government Entity** means any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity, other than ODOT.

**Governmental Approval** means any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, bond requirement, registration, or ruling, issued or required by any Government Entity having subject matter jurisdiction by Applicable Law or consent of the Department, required for performance of the Phase 1 Work or the Phase 2 Work or any part of it.

**Guaranteed Maximum Price or GMP** means a form of pricing for Buildable Unit or the Phase 2 Work in which, in return for delivering such Work, the Contractor is eligible to be paid the actual allowable cost of properly performing such Work but may not receive more than the GMP.

**Guaranteed Maximum Price (GMP) Contract Price** means any Price Proposal approved as a GMP.

**Guaranteed Maximum Price (GMP) Savings** means the difference, if any, between the actual cost of the Work plus Phase 2 Markup under any GMP Contract Price at Completion of the Contract (or completion of the applicable Work Package), and the GMP Contract Price and Phase 2 Markup incorporated into the corresponding Change Order.

**Guarantor** means any party approved by the Department to provide a Guaranty securing Contractor's obligations under this PDBC.

**Guaranty** means any guaranty provided by a Guarantor to secure Contractor's obligations under this PDBC.

**Indemnified Parties** has the meaning assigned in Section 16.1 (Indemnifications by Contractor) of the PDBC.

**Inspector** means the Department's authorized representative assigned to make detailed inspections of Contract performance.

**Instructions to Offerors (ITO)** means the documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the Offerors in response to the RFP.

**Intellectual Property** means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, and any and all other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world, together with all or any goodwill relating or attached to such rights, which is created, brought into existence, acquired, used, or intended to be used by any Contractor-Related Entity for the purposes of carrying out the Phase 1 Work or the Phase 2 Work or otherwise for the purposes of the PDBC.

**Interim Baseline Schedule** has the meaning assigned in Section 1.4.1 (Interim Baseline and Baseline Schedules) of Exhibit T (Critical Path Method Progress Schedule).

**Interim Schedule** means the updated Interim Baseline Schedule.

**Key Personnel** means those individuals named and listed in Exhibit C (Proposal Commitments) as filling:

- (a) the Key Personnel positions listed in Exhibit D (Key Personnel); and
- (b) any additional Key Personnel positions not included in paragraph (a) of this definition but offered in the Proposal Commitments, and any replacements approved in accordance with Section 10.4 (Key Personnel) of the PDBC.

**Laboratory** means the testing laboratories under the direct management of ODOT, or specifically contracted with ODOT for management of the Project's Materials. This may include the Office of Materials Management (OMM) located at 1600 West Broad Street, Columbus, Ohio, and the ODOT District testing facilities.

**Law or Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by the Department within the scope of its administration of the Contract Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including any and all Ohio or federal environmental laws and regulations pertaining to the Project. "Laws," however, excludes Governmental Approvals.

**Lead Surety or Lead Sureties** has the meaning assigned in Section 19.1.5 (Liability of Contractor and Surety /Occurrence of a Contractor Breach).

**Level of Development** is the completeness of elements in a BIM. Completeness ranges from geometric schematics to detailed element information

**Maintenance of Traffic (MOT)** means the maintenance of traffic on existing roads and crossroads within the Project Right of Way to ensure access to all relevant properties during the Work.

**Maintenance of Traffic Plan** means the Contractor's plan for Maintenance of Traffic, prepared in accordance with the Project Scope and is a part of the Contractor's Traffic Management Plan.

**Major Participant** means any Component Firm that a Key Personnel is employed by or a Component Firm that is being used to meet a "By Project Award" Prequalification requirement for the Project.

**Materials** means any materials or products specified for use in the construction of the Project and its appurtenances.

**Maximum Prime Compensation** is the not-to-exceed limit of the Prime Compensation for the Phase 1 Work under the provisions of the PDBC.

**Measured Mile** means an analysis comparing the productivity of Work to prove and quantify inefficiency as further described in Section 12.8.6 (Inefficiency) of the PDBC.

**Milestone** means the milestone for completion of the Sub-Phase 1A Work, the milestone for completion of the Sub-Phase 1B Work, the milestone for Substantial Completion of the Work or any other milestone established in the Project Schedule as the context requires.

**Milestone Date** means the date upon which each Milestone actually occurs.

**Milestone Deadline** means the date upon which each Milestone is scheduled to be achieved in accordance with the Project Schedule as such dates may be extended in accordance with the Contract Documents.

**Mobilization** means the Work described in Section 11.7 (Mobilization) of the PDBC.

**Monthly Progress Report** means the report the Contractor must submit to the Department summarizing progress made the previous Month and including activities to be performed in the following Month and as further described in the Project Scope.

**Monthly Progress Update Schedule** has the meaning assigned in Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements) of Exhibit T (Critical Path Method Progress Schedule).

**Nonconforming Work** means any Design and Construction Work that does not conform to the requirements of the Contract Documents. Nonconforming Work shall include any unacceptable Materials as described in Section 6.7 (Unacceptable Materials) of the PDBC.

**Notice of Design Change (NDC)** means design changes initiated by the Engineer of Record (EOR) to documents approved and Released for Construction (RFC) are completed under an NDC. NDCs are subject to quality check or review activities.

**Notice of Final Completion** means the notice delivered to the Contractor under Section 5.14.3.2 (Notice of Final Completion) stating that final Department acceptance of the Project has occurred.

**Notice of Potential Change Order (NPCO)** is the potential two-step process utilized by the Contractor, as outlined in Section 12.4.1 (Notice of Potential Change Order) of the PDBC, to inform the Department of the existence of a circumstance(s) or event(s) that may require a change to the Contract Documents and/or Work.

**Notice of Substantial Completion** means the notice delivered to the Contractor under Section 5.14.2.3 (Notice of Substantial Completion) stating that Substantial Completion of the Project has occurred.

**Notice of Termination** means a notice issued by the Department to terminate the PDBC pursuant to Section 21.1 (Notice of Termination) of the PDBC.

**Notice to Proceed (NTP)** is a written communication from the Department to the Contractor to start any unit or element of the Phase 1 Work, Phase 2 Work. The Notice to Proceed shall establish any conditions and restraints necessary for, or incident to, the performance of the Phase 1 Work, or Phase 2 Work.

**ODOT** means the Ohio Department of Transportation and may be used interchangeably with “State” or “Department.”

**ODOT Standards and Specifications** means those standards and specifications designated as originating from ODOT under Section 7.1 (Governing Regulations) of Exhibit E (Technical Requirements), as the same may be amended and updated in conjunction with an applicable Proposal.

**Offeror** means the entity submitting a Proposal for the Project in response to the RFP.

**Open Book Basis** means a method in which the Contractor provides the Department, at the Department’s request, all books, records, documents, contracts, subcontracts, purchase orders, and other data in its possession pertaining to the bidding, pricing, or performance of the PDBC, showing the Contractor’s underlying assumptions and data as to costs of the Work or services to be provided, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, Contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit, fees, overhead, profit, and other items reasonably required by the Department to satisfy itself as to validity or reasonableness. It also includes review of the Contractor’s underlying project-specific accounting system and the Department’s ability to view the Contractor’s allocation of costs within that system.

**Opinion of Probable Cost (OPC)** means the Contractor-generated estimate of the Contract Price prepared in accordance with the principles set forth in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

**Organizational Conflict of Interest** has the meaning set forth in ITO Section 5.3 (Organizational Conflicts of Interest).

**Original Contract Work** has the meaning assigned in Exhibit H (Force Account Provisions).

**Overtime Premium Wages** arise from the difference between an employee's standard hourly wage rate and the special hourly wage rate paid for time in excess of 40 hours per week.

**Partnering** means a collaborative process for project cooperation and communication meant to achieve effective and efficient contract performance and completion of the Project within budget, on schedule, safely and with requisite quality in accordance with the contract.

**Party** has the meaning assigned in the preamble of this PDBC.

**Payment Bonds** means the payment bonds to be delivered by the Contractor to the Department in accordance with Section 23.1 (Performance and Payment Bonds) of the PDBC.

**Performance Bonds** means the performance bonds to be delivered by the Contractor to the Department in accordance with Section 23.1 (Performance and Payment Bonds) of the PDBC.

**PDP** means ODOT's Project Development Process.

**Person** means any individual, firm, corporation, company, limited liability company, limited liability partnership, joint venture, voluntary association, partnership, trust or public or private organization, other legal entity, or combination of the foregoing.

**Phase** means either Phase 1 or Phase 2.

**Phase Change Order** means the Sub-Phase 1A Change Order, the Sub-Phase 1B Change Order, or the Phase 2 Change Order as the context requires.

**Phase 1** or the **Preconstruction Phase** means the phase in which the Phase 1 Work is performed.

**Phase 1 Baseline Schedule** has the meaning assigned in Section 1.4.1 (Interim Baseline and Baseline Schedules) of Exhibit T (Critical Path Method Progress Schedule).

**Phase 1 Work** encompasses the Contractor's performance of all contractual requirements associated with Sub-Phase 1A (BIM Proof-of-Concept) and Sub-Phase 1B (Project Development), including, but not limited to, the furnishing of all Equipment, supplies, and Materials required in accordance with the PDBC.

**Phase 2** means the phase in which the Phase 2 Work is performed.

**Phase 2 Baseline Schedule** has the meaning assigned in Section 1.4.1 (Interim Baseline and Baseline Schedules) of Exhibit T (Critical Path Method Progress Schedule).

**Phase 2 Change Order** means the Change Order to incorporate the Phase 2 Work that may be issued by the Department as further described in Section 3.3 (Phase 2 Project Scope) of the PDBC.

**Phase 2 Mark-Up** means markup as further described in Exhibit B (Contract Particulars)

**Phase 2 Project Scope** means the Project Scope governing the Phase 2 Work which will be agreed between the Parties during Sub-Phase 1B.

**Phase 2 Work** means all duties and services to be furnished and provided by the Contractor as required by a Phase 2 Change Order, 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 Completion of the Contract except for those efforts which the Contract Documents specify will be performed by the Department or other Persons. In certain cases the term is also used to mean the products of the Phase 2 Work. For clarity, the Phase 2 Work does not include the Phase 1 Work.

**Plans** means the drawings, standard construction drawings and supplemental drawings provided by the Department or produced by the Designer or the Designer's Subconsultants, approved in accordance with the PDBC, or exact reproductions thereof, that show the location, character, dimensions, and details of the Work.

**Preconstruction Phase** means Phase 1.

**Pre-Proposal One-on-One Meeting** means the meeting(s) set forth in ITO Section 2.2 (Pre-Proposal One-on-One Meetings).

**Prequalification** refers to the Department's system for determining whether the Contractor and its Subcontractors and Subconsultants meet certain minimum qualification levels in accordance with ORC Chapters 5525 & 5526 and the rules and regulations governing prequalification. The Department's Prequalification requirements are set out in the applicable Consultant Prequalification Requirements and Procedures, posted on the Department's website. Work that requires prequalification may only be performed by firms that are prequalified for those services at the time of performance of the services.

**Price Proposal** means, as a component of each Work Package Proposal, the Contractor's written Submittal of the Project requirements together with a narrative description of the Project and proposed Work together with a detailed schedule of requested compensations.

**Prime Compensation** is the monetary remuneration specified for payment by the Department to the Contractor for acceptable elements of the Phase 1 Work.

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

**Probable Maximum Loss (PML)** has the meaning assigned in Section 17 (Insurance Requirements) of the PDBC.

**Procurement Point of Contact (PPC)** means the authorized representative of the Offeror identified as the sole representative for communication with the Department.

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

**Professional Engineer** means an individual licensed by the State Board to practice engineering in the State.

**Professional Landscape Architect** means a landscape architect registered with the Ohio Landscape Architects Board to practice landscape architecture in the State of Ohio.

**Professional Services** means the professional services necessary to deliver the Work, including the design of all permanent and temporary portions of the Project, the preparation of Working Drawings or Engineered Drawings, the practice of engineering, surveying, landscape architecture, architectural services, estimating and risk assessment, assessment of environmental impacts, Right-of-Way acquisition services, supervisory and administrative personnel performing project management, superintending, preconstruction services, planning and scheduling, safety management, purchasing, accounting, IT services, other supervisory activities and the preparation of Claims.

**Profile Grade** means the trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

**Progress Meeting** means a Design Progress Meeting as defined in Section 2.2.4 (Design Progress Meeting) of Exhibit E (Technical Requirements) or other Progress Meetings as required pursuant to Section 5.2 (Phase 2 Preconstruction and Progress Meetings) of the PDBC.

**Progress Schedule** means the version of the Project Schedule depicting progress of the Work as described in Section 1.11 (Progress Schedule) of Exhibit T (Critical Path Method Progress Schedule).

**Progressive Design-Build** means a form of Design-Build contract in which a best value selection is followed by a process whereby the Parties develop the Project and Contract Price in a progressive manner.

**Prohibited Person** means any Person who is:

- a. Debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement transactions with the United States federal government or any department, agency or instrumentality thereof pursuant to any of the Debarment Regulations;
- b. Indicted, convicted or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the United States federal government or any department, agency or instrumentality thereof;
- c. Listed on the “Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs” issued by the US General Services Administration;
- d. Located within, or doing business or operating from, a country or other territory subject to a general embargo administered by the United States Office of Foreign Assets Control (OFAC);

- e. Designated on the OFAC list of 'Specially Designated Nationals';
- f. Otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other U.S. federal economic sanctions authority or any divestment or sanctions program of the State of Ohio;
- g. A banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act (Section 311);
- h. Located within or is operating from a jurisdiction that has been designated as noncooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;
- i. A financial institution against which the United States Secretary of the Treasury has imposed special measures under Section 311;
- j. A “senior foreign political figure” or a prohibited “foreign shell bank” within the meaning of 31 C.F.R. Section 103.175; or
- k. Any Person with whom the Department is engaged in litigation relating to performance of contract or business practices (unless the Department has first waived (in Department’s sole discretion) by written notice to the transferring equity holder, with a copy to the Contractor, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

**Project** is the Project, which is the subject of this PDBC and which is further described in Section 1 (General) of Exhibit E (Technical Requirements).

**Project Development Phase** means Sub-Phase 1B.

**Project Float** is the length of time between the End Project Milestone and the Contract Completion Deadline.

**Project Goals** means the goals and objectives set forth in ITO Section 1.3 (Project Goals).

**Project Limits** means points on the mainline centerline of construction where the proposed improvement, as described in the project description on the Title Sheet (excluding incidental construction), begins and ends.

**Project Manager** means the Department's design representative to the Contractor.

**Project Right-of-Way (ROW)** means the Department-acquired temporary and permanent ROW acquired in connection by the Department as described in Section 9 (Right-of-Way) of Exhibit E (Technical Requirements), together with all additional properties acquired at the Contractor's request in accordance with Section 10.2 (Additional Property Request Requirements) of Exhibit E (Technical Requirements) and other rights in real property acquired by or granted to the Contractor pursuant to governmental resolutions or other legislation, as such Project Right-of-Way may be adjusted from time to time in accordance with the Contract Documents. The term specifically includes all air space, surface rights and subsurface rights within the boundaries of the Project Right-of-Way.

**Project Schedule** means one or more, as applicable, of the logic-based Critical Path schedules (the Interim Baseline Schedule, the Baseline Schedule, the Phase 1 Baseline Schedule, the Phase 2 Baseline Schedule, the Monthly Progress Update Schedule, the Recovery Schedule,

the Weather Delay Schedule, and the As-Built Schedule) for all Work leading up to and including Substantial Completion and Completion of the Contract, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Exhibit T (Critical Path Method Progress Schedule).

**Project Scope** means the Sub-Phase 1A Project Scope, the Sub-Phase 1B Project Scope or the Phase 2 Project Scope, as the context requires. The Project Scope describes the scope of the Work and related Project Standards, criteria, conditions, procedures, specifications and other provisions for the Project and/or the Utility Relocations, as such provisions may be changed, added to, deleted or replaced pursuant to a Change Order.

**Project Site** means Project Right-of-Way and any temporary rights or interests that the Contractor may acquire in connection with the Project or the Utility Relocations included in the Construction Work.

**Project Standards** means the standards, manuals and guidelines listed in Section 7.1 (Governing Regulations) of Exhibit E (Technical Requirements), as may be amended in the Project Scope.

**Proof-of-Concept Phase** means Sub-Phase 1A.

**Proposal** has the meaning assigned in the ITO.

**Proposal Due Date** means the deadline (date and time) for submission of Proposals identified in ITO Section 1.4 (Procurement Schedule).

**Provisional Sum** is a fixed sum allocable to a specific Risk Register Event financial responsibility which shall be shared between the Contractor and the Department. Provisional Sums may be used in instances when the actual price or quantity for such item of work is unknown at the time of agreement on Phase Change Order. Where agreed as reflected in the Risk Register, Provisional Sums may include a designation of unit pricing and the estimated number of units making up the Provisional Sums.

**Quality Assurance (QA)** means all planned and systematic activities implemented to provide confidence that the Work complies with the requirements of the Contract Documents.

**Quality Control** means all activities and techniques performed at the production level in order to meet Contract requirements.

**Quality Management System Plan (QMSP)** means the Contractor's plan which describes the quality program for the Design Work, the Construction Work, and how the design and construction activities performed by different entities will be coordinated to ensure consistency of quality and assurance, prepared in accordance with the Project Scope.

**Railroad** means, depending on the context, either the right-of-way, tracks, and systems used for rail traffic in the vicinity of the Project, or the owners and/or operators of such rail systems.

**Reasonably Close Conformity** means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Department to insist upon such tolerances as establishing reasonably close conformity, the

Department may accept variations beyond such tolerances as reasonably close conformity where they will not materially affect the value or utility of the Work and the interests of the Department.

**Records** includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in Section 1306.01 of the Ohio Revised Code, created or received by the Contractor in the performance of the Phase 1 Work.

**Recovery Schedule** has the meaning assigned in Section 1.9 (Recovery Schedules) of Exhibit I (Critical Path Method Progress Schedule).

**Reference Information Documents** means documents provided by the Department for informational purposes only. The Department does not represent, warrant, or guarantee the accuracy, completeness, or fitness of the Reference Information Documents.

**Registered Engineer** means a Professional Engineer registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional engineering in the State of Ohio.

**Registered Surveyor** means a surveyor registered with the Ohio State Board of Registration for Professional Engineers to practice professional surveying in the State of Ohio.

**Regulated Materials** means:

- a. Any substance, product, waste or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law;
- b. Any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Environmental Law;
- c. Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under clause (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;
- d. Petroleum hydrocarbons excluding petroleum hydrocarbon products contained within regularly operated motor vehicles;
- e. Asbestos or asbestos-containing materials in Structures and/or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground); and
- f. lead or lead-containing materials in Structures and/or other improvements on or in the Site.

The term "Regulated Materials" includes Hazardous Waste.

**Regulated Materials Management** means procedures, practices and activities to address and comply with environmental laws and environmental approvals with respect to Regulated Materials encountered, impacted, disturbed, released, caused by or occurring in connection with the Project, Right-of-Way or the Work, as well as investigation, characterization and remediation of such Regulated Materials. Regulated Materials Management may include sampling, handling, stockpiling, storing, backfilling in place, asphalt batching, recycling, dewatering, treating, cleaning up, excavating, removing, remediating, transporting and/or disposing off-site of

Regulated Materials and otherwise managing Regulated Materials, whichever approach is effective, most cost-efficient and authorized under applicable Law.

**Released for Construction Plans** means Design Documents that have been thoroughly checked, reviewed and sealed in accordance with the Phase 2 Project Scope and adequately describe the Construction Work required.

**Relocation or Relocate** means, as related to Utilities, each removal, abandonment, transfer of location and/or Protection of Existing Utilities (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.

**Request for Change Order or RCO** means a Contractor initiated request for a Change Order pursuant to Section 12 (Contract Changes) and/or Section 13 (Time Extension To The Completion Deadlines And Payment For Excusable Delays) of the PDBC.

**Request for Proposals (RFP) Documents** means the set of documents identifying the Project and the Work to be performed and Materials to be furnished in response to which a Proposal may be submitted by an Offeror. The RFP includes the Instructions to Offerors (ITO) and this PDBC Contract.

**Right-of-Way** means a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

**Risk Register** means a register incorporating a listing of Risk Register Events for the Project (whether or not allocated to the Department or the Contractor), assessments of those risks (including cost and schedule impacts associated with the risks), an evaluation of mitigation; and allocation of responsibility for those risks.

**Risk Register Events** means risks included on the then-current Risk Register and assigned to the Department or the Contractor in accordance with Section 2.6 (Risk Identification, Pricing and Assignment) of this PDBC.

**Road** means a general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way, as defined in ORC 5501.01.

**Roadway** means the portion of a highway within limits of construction.

**Schedule** means a time-phased, resource-loaded, execution plan identifying all activities necessary to complete the Work in a logical manner in a format, which shall provide the start and completion date of each activity and the Milestones.

**Schedule of Values (SOV)** means a breakdown of the GMP into items of work, showing estimated quantities of Work in sufficient detail to determine testing and Material reporting requirements per ODOT Standards and Specifications.

**Service Line** means (a) 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, or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize the Department's or a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

**Signatures on Contract Documents** means all signatures on Contract Documents must meet the requirements of ODOT C&MS Section 102.06.

**Signed and Sealed** means the signature and seal of a licensed professional engineer on a document indicating that the licensee takes professional responsibility for the work and, to the best of the licensee's knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformity with normal and customary standards of practice and with a view to the safeguarding of life, health, property and public welfare. The licensed professional engineer certifies that the documents have been signed and sealed in accordance with laws, rules and regulations of the State of Ohio.

**Special Provisions** means additions and revisions to the Standard Specifications and Supplemental Specifications covering conditions peculiar to the Project.

**Specifications** means the directions, provisions, and requirements contained herein as supplemented by the Supplemental Specifications and Special Provisions.

**Standard of Care** means the standard of care applicable to all of the Work performed under the PDBC as defined in Section 1.7 (Standard of Care).

**Standards Deviation** means the Contractor requests a deviation from the Project Standards described in Section 7.1 (Governing Regulations) of Exhibit E (Technical Requirements).

**State** refers to the State of Ohio, as applicable, represented by the Director of Transportation or authorized designee.

**Storm Water Pollution Prevention Plan or SWPPP** means the Contractor's plan to address erosion and sediment control for the Project, prepared in accordance with Section 7.1 (Governing Regulations) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**Structures** means Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and not otherwise classed herein.

**Sub-Phase 1A or BIM Proof-of-Concept Phase** has the meaning set forth in Section 2 (Progressive Design-Build Approach) of the PDBC.

**Sub-Phase 1A Project Scope** means the Project Scope governing the Sub-Phase 1A Work which will be agreed between the Parties as described in Section 2.3.1 (Pre-Sub-Phase 1A Work) of the PDBC.

**Sub-Phase 1A Proposal** has the meaning set forth in Section 2.3.1 (Pre-Sub-Phase 1A Work) of the PDBC.

**Sub-Phase 1A Work** means the Work to be delivered by the Contractor during Sub-Phase 1A.

**Sub-Phase 1B or the Project Development Phase** has the meaning set forth Section 2 (Progressive Design-Build Approach) of the PDBC.

**Sub-Phase 1B Change Order** means the Change Order to incorporate the Sub-Phase 1B Work that may be issued by the Department as further described in Section 2.3.2.1 (Sub-Phase 1B: Proposal) of the PDBC.

**Sub-Phase 1B Project Scope** means the Project Scope governing the Sub-Phase 1B Work which will be agreed between the Parties during Sub-Phase 1A.

**Sub-Phase 1B Proposal** has the meaning set forth in Section 2.3.2.1 (Sub-Phase 1B: Proposal) of the PDBC.

**Sub-Phase 1B Proposal Due Date** has the meaning set forth in Exhibit B (Contract Particulars).

**Sub-Phase 1B Work** means the Work to be delivered by the Contractor during Sub-Phase 1B.

**Subconsultant** means any person or organization to whom the Designer or Contractor has sublet or assigned any portion of its contractual obligations for the development of Design Documents. Any such Subconsultant must hold a Certificate of Authorization from the Ohio State Board of Registration for Professional Engineers and has fulfilled the Prequalification requirements under ORC 5526.04.

**Subcontract** means the contract between the Contractor and a Subcontractor or Subconsultant.

**Subcontractor** means an individual, firm, or corporation to whom the Contractor sublets part of the Phase 1 Work or Phase 2 Work, and who is qualified under ORC 5525.02 through 5525.09 inclusive.

**Subcontractor Bidding and Selection Plan** means the plan prepared by the Contractor and submitted to the Department for review and approval, defining the Contractor's approach to subcontracting, and selecting contractors to perform that part of the Work that will not be self-performed, that is compliant with Section 8 (Subcontracting Requirements) of the PDBC.

**Submittal** means all documents, data, materials, information, studies, reports, survey data, proposals, plans, drawings, computations, specifications, estimates, codes, scientific information, technological information, regulations, maps, Equipment, charts, schedules, photography, exhibits, software, software source code, and documentation prepared or developed or created or discovered for the benefit of the Department under or in connection with the Work.

**Substantial Completion** means satisfaction of all the conditions as set forth in Section 5.14.2 (Substantial Completion of the Work), as and when confirmed by the Department's issuance of a certificate in accordance with the procedures and within the time frame established in the PDBC.

**Substantial Completion Date** means the date that Substantial Completion has been achieved for the entire Project.

**Substantial Completion Deadline** means the date shown in the Phase 2 Change Order on which Substantial Completion is scheduled to be achieved as such date may be extended in accordance with the Contract Documents.



**Substantial Completion Inspection Punch List** means an itemized list of Construction Work identified during the Substantial Completion Inspection which remains to be completed, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project. Such Work is excluded from the substantially completed Work listed in the Notice of Substantial Completion delivered under Section 5.14.2.3 (Notice of Substantial Completion). These items will be completed pursuant to Section 5.14.2.4 (Substantial Completion Inspection Punch List).

**Supplement** means a list of requirements for fabrication plants, methods of test, or other miscellaneous requirements that are maintained on file by the Department.

**Supplemental Agreement** means a written agreement executed by the Contractor and by the Department covering necessary alterations to the PDBC.

**Supplemental Specifications** means detailed specifications supplemental to or superseding the Specifications.

**Supplier** means any Person not performing work at or on the Site which supplies machinery, Equipment, Materials, hardware, software, systems or any other appurtenance to the Project 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** means the corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

**Technical Proposal** means the technical proposal submitted by an Offeror providing the information requested in ITO Section 6.8 (Technical Proposal).

**Technical Requirements** means Exhibit E (Technical Requirements), as such Technical Requirements are revised, amended and restated and set forth in an applicable Change Order.

**Term** means the period identified in Section 1.5 (Term) of the PDBC.

**Total Float** means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it delays occurrence of either the Substantial Completion Date or the Completion of the Contract Date. Such Total Float is generally identified as the difference between the early start date and late start date or early completion date and late completion date for each of the activities shown on the Project Schedule.

**Temporary Traffic Control Plan (TCP)** means Contractor's phase construction plan and details all required MOT elements of the physical work zone. The MOT plans shall include all major traffic shifts, movement closures, use of temporary roadways, temporary traffic signals, modifications to all existing signage not applicable for each MOT phase and advance interstate detour construction signage, access modifications to businesses and residences, and proposed mitigation measures for traffic impacts, as described in Section 21 (Maintenance of Traffic).

**User(s)** means the registered owner of a vehicle traveling on the Project of any portion thereof.

**Utility or utility** means and includes poles, plants, lines, trenches, bridges, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, coal or other mineral slurry, steam, heat, light, chemicals, air, sewage, drainage not connected with a highway drainage system, irrigation, or another substance. The term “utility” also includes a system for furnishing transportation of goods or persons by means of railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline, or a similar means. The term “Utility” or “utility” excludes (a) storm water facilities providing drainage for the Project Right of Way, (b) street lights and traffic signals and (c) ITS (intelligent transportation systems) and IVHS (intelligent vehicle highway systems) facilities. The necessary appurtenances to each Utility Owner Project 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.

**Utility Agreement or Memorandum of Understanding** means the agreement prepared by the Contractor and executed by the Department with a Utility Owner as described in Section 9 (Utilities) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**Utility Owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative Utilities, and municipalities and other governmental agencies (including, without limitation, the Department)).

**Utility Owner Project** means the design and construction by or at the direction of a Utility Owner (including by the Contractor) of a new Utility other than as part of a Utility Adjustment.

**Utility Relocation** means each relocation (temporary or permanent), abandonment, protection in place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project or the Work as described in Section 10 (Utilities) of Exhibit E (Technical Requirements). The term “Utility Relocation” shall not refer to any of the work associated with facilities owned by any Railroad. The Utility Relocation Work for each crossing of the Project Right of Way by a Utility that crosses the Project Right of Way more than once shall be considered a separate Utility Relocation. For any Utility installed longitudinally within the Project Right of Way, the Utility Relocation Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Relocation.

**Utility Relocation Work** means (a) the work associated with Utility Relocation, including the coordination, design, design review, permitting, construction, inspection, maintenance of records, installation, manufacture, supply, testing inspection, adjustments (including all appurtenances), and otherwise required by the Contract Documents, including all labor, Materials, Equipment supplies, utilities and subcontracted services provided or to be provided by the Contractor and/or the Utility Owners; and (b) any reimbursement of Utility Owners that is the Contractor’s responsibility pursuant to Section 7 (Utilities and Railroads) of the PDBC.

**Warranty** means any warranty made by the Contractor in Section 22 (Project Warranties).

**Warranty Work** means Work performed by the Contractor to rectify a warranty defect.

**Weather Day** has the meaning set forth in Section 15 (Weather) of the PDBC.

**Weather Delay Schedule** has the meaning assigned in Section 1.8 (Weather Delay Schedules) of Exhibit T (Critical Path Method Progress Schedule).

**Work** means the entire completed design and construction of the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents that comprise the Project or any portion thereof. Work includes and is the result of performing or furnishing Professional Services and construction required by the Contract Documents and includes the Phase 1 Work and the Phase 2 Work. Work includes Utility Relocation Work and Warranty Work.

**Work Breakdown Level or Level 3** means a schedule level that includes each Buildable Unit as further described in Exhibit T (Critical Path Method Progress Schedule).

**Work Element Level or Level 4** means a schedule level that includes each element of the Work as further described in Exhibit T (Critical Path Method Progress).

**Work Limits** means the extreme limits of the Contractor's responsibility on the Project, including all temporary and incidental construction, with the exception of work zone traffic control devices required for maintenance of traffic.

**Workday** means a calendar day that the Contractor normally works.

**Work Package** means the package attached to the applicable Change Order, following acceptance by the Department of a Proposal, defining the Work and any changes to the Contract Documents necessary to define the responsibilities of the Parties. A Work Package may be the Sub-Phase 1A Work Package, the Sub-Phase 1B Work Package, or the package attached to the Phase 2 Change Order.

**Work Package Proposal** means a proposal prepared by the Contractor in a form approved by the Department containing the Contractor's Price Proposal, proposed scope of Work and other matters as may be directed by the Department. A Work Package Proposal may be any of the Sub-Phase 1A Proposal, the Sub-Phase 1B Proposal, or the Phase 2 Proposal as further described in Section 2 (Progressive Design Build Approach) of the PDBC.

**Working Day** means any day that is not a Saturday, Sunday or other day on which (a) the Department is officially closed for business, (b) banks located in New York City are required or authorized by Law or executed order to close, or (c) the New York Stock Exchange is closed.

**Work Breakdown Level** means a hierarchical and organizational level that breaks the Design and Construction Work into discrete elements, as described in Exhibit T (Critical Path Method Progress Schedule). Each descending WBS level represents an increasingly detailed description of elements comprising the Work with a clearly identifiable linkage between the Work Breakdown Level and Project Schedule activities.

**Working Drawings** means Contractor submitted Design Document drawings for Work, not otherwise defined in the Contract Documents, and requiring Department acceptance. Examples of Working Drawings include Engineered Drawings, installation plans, certified drawings, and any other supplementary plans or similar data that the Contractor is required to submit for acceptance.

**Worksite Traffic Supervisor (WTS)** means the staff member or members employed and identified by the Contractor that is a staff member other than the superintendent to implement

the Traffic Management Plan, monitor the safety and mobility of the entire work zone, and correcting Temporary Traffic Control (TTC) deficiencies for the entire work zone.

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**REQUEST FOR PROPOSALS (RFP)  
PROGRESSIVE DESIGN-BUILD CONTRACT  
EXHIBITS**

**PID 117545  
PROJECT (24)3001  
WOO-23-17.88 ROUNDABOUT**

**Addenda 1 – February 1, 2024**

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## LIST OF EXHIBITS

- EXHIBIT A: ACRONYMS AND DEFINITIONS<sup>1</sup>
- EXHIBIT B: CONTRACT PARTICULARS
- EXHIBIT C: PROPOSAL COMMITMENTS
- EXHIBIT D: KEY PERSONNEL
- EXHIBIT E: TECHNICAL REQUIREMENTS
- EXHIBIT F: BIM EXECUTION PLAN REQUIREMENTS
- EXHIBIT G: OPINION OF PROBABLE COST (OPC) AND PRICING PROCESS
- EXHIBIT H: FORCE ACCOUNT PROVISIONS
- EXHIBIT I: DELAY COSTS
- EXHIBIT J: UNIT PRICING PROVISIONS
- EXHIBIT K: FORM OF PAYMENT AND PERFORMANCE BONDS
- EXHIBIT L: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PERFORMANCE PLAN AND GOOD FAITH EFFORTS
- EXHIBIT M: DISADVANTAGED BUSINESS ENTERPRISE TRUCKING; DBE MATERIALS AND SUPPLIES VENDORS (MSVS)
- EXHIBIT N: CONTRACT PROVISIONS FOR FEDERAL AID CONSTRUCTION CONTRACTS
- EXHIBIT O: NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY AND WORKFORCE DIVERSITY REQUIREMENTS ON ALL ODOT ADMINISTERED FEDERALLY FUNDED PROJECTS
- EXHIBIT P: ON-THE-JOB TRAINING PROGRAM
- EXHIBIT Q: PROMPT PAYMENT – ODOT LET CONSTRUCTION PROJECTS
- EXHIBIT R: [RESERVED]
- EXHIBIT S: [RESERVED]
- EXHIBIT T: CRITICAL PATH METHOD PROGRESS SCHEDULE
- EXHIBIT U: NOT USED
- EXHIBIT V: [RESERVED]

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<sup>1</sup> Note: Exhibit A is contained in the Progressive Design Build Contract (PDBC)

EXHIBIT W: PRICE FLUCTUATION CLAUSES

EXHIBIT X: DIGITAL DATA FOR MATERIAL TICKETING

EXHIBIT Y: [RESERVED]

EXHIBIT Z: RISK REGISTER

## EXHIBIT B: CONTRACT PARTICULARS

### Compensation Amounts

The Maximum Sub-Phase 1A Prime Compensation amount subject to adjustment for Change Orders as set forth in PDBC Section 11.2 (Compensation for the Sub-Phase 1A Work) is \$75,000.

The Maximum Sub-Phase 1B Prime Compensation amount subject to adjustment for Change Orders as set forth in PDBC Section 11.3 (Compensation for the Sub-Phase 1B Work) is \$350,000.

### Schedule Milestones for Phase 1

The Sub-Phase 1B Proposal shall be submitted no later than 90 Days<sup>2</sup> after the Sub-Phase 1A NTP (the "Sub-Phase 1B Proposal Due Date").

The Phase 2 Proposal shall be submitted no later than 180 Days<sup>3</sup> after the Sub-Phase 1B NTP (the "Phase 2 Proposal Due Date").

### Phase 2 Mark-Up Percentage

The Phase 2 Mark-Up percentage shall be xx% as proposed in the Proposal and shall include profit, G&A and all other Costs and expenses of the Contractor not included in the cost of the Work.

### Schedule Milestones for Phase 2

The target date for the Substantial Completion Deadline is 10/15/2025.

### Liquidated Damages for Phase 2 Work

The amount of liquidated damages to be deducted for each Day by which the Substantial Completion Date exceeds the Substantial Completion Deadline, subject to PDBC Section 13.7 (Failure to Complete On Time) shall be \$900 per day.

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<sup>2</sup> Based on: 5/23/2024 for Sub-Phase 1A NTP

<sup>3</sup> Based on: 9/20/24 for Sub-Phase 1B NTP, 4/1/25 for Phase 2 NTP



## **EXHIBIT C: PROPOSAL COMMITMENTS**

[Insert in this Exhibit C the key commitments from the Proposal, excluding the Key Personnel and Principal Participants' details which shall be inserted in Exhibit D (Key Personnel)]

## **EXHIBIT D: KEY PERSONNEL**

[Insert in this Exhibit D the names and qualifications of the Key Personnel including all details from the Proposal]

## **EXHIBIT E: TECHNICAL REQUIREMENTS**

Refer to the separate document entitled "Technical Requirements"

## **EXHIBIT F: BIM EXECUTION PLAN REQUIREMENTS**

The Contractor shall develop a BIM Execution Plan. The BIM Execution Plan shall identify the intended process and procedures to be followed in the creation, review, Department review, validation, and updates for the BIM Model throughout the Project duration.

The BIM Execution Plan shall also address the long-term retention of the Design for incorporation of the final design into the Departments retention.

The BIM Execution Plan shall also include a Design Quality Management Plan which is the Contractor's plan describing the internal quality control and quality assurance procedures.

# EXHIBIT G: OPINION OF PROBABLE COST (OPC) AND PRICING PROCESS

## Introduction: Process Framework

The contents of this Exhibit G are intended to serve as a framework providing general parameters for the development, refinement and conversion of OPCs into initial GMP Price Proposals. This framework may be modified by the Parties upon their mutual agreement and with the input of their respective consultants, including the Department.

## Part A: Establishment of Cost Model; Estimating Methodology; and Training Program

### 1. Establishment of Cost Model

No later than 30 Days after the Sub-Phase 1B NTP, the Contractor shall convene, attend, and actively participate in a meeting to discuss and develop an initial approach to costing the Project with the Department. The purpose of this meeting is to establish the baseline Cost Model for the development of OPCs and GMP Price Proposals, including design and construction cost and Project Schedule estimates. This initial meeting will also establish the plan to communicate changes in scope, quantity, risk, and other information required to affirm a consistent foundation for cost and schedule estimation.

### 2. Estimating Methodology Report

No later than 60 Days after the initial approach to cost meeting, the Contractor shall document and submit to the Department for approval a report setting forth the description and assumptions that communicates the estimating practices, processes and format to be developed on an Open Book Basis for each Price Proposal ("**Estimating Methodology Report**").

### 3. Training Program

Together with submission of the Estimating Methodology Report and proposed Cost Model(s), the Contractor shall develop a Department-approved program for the training of the Department staff on the corresponding Cost Model and related procedures, historical data, categorization of costs, estimating techniques and tools, hardware, software, and any other systems employed by the Contractor for cost and schedule estimation for the Project. The Contractor shall deliver the training as described in and at the times set forth in the approved training program.

## Part B: Opinion of Probable Cost and Schedule of Values

### 1. Overview of OPC Development Process

After delivery of the Estimating Methodology Report and Cost Model, the Contractor will prepare OPCs in a format agreed to by the Contractor and the Department, which will generally be consistent with that described in this Part B. OPCs will be developed on an Open-Book Basis and in a collaborative manner both formally and informally and with reference to the applicable milestones.

2. Reserved

3. Reserved

#### 4. OPC Phase 2 Work Milestones

OPCs for the Phase 2 Work will be developed in accordance with the general terms and conditions set forth under Section 5 below for delivery upon the following milestones (and such additional milestones as the Department may reasonable establish):

- A. During Sub-Phase 1B, based upon approximately 50% Design; and
- B. Prior to the end of Sub-Phase 1B, based on approximately 90% Design.

#### 5. Development of OPCs for Phase 2 Work

**A. Timelines for Development and Revision of OPCs** The following are the timelines pertaining to the development of OPCs, which timeframes may be modified upon mutual agreement of the Department and the Contractor:

- A. Approximately 45 Days before the completion of an OPC (or such other timeframe upon which the Contractor and the Department may agree), the Contractor shall submit to the Department the applicable Project Scope and Design Documents pertaining to the OPC.
- B. Approximately 30 Days before the completion of an OPC (or such other timeframe upon which the Contractor and the Department may agree), the Contractor shall provide a breakdown of quantities in accordance with the agreed upon Estimating Methodology and Cost Model. The Contractor and Department will participate in a quantity reconciliation meeting to verify that quantities are within a mutually agreeable amount.
- C. Upon completion of quantity reconciliation, the Contractor and the Department will develop their estimates to account for all Work, complete development of crews, and assign production rates.
- D. Approximately 15 Days before the anticipated completion of the 90% Design OPC (or such other period to which the Department and Contractor may agree), the OPC will be compared to the estimate prepared by the Department (the "Department's Estimate"). If the OPC and the Department's Estimate differ by more than a percentage acceptable to the Department, the Department, the Contractor and, if required at the Department's sole discretion, the Department's Office of Estimating will conduct a review to determine where the cost estimates differ and what assumptions or details were used to determine each difference.
- E. For avoidance of confusion, the Department will not be preparing a Department Estimate for the 30% Design and 60% Design OPCs. The Contractor will still be required to meet all other requirements of this Exhibit G.

**B. Standards Pertaining to Development of OPCs** The following standards shall apply to the development of OPCs throughout the Project:

- (a) The Contractor shall prepare each OPC on the basis described in the Estimating Methodology Report and the approved Cost Model or as otherwise agreed to by the Parties;
- (b) Each OPC shall be consistent with the then-current Project Schedule or updated draft of the Project Schedule incorporating the Phase 2 Work as part of an integrated

and cohesive cost and schedule build-up for the Phase 2 Work. The OPC shall clearly delineate (i) Self-Performed Work, (ii) Work to be performed by a Subcontractor that is a Component Firm, and (iii) Work assumed to be performed by a Subcontractor that is not a Component Firm, consistent with PDBC Section 8.2 (Limitation on Subcontracted Work);

- A.** The Contractor shall attempt to obtain such number of quotes from potential Subcontractors and Subconsultants as is contemplated under the approved Subcontractor Bidding and Selection Plan. This information shall be provided with each OPC and the Contractor shall require its potential Subcontractors and Subconsultants to share their information, quotes, scope of work bid, and product or services data with the Department and the Department's Office of Estimating. Where the approved Subcontractor Bidding and Selection Plan does not contemplate obtaining quotes from potential Subcontractors, the Contractor shall provide the estimate for the applicable scope of work and supporting data, which, to the extent available, shall include data from recent quotes obtained for equivalent scopes of work, products or services on other projects;
- B.** No OPC shall include cost items already included in OPCs that have been converted to Contract Prices, cost items expressly retained by the Department, or cost items not required by the Department; and
- C.** Each OPC shall be independently prepared by the Contractor but in coordination with the Department.

**C. Contents of OPCs** Each OPC submitted by the Contractor shall contain the following elements in the following order, together with such additional contents upon which the Contractor and the Department may agree:

- A.** A summary memorandum consisting of a narrative summary of the OPC that includes:
  - A.** The applicable Project Scope, Design Documents and Construction Documents pertaining to the corresponding OPC;
  - B.** A list of clarifications and assumptions made by the Contractor in the preparation of the corresponding OPC to supplement the information in the applicable Project Scope, Construction Documents and Design Documents;
  - C.** The proposed GMP, which shall include a breakdown of the then-current estimate of the cost of the Work in a commercially reasonable format consistent with the approved Cost Model;

- D. The proposed Contractor's Risk Contingency together with the then-current Risk Register setting forth those Risk Events for which Contractor has assumed financial responsibility;
  - E. If so elected by the Department, the proposed Department's Risk Contingency together with the then-current Risk Register setting forth those Risk Events for which the Department has assumed financial responsibility;
  - F. A summary of costing activities since the previous OPC submittal;
  - G. Changes subsequent to the previous OPC submittal and reasons for the changes;
  - H. Responses to the Department's comments on the previous OPC submittal;
  - I. The then-current Project Schedule or updated draft of the Project Schedule upon which the OPC is based;
  - J. A list of proposed Materials to be installed and the procurement status for each (including Supplier selection activities);
  - K. A list of critical or long lead Materials;
  - L. A list of proposed Subcontracts with the procurement status for each (including Subcontractor selection activities);
  - M. A cost summary table;
  - N. An updated Schedule of Values showing a line-item cost breakdown of the cost of Work as further detailed under Section 5 below;
- B. A certification from the Contractor that all costs included in the OPC are allowable in accordance with the cost principles in 2 CFR part 200 subpart E, and the OPC does not include any costs which are expressly unallowable under applicable cost principles of 2 CFR part 200 subpart E; and
- C. Such other information as is necessary, in the Department's sole discretion, to satisfy the Department as to the reasonableness of the OPC and that the Contractor's pricing and other financial terms for the Work are fair and reasonable.

**D. Cost of Work** Each OPC shall be based upon the total cost of Work (as described herein). The cost of Work will be the sum of the items D1 through D8 below.

#### **D1. Labor Costs**

Labor Costs will include costs for Professional Services undertaken in the performance of the Phase 2 Work by personnel and entities that meet the definition of FAR Participants shall be calculated by utilizing the formula described in Section 11.1.1.2 of the PDB Contract.

Construction labor costs for non-FAR Participants will be based on the hourly wages multiplied by 1.5 plus the fringe benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by prevailing wage laws or by a collective



bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

Construction labor cost will also include the following payroll taxes and legally required insurances:

- (a) Social Security Tax
- (b) Medicare Tax
- (c) Ohio Workers' Compensation Premiums
- (d) State and Federal Unemployment Insurance
- (e) Longshore and Harbor Workers' Compensation Insurance for work from a barge or ship, or unloading material from a barge or ship.

The hourly rates multiplied by 1.5, plus the fringe benefits, plus the taxes and insurance listed above shall then be increased by the Phase 2 Markup percentage identified in Exhibit B (Contract Particulars).

## **D2. Material Costs**

The amounts the Contractor actually paid for Materials, including temporary Materials and Materials not incorporated into the Work, which were purchased by the Contractor directly relating to the Work, including applicable taxes transportation thereof, cost of inspection, testing, storage, or handling.

## **D3. Equipment, Tools, Equipment Operation, Maintenance and Repair**

Costs for owned or rented Equipment necessary to complete the Work will be included at established rates given in the Equipment Watch Cost Recovery (formerly Rental Rate Blue Book), by Equipment Watch, a division of Penton Business Media, Inc. No Phase 2 Markup will be applied to Equipment costs. All costs for the operation, maintenance, and repair of Equipment furnished by the Contractor to undertake the Work. The Phase 2 Markup will not apply to the costs of Equipment.

## **D4. Indirect Costs**

To the extent not included in any other item under D1-D8, Indirect costs will be included as actual costs for the following items:

- A. **Site Office Expense:** Rental of buildings, maintenance, removal, utilities, office and engineering expendables, furniture, computers (including corporate IT charges), tablets, telephones and infrastructure.
- B. **Insurance and Taxes:** Insurance other than that based on payroll, such as railroad protective, Equipment insurance, and other Contractor required insurances. Taxes (excluding payroll taxes) such as property tax and any special local or State sales tax (if any), should be included with the applicable taxed item.
- C. **Bond Premiums:** Premiums on required bonds, including the Payment Bond and Performance Bond.

- D. **Temporary Buildings:** Cost of ownership or rental, set-up maintenance and removal of such as warehouses, first aid buildings and other miscellaneous structures.
- E. **Personnel expense:** Small tools and supplies (unless carried in the Equipment portion of the OPC), safety expendables, drug screen testing, training, physicals, hiring expense; include any per-diem costs for indirect personnel and construction labor.
- F. **Project Utilities:** Site utilities such as temporary electric, water internet and sanitation.
- G. **Mobile Equipment:** Overhead vehicles, maintenance equipment and personnel (if not included in Labor or Equipment portions of the OPC), and general service equipment (if not included in the Labor portion of the OPC).
- H. **Construction Plant:** Site fences, parking areas, material yards, temporary access and other special construction items not included in Labor or Equipment items.
- I. **Quality Control:** Cost of quality control labor, equipment supplies, outside services, and Contractor hired-personnel and on-site quality supervision, in each case, to the extent not included under the Labor item of the OPC.
- J. Any other auditable indirect Project costs not attributable to any other item under D1-D8.

#### **D5. Subcontracted Work**

Costs for subcontracted Work that is competitively procured (advertised for bid submissions, regardless of the number of bids actually received) will be included at the amount of the selected Subcontractor's bid.

Costs for subcontracted Work that is not competitively procured will be included in accordance with this Part B with a Subcontractor mark-up proposed by the Contractor which will be verified by the Department.

#### **D6. Mobilization**

Costs for mobilization will be included at the actual estimated costs for the elements of Work included in mobilization, but unless otherwise agreed to by the Department, the total costs of mobilization shall not exceed 2.5 percent of the Price Proposal for the Phase 2 Work or any other Work Package.

#### **D7. Contractor's Risk Contingency**

The Contractor's Risk Contingency amounts included in an OPC shall be fully identified and delineated based upon the aggregate amount of the value of those Risk Events for which the Contractor has assumed financial responsibility under the then-current Risk Register. Amounts held in the Contractor's Risk Contingency shall not include any amounts attributable to Risk Events for which the Department has assumed financial responsibility under the then-current Risk Register.

#### **D8. Allowances**

Each OPC shall allocate allowances to any Allowance Items that the Department identifies based upon its review of the then-current Design Documents. Throughout the development of each OPC, the Department and the Contractor will coordinate to review proposed

Allowance Items to determine whether the Design Documents have been sufficiently refined to more precisely quantify the costs of an item categorized as an Allowance Item. Any value assigned to an Allowance Item shall be determined by the Department's Office of Estimating in consultation with the Contractor based upon the design information then available to determine the value of the corresponding Allowance Item. All other costs will be deemed to be included in the applicable Contract Price, and will not be subject to adjustment, regardless of the final amount of the Allowance Item. The Contractor shall provide written notice to the Department upon the commencement of the Work pertaining to any Allowance Item. The Department shall authorize the Contractor to perform any Work pertaining to an Allowance Item through the issuance of a written directive. In the event the actual costs for an Allowance Item exceed the corresponding allowance under the approved Price Proposal, the Contract Price shall be adjusted accordingly by a subsequent Change Order, subject to the requirements of Section 12 (Contract Changes) and Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) of the PDBC.

### **E. General and Administrative Expenses (G&A)**

Contractor's G&A costs shall include the gross amount of all auditable general and administrative costs and expenses that are allocated among all of the Contractor's projects (inclusive of the Project), including:

- 1.) Payroll costs and other compensation of Contractor's officers, executives, principals of partnerships and sole proprietorships, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, superintendents, foremen and similar administrative personnel, that are not assigned to the Project.
- 2.) Expense of the Contractor's principal and branch offices other than the Contractor's office at the Project Site.
- 3.) Any part of the Contractor's capital expenses. Interest on the Contractor's capital employed for the Project (if any). Charges against the Contractor for delinquent payments on the same; and
- 4.) Other overhead or general expense costs of any kind to the extent the same is auditable.

Notwithstanding any other provisions herein, and for the avoidance of doubt, Contractor's G&A costs, including specifically those G&A items listed in items (a)-(d) herein and the aggregate of all such items, shall not be characterized, considered, incorporated, or included in the Cost of the Work.

## **6. Phase 2 Markup**

The Phase 2 Mark-Up will be applied to the applicable elements of items D1 through D8 above. Values for items of Work in the Schedule of Values and incorporated into the resource loaded CPM schedule should carry the appropriate allocation of the Phase 2 Mark-Up.

## **7. Schedule of Values**

In conjunction with the preparation of any OPC, the Contractor shall assign the Schedule of Values to the activities in the CPM schedule. The assignment of values to scheduled activities will be reviewed by the Department in conjunction with each OPC.

Each Schedule of Values prepared in accordance with the PDBC shall also:

1. Be coordinated with and consistent with the draft updated Project Schedule;
2. Provide an estimated quantity of items to the Department for each element of Work in accordance with Department standard bid item codes whenever possible. Where Department standard bid items are not available, provide an explanation of non-standard items. The Department will provide unique item names and codes for these items.

## **Part C: Basis for Establishing Sub-Phase 1B Price Proposal and GMP Price Proposals for Phase 2 Work**

### **1. Timelines for Preparation and Delivery of GMP Price Proposal**

Upon the Department's written agreement that an OPC can be converted into a GMP Price Proposal, the Contractor shall submit to the Department, and the Department's Office of Estimating, the Contractor's proposed GMP Price Proposal, which shall consist of the materials comprising the updated OPC as described under Section 3 below. Approximately 30 days before the formal submission of the GMP Price Proposal, the Contractor, the Department, and the Department's Office of Estimating shall meet to reconcile any questions, discrepancies or disagreements relating to the GMP Price Proposal. The reconciliation shall be memorialized by agreed upon revisions to the applicable portions of the GMP Price Proposal, which shall be approved in writing by the Department and the Contractor. The Contractor shall submit to the Department, the Contractor's proposed final GMP Price Proposal, based upon the agreed upon modifications described herein, and contingent upon the Department's approval of the corresponding Change Order incorporating the GMP Price Proposal as a GMP Contract Price.

### **2. Standards Pertaining to Development of GMP Price Proposals.** The following standards will apply to the development of GMP Price Proposals:

- (a) Each GMP Price Proposal shall allow for reasonable expected changes and refinements in the applicable Project Scope, Design Documents and the Construction Documents through completion of the Construction Documents, except for material changes in the applicable Project Scope.
- (b) Included with each GMP Price Proposal, the Contractor shall deliver to the Department one electronic/digital set of the drawings, specifications, plans, sketches, instructions, requirements, Materials, Equipment specifications and other information or documents that fully describe the Work contemplated under the corresponding GMP Price Proposal.
- (c) Each GMP Price Proposal and all supporting documents shall identify and describe all Contract Items, assumptions, costs, schedules and other matters necessary for proper execution and completion of the corresponding work. Each GMP Price Proposal and the supporting documents are complementary and in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality or quantity of material and/or workmanship shall prevail over all other interpretations.
- (d) The submission of any GMP Price Proposal shall be a representation on the part of the Contractor that it will provide every item, system or element of performance that is identified, shown or specified in the corresponding GMP Price Proposal or the support documents, along with those necessary or ancillary materials that are reasonably inferable and equipment for their complete operating installation, unless specifically accepted in writing by the Department. Upon the Department's written acceptance of any GMP Price Proposal, the Contractor shall not be entitled to any increase in the GMP Contract Price due to the continued refinement of the Design Documents and the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the applicable Work as described in and reasonably inferable from the GMP Price Proposal or the supporting documents used to establish the GMP Price Proposal.

- (e) Each GMP Price Proposal shall adopt and incorporate all of the terms and conditions of the PDBC and all attachments thereto. Any proposed deviation from the terms and conditions of the PDBC must be clearly and conspicuously identified to the Department in writing and specifically accepted by the Department in writing. In the event of a conflict between any term of a GMP Price Proposal that was not clearly and conspicuously identified and approved by the Department and the terms of the PDBC, the terms of the PDBC shall control.
- (f) The Department may reject any GMP Price Proposal, in which case the Department may elect to either (i) terminate the PDBC for convenience, (ii) request the Contractor to submit a subsequently revised GMP Price Proposal based upon the Department's comments, or (iii) request the Contractor to prepare subsequent Design Documents to an agreed upon design percentage.
- (g) Following the submission of any GMP Price Proposal through the execution of a Change Order, and then during the development of the final Design Documents and Construction Documents, if any member of the Contractor becomes aware of any facts that would be eligible for a Change Order and cause the GMP to exceed the applicable Contract Price, then such individual shall cause the Authorized Contractor Representative to provide prompt written notice to the Department.
- (h) Once any GMP Price Proposal is established as a GMP Contract Price through the execution of a Change Order, the GMP shall only be revised upon the issuance and execution by the Department of a Change Order in accordance with Section 12 (Contract Changes) and Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) of the PDBC. Any GMP shall be based upon completion of the Work pursuant to the Substantial Completion Date, the Completion of the Contract Date and any other Milestone Dates established in the corresponding Change Order.
- (i) Contractor shall document the actual Cost of Work at buyout as compared to the approved GMP Price Proposal and shall report this information to the Department monthly and with Contractor's recommendation for selection of a bid/proposal for each subcontracting package.

### **3. GMP Price Proposal Components**

Each GMP Price Proposal shall incorporate the updated components of the OPC that is being converted to the corresponding GMP Price Proposal. After the Department's request for the Contractor to convert an OPC into a GMP Price Proposal, the Contractor shall update all elements of the OPC based upon the then-current versions of the: (i) applicable Project Scope, Design Documents and Construction Documents, (ii) the then-current Project Schedule or updated draft of the Project Schedule, (iii) the Risk Register, (iv) the Schedule of Values incorporated into the OPC, and (v) the breakdown of the cost of the Work comprising the Contract Price.

### **4. Review of GMP Price Proposal**

After submission of any GMP Price Proposal, the Contractor shall meet with the Department and the Department's Office of Estimating to review the updated GMP Price Proposal. In the event the Department or any of its representatives discovers any inconsistencies or

inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the GMP Price Proposal.

**5. GMP Price Proposal Acceptance**

In the event the Department notifies the Contractor of its approval of any GMP Price Proposal in writing, the Department will proceed with incorporating the approved GMP Price Proposal in the Change Order pertaining to the Phase 2 Work.

## EXHIBIT H: FORCE ACCOUNT PROVISIONS

### 1. General

The Department may direct the Contractor to perform revised Work including Extra Work under force account. The Contractor shall submit a written proposal and estimated costs for the Work, including the planned Equipment, Materials, labor, and a work schedule.

The Department will pay the Contractor as specified in this Exhibit H as full compensation for performing the force account Work. The markups included in this Exhibit H shall be all-inclusive and the Contractor shall not be eligible to receive Phase 2 Markup for force account Work. The Contractor and the Department will document the labor and Equipment used on the force account Work on a Daily Force Account Record. At the end of each Workday, the Contractor and the Department will compare and sign the Daily Force Account Record. The Department will make no force account payment before the Contractor submits an itemized statement of the costs for the applicable force account Work.

The Department will examine and, if found to be acceptable, approve all rates and costs submitted by the Contractor.

The Contractor shall provide the following content in itemized statements for all force account Work:

- a. Name, classification, date, daily hours, total hours, rate, and amount for all labor.
- b. Designation, dates, daily hours, total hours of actual operation and idle time, Blue Book rate with reference or category, and amount for each unit of Equipment and the applicable Blue Book hourly operating cost for each unit of Equipment and invoices for all rental Equipment. The designation includes the manufacturer's name or trademark, model number, and year of manufacture.
- c. Quantities of materials and prices.
- d. Transportation charges on materials, free on board (F.O.B.) at the Project Site.
- e. Cost of workers' compensation insurance premiums, all applicable insurance premiums, unemployment insurance contributions, and social security tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which should be expressed as a cost per hour.
- f. Documentation of the following:
  - a. For surveying or design work in accordance with Part 9 (Professional and Specialized Work) of this Exhibit H the Contractor shall provide:
    - i. Documentation for all work performed by the Designer and any Subconsultants that provided services. Documentation shall consist of records of all Actual Allowable Costs broken down as direct labor charges, indirect costs (overhead), non-salary direct costs and facilities capital cost of money. In addition, the Department will pay a profit of 12 percent of the sum of direct labor costs plus overhead. The Department will not pay an additional percent markup to the Contractor on these costs.



- ii. "Actual Allowable Costs" are incurred costs based on the cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation (Codified at 48 CFR Part 31), the State of Ohio Travel Regulations (Ohio Administrative Code Rule 126-1-02), and the AASHTO Uniform Audit and Accounting Guide, all as amended from time to time.
- b. For all surveying, professional, or similar specialized Work not normally part of a Design-Build contract as set forth in Part 9 (Professional and Specialized Work) of this Exhibit H, the Contractor shall provide documentation showing payment to a firm hired by the Contractor.
- g. If Materials are taken from Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, the Contractor shall provide an affidavit and certify all of the following:
  - (a) The Materials were taken from the Contractor's stock.
  - (b) The quantity shown was actually used for the force account Work.
  - (c) The price and transportation costs represent the actual cost to the Contractor.
- h. Documentation showing payment to trucking firms and owner-operators. The Contractor shall submit documentation showing owner-operations status. When the trucking is subject to prevailing wage, the Contractor shall submit payroll and Equipment usage records according to Parts 1.a, 1.b, and 1.e (General) of this Exhibit H.
- i. The Contractor shall provide "receipted invoices" for all costs substantiated by an invoice.

If only part of the expenditure represented by an invoice is applicable to force account work, or if the invoice represents expenditure for more than one item of work, clearly indicate the actual amount of expenditure applicable to each item of work.

## **2. Labor**

The Department will pay the wages and fringe benefits currently in effect for each hour the Work is performed by all labor employed in the Work and all foremen in direct charge of the specific operation. The Department will pay an additional 38 percent markup on these wages and benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by prevailing wage laws or by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

The Department will pay the actual itemized cost, without markup, of the following payroll taxes and legally required insurances:

- a. Social Security Tax.
- b. Medicare Tax.
- c. Ohio Workers' Compensation Premiums.
- d. State and Federal Unemployment Insurance.
- e. Longshore and Harborworkers' Compensation Insurance for work from a barge or ship, or unloading material from a barge or ship.

The Contractor shall provide itemized statements in addition to the documentation requirements for all labor including the name, classification, date, daily hours, total hours, rate, and amount. If any person is paid more than the one rate, a separate listing shall be made for that person for each rate paid. The Contractor shall provide itemized statements for Ohio Workers' Compensation insurance premiums, all applicable insurance premiums, State and Federal Unemployment Insurance contributions, and Social Security Tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which shall be expressed as a cost per hour.

Instead of itemizing the cost of Social Security Tax, Ohio Workers' Compensation, and State and Federal Unemployment Insurance, the Contractor may elect to receive as compensation for these payroll taxes and premiums, an amount equal to 22 percent of the paid wages. If the Contractor pays fringes directly to the worker in lieu of paying into a fringe benefit program, then the Department will treat these fringe payments as paid wages when calculating the allowed 22 percent compensation.

The Department will pay, without markup, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement.

The Department will not pay for wages or benefits for personnel connected with the Contractor's forces above the classification of foreman that have only general supervisory responsibility for the force account Work.

If the foreman or timekeeper is employed partly on force account Work and partly on other Work, the Contractor shall prorate the number of hours between the force and non-force account Work according to the number of people on each task as shown on payrolls.

The Department will pay the prevailing wage and fringe rates that apply to the Project for the classifications required for Extra Work. The Contractor shall provide payroll records for pay rates higher than the prevailing wages and establish that the higher than prevailing rates are paid for original scope of Work excluding the force account Work (the "Original Contract Work"). The Department will pay for foremen and time keepers not covered by prevailing wages not more than the salaried rate they receive when engaged in Original Contract Work.

The Department will pay actual costs for subsistence and travel allowances when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the Project. The Department will not pay a percent markup on these costs.

### **3. Materials**

The Department will pay the Contractor's actual invoice costs, including applicable taxes and actual freight charges, for Department approved materials the Contractor uses in force account Work. The Department will pay an additional 15 percent markup on these costs.

Freight or hauling costs charged to the Contractor and not included in unit prices shall be itemized and supported by invoices. The cost of owned or rented Equipment used to haul materials to the Project Site is not part of the Materials cost. Such Equipment, when used for hauling Materials, shall be listed under cost of Equipment.

The Contractor shall provide itemized statements in addition to the documentation requirements for all Equipment including the quantity and price of each Material and transportation charges free on board (F.O.B.) at the Project Site. Attach invoices to support the quantities of Materials used, unit prices paid and transportation charges. If the Contractor uses Materials from the Contractor's stock and original receipted invoices for the Materials and transportation charges do not exist, the Department and the Contractor will agree on a price that represents the actual cost to the Contractor. Provide an affidavit and certify all of the following:

- a. The Materials were taken from the Contractor's stock.
- b. The quantity shown was actually used for the force account Work.
- c. The price and transportation costs represent the actual cost to the Contractor.

The Contractor shall not incorporate Materials into the Work without a price agreement.

#### **4. Construction Equipment**

##### **a. General**

The Department will pay the Contractor's costs for Equipment the Department deems necessary to perform the force account Work for the time directed by the Department or until the Contractor completes the force account Work, whichever happens first. The Department will pay the Contractor the established rates for Equipment only during the hours that it is operated, except as otherwise allowed elsewhere in the Contract Documents. The Department will pay for non-operating hours at the idle Equipment rate as specified in Part 4.c (Hourly Idle Equipment Rate) of this Exhibit H. The Contractor shall report Equipment hours to the nearest 1/2 hour. The established Equipment rates in this Exhibit H include compensation for overhead and profit except as otherwise specified.

The Department will pay for use of Contractor-owned Equipment the Department approves for force account Work at established rates. The Department will pay the rates, as modified in Part 4.b (Hourly Owned Equipment Rates) of this Exhibit H, given in the Equipment Watch Cost Recovery (formerly Rental Rate Blue Book), by EquipmentWatch, a division of Penton Business Media, Inc.

The Contractor shall provide, and the Department will confirm, the manufacturer's ratings and manufacturer-approved modifications required to classify Equipment for rental rate determination. For Equipment with no direct power unit, use a unit of at least the minimum recommended manufacturer's rating.

The Department will not pay rental for small tools or Equipment that show a daily rate less than \$5.00 or for unlisted Equipment that has a value of less than \$400.

Tool trucks will be allowed for compensation if they are used at the location where force account Work is performed. Only the tools used from the tool truck will be allowed for compensation. Tools in the tool truck that are not used in the force account Work will not be compensated. A tool trailer that remains at the Contractor's office or yard will not be compensated under force account Work. Tool trailers that are taken to the location where the force account Work is performed will be allowed for compensation along with the tools used on the force account Work that were taken from the trailer.

Traffic control devices used in Maintenance of Traffic and owned by the Contractor shall be considered as owned Equipment. Allowed rates for common traffic control devices and concrete barrier that are not listed in the Blue Book will be as determined by the Department.

The Contractor shall use Department-approved Equipment in good working condition and providing normal output or production. The Department may reject Equipment not in good working condition or not properly sized for efficient performance of the Work.

For each piece of Equipment used, whether owned or rented, provide the Department with the following information:

- (a) Manufacturer's name or trademark.
- (b) Equipment type.
- (c) Year of manufacture.
- (d) Model number.
- (e) Type of fuel used.
- (f) Horsepower rating.
- (g) Attachments required, together with their size or capacity.
- (h) All further information necessary to determine the proper rate.
- (i) Dates, daily hours, total hours of actual operation and idle time.
- (j) Blue Book rate with reference or category.
- (k) Amount.
- (l) Applicable Blue Book hourly operating cost.
- (m) Invoices for all rental Equipment.

#### **b. Hourly Owned Equipment Rates**

The base rate for the machine and attachments represents the major cost of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs. The hourly operating rate represents the major costs of Equipment operation, such as fuel and oil lubrication, field repairs, tires, expendable parts, and supplies.

For all Equipment used on force account Work, determine, and have the Department confirm, the hourly owned Equipment rates as follows:

$$\text{HOER} = [\text{RAF} \times \text{ARA} \times (\text{R} / 176)] + \text{HOC}$$

Where:

- (a) HOER = Hourly owned Equipment rate
- (b) RAF = Regional adjustment factor shown in the Blue Book
- (c) ARA = Age rate adjustment factor shown in the Blue Book
- (d) R = Current Blue Book monthly rate
- (e) HOC = Estimated hourly operating cost shown in the Blue Book

However, compensation for Equipment normally used on a 24 hours per day basis will not exceed the monthly rate plus adjustments and operating costs.

The rate adjustment factor assigned to any attachment will be the yearly factor as determined for the base Equipment.

When multiple attachments are included with the rental Equipment, only the attachment having the highest rental rate will be eligible for payment, provided that the attachment has been approved by the Department as being necessary to the force account Work.

When a piece of owned Equipment is not listed in the Blue Book, use the rate for similar Equipment found in the Blue Book or, if no similar Equipment is listed, use 6 percent of the purchase price as the monthly rate (*R*) and add the hourly operating rate found in the Blue Book for similar Equipment of the same horsepower.

For Equipment brought to the Project Site exclusively for force account Work and on the Project Site for less than a month, multiply the monthly rate (*R*) by the factor listed in Table H-1 below:

**TABLE H-1**

<i>Working Hours</i>	<i>Factor</i>
Less than or equal to 8.0	2.00
8.1 to 175.9	2.048 - (hours/168)
176 or greater	1.00

The term "Working Hours," as used in Table H-1, includes only those hours the Equipment is actually in operation performing force account Work; apply the factor, as determined above, to these actual working hours only. Calculate compensation for any idle time according to Part 4.c (Hourly Idle Equipment Rate) of this Exhibit H without application of the factor.

The Department will pay as working Equipment for the entire Workday, Equipment used intermittently during the Workday. The following criteria qualify for intermittently used Equipment:

- (1) Equipment dedicated to the force account Work exclusively all day and not used on other Work.
- (2) Equipment works before and after the intermittent idle period and its total working time during the Workday is at least two hours.

Equipment that is captive to the force account Work (i.e. it must remain at the location of the force account Work), but does not qualify for intermittently used owned Equipment, is paid as idle Equipment according to Part 4.c (Hourly Idle Equipment Rate) of this Exhibit H for the time it is not working.

### **c. Hourly Idle Equipment Rate**

For Equipment that is in operational condition, on the Project Site, and necessary for force account Work, but is idle, the Department will pay an hourly idle Equipment rate. The procedure to determine the hourly idle Equipment rate for Contractor owned Equipment is as follows:

$$\text{HIER} = \text{RAF} \times \text{ARA} \times (\text{R} / 176) \times (1/2)$$

Where:

- (a) HIER = Hourly idle Equipment rate.
- (b) RAF = Regional adjustment factor shown in the Blue Book.
- (c) ARA = Age rate adjustment factor shown in the Blue Book.
- (d) R = Current Blue Book monthly rate.

If rented Equipment necessary for force account Work is idle, the Department will pay the Contractor for the actual invoiced rates prorated for the duration of the idle period. The actual invoiced rates must be reasonably in line with the Blue Book rates and approved by the Department. The Department will pay a 15 percent markup for overhead and profit for the actual invoiced rates during the idle period.

The Department will not pay idle owned Equipment costs for more than eight hours in a 24-hour day or 40 hours in a week.

The Department will not pay for inoperable Equipment.

The Department may order specific Equipment to the Project Site up to five Days before its planned usage. If this Equipment is not used for other Work, the Department will pay for it as idle Equipment until used.

The Department will pay for the cost of idle owned or rented Equipment if the force account Work is suspended at the Department's direction. The Department will not pay the cost of idle Equipment if the force account Work is suspended by the Contractor for the Contractor's own reasons.

The Department will only pay for the number of Calendar Days during the existence of a Department-directed force account Work suspension. The Department will not compensate the Contractor for days during a Department-instructed suspension of the force account work that the Department determined were lost to weather.

The Department will only pay for Equipment physically located at the Project Site that was received to prosecute the scheduled Work during the period of a Department-instructed suspension of the force account Work.

Compensation for idle Equipment will stop at the completion of the force account Work or at the end of the suspension of the force account Work.

#### **d. Rented Equipment**

The Department will pay a 15 percent markup for overhead and profit for all rented Equipment, its corresponding Blue Book hourly operating costs, and State and Local sales taxes.

##### **(a) Equipment Rented Solely for Force Account Work**

If the Contractor rents or leases Equipment from a third party exclusively for force account Work, the Department will pay the actual invoiced amount. The actual invoiced rates must be reasonably in line with the Blue Book and approved by the Department. The Department will pay a 15 percent markup for overhead and profit for all rented

Equipment paid for by the actual invoices. Add the Blue Book hourly operating cost to the marked up actual invoiced rates.

(b) Equipment Rented for Original Contract Work, but Used for Force Account Work

If the Contractor uses rented Equipment currently on the Project Site for Original Contract Work to perform force account Work, then determine the hourly outside-rented Equipment rate as follows:

$$\text{HRER} = (\text{HRI} \times 115\%) + \text{HOC}$$

Where:

- (e) HRER = hourly rented Equipment rate.
- (f) HRI = hourly rental invoice costs prorated for the actual number of hours that rented Equipment is operated solely on force account Work. Use a monthly invoice rate divided by 176, a weekly invoice rate divided by 40, or a daily invoice rate divided by 8.
- (g) HOC = hourly operating cost shown in the Blue Book.

The Department will not compensate for rental rates that exceed the Blue Book rates unless approved in advance of the Work by the Department.

**e. Moving of Equipment**

The Department will also pay for the time required to move needed Equipment to the location of the force account Work and to return it to its original location. The Department will pay for loading and transportation costs instead of moving time if Equipment is moved by means other than its own power. Moving time back to the original location or loading and transportation costs will not be allowed if the Equipment is used at the location of the force account Work on contract items or related Work.

The Department will consider the actual cost of transferring the Equipment to the Project Site and returning it to the original location as an additional expense and pay for it as specified, for Equipment moved on the Project Site exclusively for force account Work.

The Department will confirm the original location of the Equipment before the Contractor moves and uses it for force account Work.

If the Equipment is transported by a common carrier, the allowance is the invoiced amount paid for the freight plus 15 percent. However, if the Contractor's forces transport the Equipment, the allowable compensation will be Blue Book rate of the hauling unit and hourly Blue Book operating cost plus the driver's wages and the cost of loading and unloading the Equipment calculated according to Part 2 (Labor) of this Exhibit H.

**5. Foreman's Transportation**

The Department will pay the Blue Book rate for every hour the foreman's truck is at the location of the force account Work or moving to or from the Project Site. This rate includes Equipment cost, fuel and lubricants, overhead, profit, and mobile phone or two-way radios.

## 6. Subcontract Work

For Work performed by an approved Subcontractor, the Department will pay an amount to cover administrative costs of 8 percent on the first \$10,000 of Work and 5 percent for Work in excess of \$10,000 as provided in Part 2 (Labor) of this Exhibit H through Part 5 (Foreman's Transportation) of this Exhibit H. No additional mark-up is allowed for Work of a sub-contractor or trucking services employed by a Subcontractor.

## 7. Final Adjustment to Premium for Contract Bonds

Not Used.

## 8. Trucking

- a. Trucking firms and owner operators not subject to prevailing wage will be paid at the invoiced cost plus 8 percent on the first \$10,000 of trucking and 5 percent for trucking in excess of \$10,000 to cover administrative costs.
- b. Trucking that is subject to the prevailing wage law will be compensated according to the following parts of this Exhibit H: Part 1 (General), Part 2 (Labor), Part 4 (Construction Equipment), Part 6 (Subcontract Work), and Part 10 (Payment for Force Account Work).

The Contractor shall provide documentation showing payment to trucking firms and owner-operators and owner-operations status. When the trucking is subject to prevailing wage, the Contractor shall submit payroll and Equipment usage records according to Part 2 (Labor) of this Exhibit H and Part 4 (Construction Equipment) of this Exhibit H.

## 9. Professional and Specialized Work

Professional and specialized Work will be paid for according to the following:

- a. The following Work, when performed by the Designer or its subconsultants, is paid as set forth in Part 1.f (General) of this Exhibit H.
  1. Design costs.
  2. Surveying costs.
2. The following Work, when performed by a firm other than the Designer or its subconsultants, is paid at the reasonable and fair market invoiced cost plus a 5 percent markup. The markup is limited to \$10,000 for all the Work performed by the firm.
  1. Specialized Work that is not part of the Original Contract Work and is not normally subject to prevailing wage.
  2. Installation, periodic maintenance, and removal of traffic control devices under ODOT C&MS Item 614 performed by a traffic control service or rental company, provided the workers are not on the Project Site full-time. Maintenance of Traffic services performed by LEO.
  3. Other professional or specialized Work not contemplated at the time of submittal of a Work Package Proposal.

The Contractor shall provide documentation showing payment for professional and specialized Work.



## 10. Payment for Force Account Work

The Contractor shall submit an analysis of estimated cost prepared in accordance with this [Exhibit H](#) for force account Work. Attach an original affidavit to the analysis stating:

*“Labor rates shown are the actual rates paid for labor, unit prices for Materials and rates for owned and rented Equipment have been estimated on the basis they are not in excess of those charged in the area in which the Work will be performed.”*

The Department will process an Estimated Cost of Force Account (ECFA) if the amount of the force account Work is likely to be greater than \$100,000 and is expected to take more than two weeks to complete. The Department will process an Actual Cost of Force Account (ACFA) to make any necessary adjustment between the ECFA and the final itemized costs for the force account Work.

For force account Work estimated to be less than \$100,000 and anticipated to require less than two weeks to perform, the Department will process an Actual Cost of Force Account (ACFA) at the conclusion of the Work.

The Contractor shall submit biweekly itemized statement of costs prepared from the Daily Force Account Records to the Department as the Work is being performed. The Department will process estimates as the force account Work is performed. Payment will only be made upon receipt of the Contractor’s itemized statement of costs.

Upon conclusion of the Work performed by an ECFA or Work performed by an ACFA the Contractor shall submit an itemized statement of the actual costs prepared from the Daily Force Account Record and utilizing the Department’s electronic template titled “Electronic Force Account.” Submit a compact disk (CD), labeled with the Contractor’s name and the project number, and a hard copy of the “Electronic Force Account.” The “Electronic Force Account” template can be downloaded from the following website:

[www.dot.state.oh.us/divisions/constructionmgt/admin/pages/default.aspx](http://www.dot.state.oh.us/divisions/constructionmgt/admin/pages/default.aspx)

The Department may approve an alternative electronic template provided all calculations and printouts are equivalent to those generated by the “Electronic Force Account” template.

The Contractor shall attach an original affidavit to the hard copy stating:

*“The name, classification, total hours worked and rates paid each person listed on the Summary of Actual Cost are substantiated by actual records of persons employed on the force account work. All unit prices for Materials and rates for owned and rented Equipment listed on the Summary of Actual Costs are substantiated by actual records of Materials and Equipment actually used in performance of the force account Work and the price of any owned Equipment not previously agreed upon does not exceed prices charged for similar Equipment in the area in which the Work was performed.”*

Daily Force Account Records signed by both the Department and Contractor will govern over other Department and Contractor records subject to the following:

1. When the Contractor is subject to a Union Contract that requires a minimum number of paid hours, the compensation will be for the verified contract minimum hours.

2. Material quantity disagreements will be resolved by field measurements of the installed quantities or the Department's estimate of the amount of temporary or un-measurable Material used. The Department may also review and consider the Contractor's Material invoices and Material certifications to make the final determination.

In the event the Contractor declines to sign the Daily Force Account Record, the Department's records shall govern. Any resulting dispute must be pursued in accordance with PDBC Section 18 (Partnering and Dispute Resolution).

## EXHIBIT I: DELAY COSTS

### 1. General

If the Department agrees that it has caused a delay, the Department will pay for the costs specified in this Exhibit I as allowed by PDBC Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays), unless these costs have been previously paid as listed in PDBC Section 12.8.1 (Negotiated Prices) or Exhibit H (Force Account Provisions). Such payment constitutes full compensation for any and all delay costs.

The Department will make no payment for delays occurring during the period from December 1 to April 30 unless the Contractor's approved progress schedule depicts Work on the Critical Path occurring throughout this period.

The Department will not pay for delay costs until the Contractor submits an itemized statement of those costs. Provide the content specified in Exhibit H (Force Account Provisions), for the applicable items in this statement and as follows:

1. Proof of cost of superintendent, or other project staff salaries, wages, and payroll taxes and insurance.
2. Proof of cost of office rent, utilities, land rent, and office supplies.
3. Proof of escalated cost for labor and Material.
4. Proof of Material storage costs.

### 2. Allowable Delay Costs

#### a. Extended Labor

The Contractor shall compute labor costs during delays as specified in Part 2 (Labor) of Exhibit H for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for other Department-approved reasons.

#### b. Escalated Labor

To receive payment for escalated labor costs, demonstrate that the Department-caused delay forced the Work to be performed during a period when labor costs were higher than planned at the time of Submittal of each Work Package Proposal. Provide adequate support documentation for the costs, allowances, and benefits specified in Part 2 (Labor) of Exhibit H. The Department will pay wages and fringes with a 20 percent mark-up to cover administrative costs.

#### c. Idle Equipment or Equipment Demobilization

The Department will pay the Contractor according to Part 4.c (Hourly Idle Equipment Rate) of Exhibit H for idle Equipment, other than small tools, that must remain on the Project during the delays. The Department will pay the Contractor's transportation costs to remove and return Equipment not required on the Project during the delays. No other Equipment costs are recoverable as a result of delay.

d. Material Escalation or Material Storage

The Department will pay the Contractor for increased Material costs or material storage costs due to the delay. Obtain the Department's approval before storing Materials due to a delay. Payment will be based upon the accepted quantity of Work performed during the period for which escalated costs have been approved. The Department will pay increased Material costs with an 8 percent mark-up to cover administrative costs and any Material waste inherent to the Work.

e. Field Overhead

The Department will pay field overhead costs for the Contractor or any Subcontractor which include the cost of supervision, field office and office supplies, and utilities for which payment is not provided for in Part 2.f (Home Office Overhead) of this Exhibit I, during a delay period provided all of the following criteria are met:

- The Contractor has incurred an excusable, compensable delay that delays the Work at least 10 Days beyond the original Completion Date. These days are cumulative throughout the Term.
- The delay for which payment of field overhead is sought is due to delays defined in the following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - 2. (Delays due to utility interference);
  - 3. (Delays due to railroad interference);
  - 4. (Delays due to a Department-ordered suspension); and
  - 9. (Delays due to the neglect of the Department or its failure to act in a timely manner).
- The delay for which payment of field overhead is sought is due to delays due to revised Work as specified in PDBC Section 12 (Contract Changes).

The Department will pay the salary and fringes plus a 5 percent markup for the field personnel included as part of the Contract Price build-up that are on the Project Site during the delay period.

Superintendent's transportation is compensable at the same rate allowed for foreman's transportation in Part 5 (Foreman's Transportation) of Exhibit H, which includes the cost of mobile communication devices. The allowed hours are when the superintendent is at the Project Site.

Superintendent's subsistence is compensable, provided this is the company's terms of compensation to such employees, as documented by the Contractor's written company policy or contracts with their employees.

The Contractor's or Subcontractor's field office costs include field office trailers, tool trailers, office Equipment rental, temporary toilets, and other incidental facilities and supplies. The Contractor shall compute these costs on a Day basis. Owned trailers are paid at the Blue Book rate. Rented trailers are paid at the invoiced cost plus a 15 percent markup. Rented office space, toilets, and office Equipment are allowed a 5 percent markup. Purchased office supplies are allowed a 5 percent markup.

Office utilities include, but are not limited to, telephone, electric, water, and natural gas. Compute these costs on a Day basis and allow a 5 percent markup.

f. Home Office Overhead

The Department will pay the Contractor for home office overhead, unabsorbed home office overhead, extended home office overhead, and all other overhead costs for which payment is not provided for in Part e (Field Overhead) of this Exhibit I, including overhead costs that would otherwise be calculated using the Eichleay formula or some other apportionment formula, provided all of the following criteria are met:

- The Contractor has incurred an excusable, compensable delay that delays the Work at least 10 Days beyond the original Completion Deadline. These days are cumulative throughout the Project.
- The delay for which payment of home office overhead is sought is only due to delays defined in the following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - 2. (Delays due to utility interference);
  - 3. (Delays due to railroad interference);
  - 4. (Delays due to a Department-ordered suspension); and
  - 9. (Delays due to the neglect of the Department or its failure to act in a timely manner).

Any Subcontractor that has approved C-92's for subcontracted work totaling \$10,000,000 or more is eligible for reimbursement of home office overhead provided the criteria set forth in Part f, sub-parts (1) and (2) (Home Office Overhead) of this Exhibit I are met.

Payment will be made for every eligible day beyond the original Completion Date at the rate determined by Part f, sub-part (i) (Home Office Overhead Daily Rate) of this Exhibit I.

Payment for eligible days occurring during an unanticipated construction period will be calculated in accordance with this Part f, sub-part (ii) (Home Office Overhead Payment for an Unanticipated Construction Period) of this Exhibit I.

Payment for eligible days occurring during an unanticipated winter period will be calculated in accordance with this Part f, sub-part (iii) (Home Office Overhead Payment for an Unanticipated Winter Period) of this Exhibit I.

(i) Home Office Overhead Daily Rate

Calculate the home office overhead daily rate using the following formula:

$$\text{Daily HOOP} = (A \times C)/B$$

Where:

- A = Original Contract Price
- B = Contract duration in Days

- $C = 0.03$
- Daily HOOP = Home office overhead daily rate

Contract duration term, B, includes every Day from the execution of the Phase 2 Change Order, to the original Contract Completion Date.

When the Contractor requests home office overhead compensation for a Subcontractor, use the above formula to calculate the Subcontractor's Daily HOOP; however, in the Subcontractor calculation, A is equal to the Subcontractor's portion of the original Contract Price as determined by the sum of all approved C-92's issued for the subcontracted Work.

For the contract values/durations (A and B of the Daily HOOP calculation) the Department will be taking a cumulative approach, the original change order values for Sub-Phase 1B and the established durations will be utilized.. Once the Phase 2 change order is issued, the GMP and associated durations will be utilized.

(ii) Home Office Overhead Payment for an Unanticipated Construction Period

Calculate the home office overhead payment for an unanticipated construction period occurring between May 1 and November 30 using the following formula:

$$\text{CP HOOP} = \text{Daily HOOP} \times D$$

Where:

1. D = Sum of all excusable, compensable delays in Days minus the sum (in Days) of all delays due to following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - a. 1. (Delays due to Revised Work); and
  - b. 8. (Delays due to acts of the government or political subdivisions other than the Department).
- Daily HOOP = Daily home office overhead rate.
- CP HOOP = Home office overhead payment for an unanticipated construction period occurring between May 1 and November 30.

The excusable, compensable delay term, D, is the additional, unanticipated extended period for Work performed between May 1 and November 30 in Days.

(iii) Home Office Overhead Payment for an Unanticipated Winter Period

The Contractor shall calculate the payment for home office overhead for an unanticipated winter period occurring between December 1 and April 30 using the following formula:

$$\text{WP HOOP} = \text{Daily HOOP} \times F \times D/E$$

Where:

- D = Sum of all excusable, compensable delays in Days minus the sum (in Days) of all delays due to following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - c. 1. (Delays due to Revised Work); and
  - d. 8. (Delays due to acts of the government or political subdivisions other than the Department).
- E = Sum of all excusable, compensable delays in Days plus the sum of all excusable, non-compensable delays in Days.
- F = 151 for a non-leap year or 152 for a leap year.
- Daily HOOP = Daily home office overhead rate.
- WP HOOP = Home office overhead payment for an unanticipated winter period occurring between December 1 and April 30.

Payment for Home Office Overhead for an unanticipated winter period will not be made when the value of the remaining Work is below the lesser of \$500,000.00 or 10 percent of the estimated final Contract Price.

(iv) Total Home Office Overhead Payment

The Contractor shall calculate the total home office overhead payment using the following formula:

$$\text{Total HOOP} = \text{CP HOOP} + \text{WP HOOP}$$

Where:

- CP HOOP = Home office overhead payment for an unanticipated construction period occurring between May 1 and November 30
- WP HOOP = Home office overhead payment for an unanticipated winter period occurring between December 1 and April 30
- Total HOOP = Total home office overhead payment

g. Subsistence and Travel Allowance

The Department will pay costs for subsistence and travel allowances for labor that must remain on the Project Site during the delays, when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the project. Overnight lodging will be reimbursed if the person is at a location greater than forty-five miles from their residence up to a maximum of \$106 per day. Meals and incidental expenses will be reimbursed up to a maximum of \$56 per day. The Department will not pay a percent markup on these costs.

## EXHIBIT J: UNIT PRICING PROVISIONS

### 1. General

The provisions in this Exhibit J shall apply to any Contract Items in a Work Package that are to be compensated under unit prices.

For items in a Work Package with unit prices (if any), the Department will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in the ODOT C&MS. When the following units of measure are specified, the Department will measure quantities as described below unless otherwise specified in the Contract Documents. The accuracy of individual pay item Estimate payments will be one decimal more accurate than the unit of measure denoted for the pay item.

The Department will monitor the quantities of Work and may verify invoice requests based on the method of measurement and basis of payment provisions provided in these Specifications. When the following units of measure are specified, the Department will monitor quantities as described below in Ohio unless otherwise specified in the Contract Documents.

**Lump Sum.** Not measured. Describes payment as reimbursement for all resources necessary to complete the Work. When a complete structure or structural unit is specified as the unit of measurement, the unit will include all necessary fittings and accessories.

**Each.** Measured by the number of individual items of Work completed.

**Foot (Meter).** Measured parallel to the longitudinal base or foundation upon which items are placed, or along the longitudinal surface of the item. Measured vertically to the nearest 0.1 foot (0.01 m), with a minimum vertical measurement of 1 foot (0.10 m), at each unit.

**Square Yard or Square Foot (Square Meter).** Measured by a two-dimensional area method on the surface of the item.

**M Square Feet.** One thousand square feet.

**Cubic Yard (Cubic Meter).** Measured by a three-dimensional volume method. Measure all "loose material" or material "measured in the vehicle" by the cubic yard (cubic meter). Haul material "measured in the vehicle" in approved vehicles and measure in the vehicle at the point of delivery. For this purpose, use approved vehicles of any type or size satisfactory to the Department, provided the vehicle's bed is of such type that the actual contents are readily and accurately determined. Unless all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

**Cubic Yard (Cubic Meter) for Asphalt Concrete.** Measure as specified in C&MS 401.21.

**Acre (Hectare).** Measured by a two-dimensional area method on the surface to the nearest 0.1 acre (0.05 ha).

**Pound (Kilogram).** Measured by actual item net weight avoirdupois (mass).

**Ton (Metric Ton).** The term "ton" means the short ton consisting of 2000 pounds avoirdupois. The term "metric ton" means 1000 kilograms. Weigh all materials that are proportioned by



weight on accurate and approved scales that are operated by competent, qualified personnel at locations approved by the Department. However, car weights will not be acceptable for Materials to be passed through mixing plants. If trucks are used to haul Material being paid for by weight, weigh the empty truck at least once daily and as the Department directs and only if the weight of the truck is used in determining the ticket weight. Place a plainly legible identification mark on each truck bearing the weight of the truck.

For Work on a tonnage basis, file with the Department receipted freight bills for railroad shipments and certified weight-bills when Materials are received by any other method, showing the actual tonnage used. For Work on a volume basis, itemize evidence of the volume used.

**Gallon (Liter).** Measured by actual item liquid volume. The Department will measure the following materials by the gallon (liter) at the following temperatures:

<i>Temperatures</i>	<i>Items</i>
60 °F (16 °C)	Creosote for Priming Coat, Creosote Oil, Creosote Solutions for Timber Preservatives, Asphalt Primer for Water-proofing, and Liquefier
100 °F (38 °C)	RC, MC Asphalt Emulsions, CBAE, Primer 20, and Primer 100
300 °F (149 °C)	Asphalt Binder

Measure tank car outage of asphalt material at its destination before any material has been removed from the tank car according to Supplement 1060.

Convert the net weight of asphalt material shipments to gallons (liters) at the specified pay temperature according to Supplement 1060.

Convert the gallons (liters) at the measured temperature to gallons (liters) of asphalt material at the specified pay temperature according to Supplement 1060.

**M Gallon.** One thousand gallons.

**Thousand Board Feet, MBF (Cubic Meter).** Measure timber by MBF (cubic meter) actually incorporated in the structure. Base the measurement on nominal widths, thicknesses, and the extreme length of each piece.

**Standard Manufactured Items.** When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by size, unit weight, section dimensions, etc., such identification will be to nominal weights or dimensions set by the industry.

**2. Significant Changes in the Character of the Work (Unit Priced Items)**

For Work that is priced using unit priced Contract Items, the Department may increase or decrease unit priced item quantities and may alter the Work as necessary to complete the Project. The Department will make appropriate adjustments according to PDBC Section 12.7.2 (Significant Change in the Character of the Work) if such alterations significantly change the character of the Work.

If the Contractor disagrees as to whether an alteration constitutes a significant change, the Contractor shall use the notification procedures specified in PDBC Section 18 (Partnering and Dispute Resolution).

For unit priced items the term “significant change” is defined as follows:

- When the character of the Work as altered differs materially in kind or nature from that involved or included in the Contract Documents; or
- When the product of the quantity in excess of the estimated quantity of a unit priced Contract Item and the unit price exceeds \$100,000.

A quantity underrun is defined as follows:

- a. The estimated quantity of a unit priced Contract Item exceeds four units;
- b. The decrease in quantity of any unit priced Contract Item exceeds 25 percent of the estimated quantity; and
- c. The total of all such adjustments for all unit priced Contract Items is more than \$400.

After the determination of final quantities for unit priced Contract Items, the Department will adjust the unit prices for the affected unit priced Contract Item by multiplying the unit price by the factor obtained from Table J-1.

**TABLE J-1**

<i>% Decrease</i>	<i>Factor</i>	<i>% Decrease</i>	<i>Factor</i>
25	1.08	57	1.33
26 to 27	1.09	58	1.35
28 to 29	1.10	59	1.36
30 to 31	1.11	60	1.38
32 to 33	1.12	61	1.39
34 to 35	1.13	62	1.41
36	1.14	63	1.43
37 to 38	1.15	64	1.44
39	1.16	65	1.46
40 to 41	1.17	66	1.49
42	1.18	67	1.51
43	1.19	68	1.53
44 to 45	1.20	69	1.56
46	1.21	70	1.58

<b>% Decrease</b>	<b>Factor</b>	<b>% Decrease</b>	<b>Factor</b>
47	1.22	71	1.61
48	1.23	72	1.64
49	1.24	73	1.68
50	1.25	74	1.71
51	1.26	75	1.75
52	1.27	76	1.79
53	1.28	77	1.84
54	1.29	78	1.89
55	1.31	79	1.94
56	1.32	80 and over	2.00

When a change does not qualify as a significant change or a quantity underrun, the change is considered a minor change. The Department will pay for minor changes in the Work at the applicable unit price for the Contract Item. Table J-1 is not applicable to Lump Sum Contract Items.

### 3. Eliminated Items

The Department may partially or completely eliminate Contract Items, or may eliminate portions of the Work described in the Base Design.

The Department will only make an adjustment to compensate the Contractor for the reasonable cost incurred in preparation to perform significantly changed Work according to the provisions in this Exhibit J for significant changes in the character of the Work as defined in Part 2 (Significant Changes in the Character of the Work (Unit Priced Items)) or Work completely eliminated prior to the date of the Department's written order to significantly change or completely eliminate the Work. The adjustment will be determined according to the provisions in this Exhibit J under the provisions of Part 4 (Compensation for Altered Quantities) and PDBC Section 12 (Contract Changes). Such payment will not exceed the price of the Contract Item.

The Department will not seek a savings for maintaining traffic, Mobilization, and construction layout stakes items for eliminated Contract Items, unless there is a significant change.

### 4. Compensation for Altered Quantities

If the quantities of unit priced items vary from the quantities in the Contract, the Department will make payment at the original Contract unit prices for the agreed quantities of Work.

- A. If a portion of the Work is eliminated in accordance with Part 3 (Eliminated Items) or the contract is terminated in accordance with PDBC Section 21 (Termination for Convenience) the Department will pay the following in addition to that

provided by Part 2 (Significant Changes in the Character of the Work (Unit Priced Items)):

- A. Restocking charges supported by paid invoices and an additional 5 percent markup on the compensation for overhead and profit.
- B. The cost of Material transferred to the Department or a local government agency in lieu of restocking or disposal. The allowed compensation is the paid invoice cost plus 15 percent markup, but no more than the unit bid price for the reference number involved.
- C. Hauling costs, if not included in restocking charges, for returned Material and for Material delivered to the Department.

## **EXHIBIT K: FORM OF PAYMENT AND PERFORMANCE BONDS**

**CONTRACT PERFORMANCE BOND**

(5525.16)

**KNOW ALL MEN BY THE PRESENTS:**

**THAT WE** (1) \_\_\_\_\_

\_\_\_\_\_

as principal (the "Principal" or "Contractor"), (2) \_\_\_\_\_

\_\_\_\_\_

("Co-Surety"), (3) \_\_\_\_\_ ("Co-

Surety"), and (4) \_\_\_\_\_ ("Co-Surety"), each authorized to

do business in the State of Ohio, \_\_\_\_\_

\_\_\_\_\_ in the penal sum of \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_), as the same may be adjusted from time to time in accordance

with any executed Performance Bond Rider, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

**THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:**

**WHEREAS**, said Principal has heretofore filed with the Director of Transportation of the State of Ohio, a written proposal for the design construction and completion of

- WOO-23-17.88 Roundabout (the Project)

**WHEREAS**, said Director of Transportation has accepted said proposal and has awarded to said Principal a Progressive-Design Build Contract pertaining to the design, construction and completion of the Project duly executed and delivered as of \_\_\_\_\_, 2023, as the same may be supplemented, modified, amended, or amended and restated (the "Contract"), on the terms and conditions set forth therein; and

**WHEREAS**, upon award of the Contract, Principal is required to furnish a performance bond (this "Bond") guaranteeing the faithful performance of its obligations under the Contract and the other Contract Documents (as defined in the Contract).

**NOW, THEREFORE**, Principal and Co-Sureties are duly licensed or authorized in the State of Ohio, are held and firmly bounded unto the Ohio Department of Transportation ("Obligee") in the initial amount of Four Hundred and Twenty Five Thousand and 00/100 (\$425,000.00), subject to adjustment in accordance with one or more validly executed Performance Bond Rider(s) in the form attached hereto (collectively the "Bonded Sum"), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

**NOW, THEREFORE, FURTHER AGREED**, if the said Principal shall well, truly and faithfully comply with and perform each and all of the terms, covenants and conditions of such Contract and the other Contract Documents on its part to be kept and performed, according to the tenor thereof, and within the time prescribed and will perform the Work embraced therein upon the terms proposed and within the time prescribed and in accordance with the Contract, the other Contract Documents, Plans, Specifications and estimates furnished therefor, to which reference is here made, the same being a part hereof, as if fully incorporated herein, and will fully indemnify the State against any damage that may result from any failure of the Contractor to so perform, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder shall, except as expressly provided and set forth in ORC 5525.17, not exceed the penal amount of this obligation, as herein stated as the same may be adjusted from time to time in accordance with any Performance Bond Rider. It is further expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder is governed by Ohio Revised Code (i) Section 5525.16, except as to the Principal's indemnification of any railroad company against any damage that may result by reason of the negligence of the Principal in making the improvement in the case of a railroad at grade separation as the scope of the Project does not include such railroad at grade separation, thus the Principal's indemnification shall not be required hereunder, and (ii) 5525.17, and nothing other than the foregoing limitation stated herein shall operate as a limitation upon the joint and several obligations of the Co-Sureties under that statute or any other provision under Ohio law.

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

- Notwithstanding the provisions above, the amount of this Bond may be increased or decreased by the amount specified in a fully completed and executed Performance Bond Rider.
- The Co-Sureties hereby agree to empower a single representative, who shall be an employee or agent of the Lead Surety if a Lead Surety is elected as described in Section 19.1.5 (Liability of Contractor and Surety/Occurrence of a Contractor Breach) of the PDBC, with the authority to act on behalf of all Co-Sureties with respect to this Bond, so that the Obligee and claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. Each of the other Co-Sureties hereby acknowledge and agree that the foregoing designation shall constitute a waiver of each Co-Surety' rights under this Bond or applicable law to receive any notices with respect to this Bond or to undertake any portion of the Work after a Contractor Default. The initial representative shall be \_\_\_\_\_ and all correspondence or claims relating to this Bond should be sent to the Surety at the following address:

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

Address: \_\_\_\_\_  
\_\_\_\_\_

- 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.

Any capitalized terms used and not expressly defined herein shall be given the meaning assigned to them in the Contract.

The said Co-Sureties hereby stipulate and agree that any failure to complete Work at the times set forth in the Contract, or extensions of time for completion, or modifications, omissions or additions in or to the terms of said Contract, or in or to the other Contract Documents shall not in any way affect the obligation of said Co-Sureties on their bond. It is expressly acknowledged and agreed by the Co-Sureties the Principal the Obligee and their respective heirs, executors, administrators, successors and assigns that the listed amount under this Bond is for Sub-Phases 1A and 1B of the Contract and that the Bonded Sum under this Bond shall increase to meet the full entirety of the Contract Price as the Contract is amended pursuant to one or more Change Orders.

***[Remainder of the Page Left Intentionally Blank. Signature Page to Follow]***



Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

In presence of (MUST BE WITNESSED)

Principal

By \_\_\_\_\_

Witness to Principal

Address of Witness

Witness to Attorney-in-fact

Address of Witness

Name of Surety Company (1)

Address of Surety Company (1)

Signature of Attorney-in-fact

Company of Attorney-in-fact

Address of Attorney-in-fact (include phone #)

Sureties

Name of Surety Company (2)

Address of Surety Company (2)

Signature of Attorney-in-fact

Company of Attorney-in-fact

Address of Attorney-in-fact (include phone #)

Sureties

Name of Surety Company (3)

Address of Surety Company (3)

Signature of Attorney-in-fact

Company of Attorney-in-fact

Address of Attorney-in-fact (include phone #)

Sureties

## INSTRUCTIONS

Attach corporate seal of Principal if corporation.

Attach corporate seal if each surety company signing as surety.

- If a corporation, insert on page 3, "A corporation organized under the laws of the State of (Name of State) with its principal place of business at (Address)."
- If a surety company, insert on page 3, "A corporation organized under the laws of the State of (Name of State) and duly authorized to transact business within the State of Ohio."

If the above bond is executed by private individuals as sureties, the affidavits in justification of sureties must be filled out in detail; in lieu of said affidavits, a certificate of the County Auditor of the County in which said sureties, or one of them, reside, or have property, may be furnished to the effect that in his judgement such sureties possess the qualifications required by Section 1341.01 Ohio Revised Code which reads as follows:

"Sureties must be residents of this State, and worth, in the aggregate, double the sum to be secured, beyond the amount of their debts, and have property liable to execution in this State equal to the sum to be secured."

If signed by a surety company said bond must be accompanied by (1) a certificate of the superintendent of insurance, that such surety company is authorized to transact business in this State; and (2) the power of attorney of the agent of such company showing his authority to execute said bond on its behalf, which power of attorney must be dated not more than ninety days previous to the signing of the contract; and

- a recent financial statement of the surety company. In the event the bond exceeds 10% of the capital and surplus of the surety company signing the bond, the excess amount must be reinsured in some other surety company licensed to do business in Ohio and a certificate showing such reinsurance must accompany said bond.

# PERFORMANCE BOND RIDER

To be attached to and form a part of

Bond No.

**Type of  
Bond: Performance Bond**

Dated  
effective: \_\_\_\_\_  
(MONTH-DAY-YEAR)

\_\_\_\_\_, as Principal,  
(PRINCIPAL)

and by \_\_\_\_\_, as Surety,

in favor of **Ohio Department of Transportation**  
(OBLIGEE)

For the Progressive Design Build Contract for the Project (24)3001, WOO-23-17.88 Roundabout | PID 117545

**WHEREAS**, in accordance with the terms and conditions of the Contract, Principal and Obligee have reached agreement on and are prepared to execute a/the \_\_\_\_\_ to the Contract; and

**WHEREAS**, The Bonded Sum, as defined in the Performance Bond, hereunder shall (Select the one that best applies):

- (1) **increase** by \$ \_\_\_\_\_ effective upon and pursuant to the Obligee's issuance of the Notice to Proceed for Phase 2 under the Contract; or
- (2) **increase** by \$ \_\_\_\_\_ effective upon and pursuant to the Change Order executed \_\_\_\_\_.

bringing the total amount of the Bonded Sum of the Performance Bond to \$ \_\_\_\_\_ ( \_\_\_\_\_  
Dollars and No Cents).

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

- The Penal Sum of the Performance Bond shall be hereby increased to the total Contract amount of \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars and No Cents), effective on the date of full execution of the \_\_\_\_\_.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

**This rider  
is effective**

(MONTH-DAY-YEAR)

**Signed and Sealed**

(MONTH-DAY-YEAR)

By: \_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

**CONTRACT PAYMENT BOND**

(5525.16, 153.54 et seq O.R.C., also see 1311.27, 5525.12)

**KNOW ALL MEN BY THE PRESENTS:**

**THAT WE** (1) \_\_\_\_\_

\_\_\_\_\_ as principal (the "Principal" or "Contractor"), (2) \_\_\_\_\_

\_\_\_\_\_ ("Co-Surety"), (3) \_\_\_\_\_ ("Co-

Surety"), and (4) \_\_\_\_\_ ("Co-Surety"), each authorized to

do business in the State of Ohio, \_\_\_\_\_

\_\_\_\_\_ in the penal sum of \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_), as the same may be adjusted from time to time in accordance

with any Payment Bond Rider, for the payment of which, well and truly to be made, we hereby jointly and severally

bind ourselves, our heirs, executors, administrators, successors and assigns.

**THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:**

**WHEREAS**, said Principal has heretofore filed with the Director of Transportation of the State of Ohio, a written proposal for the design construction and completion of

- (24)3001 | WOO-23-17.88 Roundabout | PID 117545 (the "Project")

**WHEREAS**, said Director of Transportation has accepted said proposal and has awarded to said Principal a Progressive-Design Build Contract pertaining to the design, construction and completion of the WOO-23-17.88 Roundabout (the "Project") duly executed and delivered as of \_\_, 2023, as the same may be supplemented, modified, amended, or amended and restated (the "Contract"), on the terms and conditions set forth therein; and

**WHEREAS**, upon award of the Contract, Principal is required to furnish a payment bond (this "Bond") guaranteeing the faithful payment of its obligations under the Contract and the other Contract Documents (as defined in the Contract).

**NOW, THEREFORE**, Principal and Co-Sureties are duly licensed or authorized in the State of Ohio, are held and firmly bounded unto the Ohio Department of Transportation ("Obligee") in the initial amount of Four Hundred and Twenty Five Thousand and 00/100 (\$425,000.00), subject to adjustment in accordance with one or more validly executed Payment Bond Rider(s) in the form attached hereto (collectively the

“Bonded Sum”), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

**NOW, THEREFORE, FURTHER AGREED**, if the said Principal shall pay all lawful claims of any subcontractors, materialmen, laborers or mechanics who have performed labor or furnished material, fuel, tools or machinery and for the use of and repairs to machinery and equipment used in carrying forward, performing or completing said contract, said Principal and Co-Sureties agreeing and assenting that this undertaking shall be for the benefit of any subcontractor, materialman, laborer or mechanic, having a just claim, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated as the same may be adjusted from time to time in accordance with any Payment Bond Rider. It is further expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder is governed by Ohio Revised Code Section (i) 5525.16, except as to the Principal's indemnification of any railroad company against any damage that may result by reason of the negligence of the Principal in making the improvement in the case of a railroad at grade separation as the scope of the Project does not include such railroad at grade separation, thus the Principal's indemnification shall not be required hereunder, and (ii) 5525.17, and nothing other than the foregoing limitation stated herein shall operate as a limitation upon the joint and several obligations of the Co-Sureties under that statute or any other provision under Ohio law.

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

- Notwithstanding the provisions above, the amount of this Bond may be increased or decreased by the amount specified in a fully completed and executed Payment Bond Rider.
- The Co-Sureties hereby agree to empower a single representative, who shall be an employee or agent of the Lead Surety if a Lead Surety is elected as described in Section 19.1.5 (Liability of Contractor and Surety/Occurrence of a Contractor Breach) of the PDBC, with the authority to act on behalf of all Co-Sureties with respect to this Bond, so that the Obligee and claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. Each of the other Co-Sureties hereby acknowledge and agree that the foregoing designation shall constitute a waiver of each Co-Surety' rights under this Bond or applicable law to receive any notices with respect to this Bond or to undertake any portion of the Work after a Contractor Default. The initial representative shall be \_\_\_\_\_ and all correspondence or claims relating to this Bond should be sent to the Surety at the following address:

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

Address: \_\_\_\_\_  
\_\_\_\_\_

- 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.

Any capitalized terms used and not expressly defined herein shall be given the meaning assigned to them in the Contract.

The said Co-Sureties hereby stipulate and agree that any failure to complete Work at the times set forth in the Contract, or extensions of time for completion, or modifications, omissions or additions in or to the terms of said Contract, or in or to the other Contract Documents shall not in any way affect the obligation of said Co-Sureties on their bond. It is expressly acknowledged and agreed by the Co-Sureties the Principal the Obligee and their respective heirs, executors, administrators, successors and assigns that the listed amount under this Bond is for Sub-Phases 1A and 1B of the Contract and that the Bonded Sum under this Bond shall increase to meet the full entirety of the Contract Price as the Contract is amended pursuant to one or more Change Orders.

***[Remainder of the Page Left Intentionally Blank. Signature Page to Follow]***

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

In presence of (MUST BE WITNESSED)

Principal

By \_\_\_\_\_

Witness to Principal

Address of Witness

Witness to Attorney-in-fact

Address of Witness

Name of Surety Company (1)

Address of Surety Company (1)

Signature of Attorney-in-fact

Company of Attorney-in-fact

Address of Attorney-in-fact (include phone #)

Sureties

Name of Surety Company (2)

Address of Surety Company (2)

Signature of Attorney-in-fact

Company of Attorney-in-fact

Address of Attorney-in-fact (include phone #)

Sureties

Name of Surety Company (3)

Address of Surety Company (3)

Signature of Attorney-in-fact

Company of Attorney-in-fact

Address of Attorney-in-fact (include phone #)

Sureties



## INSTRUCTIONS

Attach corporate seal of Principal if corporation.

Attach corporate seal if each surety company signing as surety.

- If a corporation, insert on page 3, "A corporation organized under the laws of the State of (Name of State) with its principal place of business at (Address)."
- If a surety company, insert on page 3, "A corporation organized under the laws of the State of (Name of State) and duly authorized to transact business within the State of Ohio."

If the above bond is executed by private individuals as sureties, the affidavits in justification of sureties must be filled out in detail; in lieu of said affidavits, a certificate of the County Auditor of the County in which said sureties, or one of them, reside, or have property, may be furnished to the effect that in his judgement such sureties possess the qualifications required by Section 1341.01 Ohio Revised Code which reads as follows:

"Sureties must be residents of this State, and worth, in the aggregate, double the sum to be secured, beyond the amount of their debts, and have property liable to execution in this State equal to the sum to be secured."

If signed by a surety company said bond must be accompanied by (1) a certificate of the superintendent of insurance, that such surety company is authorized to transact business in this State; and (2) the power of attorney of the agent of such company showing his authority to execute said bond on its behalf, which power of attorney must be dated not more than ninety days previous to the signing of the contract; and

- a recent financial statement of the surety company. In the event the bond exceeds 10% of the capital and surplus of the surety company signing the bond, the excess amount must be reinsured in some other surety company licensed to do business in Ohio and a certificate showing such reinsurance must accompany said bond.

# PAYMENT BOND RIDER

To be attached to and form a part of

Bond No.

**Type of  
Bond: Payment Bond**

Dated  
effective: \_\_\_\_\_  
(MONTH-DAY-YEAR)

\_\_\_\_\_, as Principal,  
(PRINCIPAL)

and by \_\_\_\_\_, as Surety,

in favor of **Ohio Department of Transportation**  
(OBLIGEE)

For the Progressive Design Build Contract for the (24)3001 | WOO-23-17.88 Roundabout | PID 117545 Project.

**WHEREAS**, in accordance with the terms and conditions of the Contract, Principal and Obligee have reached agreement on and are prepared to execute a/the \_\_\_\_\_ to the Contract; and

**WHEREAS**, The Bonded Sum, as defined in the Payment Bond, hereunder shall (Select the one that best applies):

- (3) **increase** by \$\_\_\_\_\_ effective upon and pursuant to the Obligee's issuance of the Notice to Proceed for Phase 2 under the Contract; or
- (4) **increase** by \$\_\_\_\_\_ effective upon and pursuant to the Change Order executed \_\_\_\_\_.

bringing the total amount of the Bonded Sum of the Payment Bond to \$\_\_\_\_\_ ( \_\_\_\_\_  
Dollars and No Cents).

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

- The Penal Sum of the Payment Bond shall be hereby increased to the total Contract amount of \$ \_\_\_\_\_ ( \_\_\_\_\_  
Dollars and No Cents), effective on the date of full execution of the \_\_\_\_\_.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

By: \_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

## EXHIBIT L: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PERFORMANCE PLAN AND GOOD FAITH EFFORTS

### DBE PERFORMANCE PLAN

A DBE Performance Plan shall be submitted by the Contractor to the Department at the Change Order for Sub-Phase 1B, and Phase 2. The DBE Performance Plan shall set forth specific information demonstrating how the Contractor will achieve the DBE goal and shall include the following information:

- The names and addresses of the certified DBE firm(s) committed;
  1. A description of the work each DBE firm will perform. Each DBE firm must be certified in a NAICS code applicable for the kind of work the firm will perform in order to count towards meeting the DBE goal;
- Whether the DBE firm(s) being used to meet the DBE goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity;
  - (1) The dollar amount each DBE firm will be utilized for in order to meet the DBE goal;
- 1. Written documentation of the Offeror's commitment to use a DBE firm whose participation it submits to meet a contract goal; and
- 2. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and percentage of work provided in the Offeror's commitment.

By submitting a DBE Performance Plan, the Contractor is affirming that they will be using the DBE firms identified in the DBE Performance Plan to meet the DBE goal.

The DBE Performance Plan shall be submitted with the Phase 2 Proposal and will be a DBE Open Ended Performance Plan requiring updates throughout Phase 2 as more details are identified regarding anticipated work opportunities. The initial DBE Performance Plan submitted with the Phase 2 Proposal shall include the following information:

1. Types of work;
2. Estimated dollar value for each type of work;
3. Estimated time frame for when each type of work will be performed on the project.

As more details are identified regarding anticipated work opportunities, the DBE Performance Plan will be required to include the following information:

- 1.) The names and addresses of the certified DBE firm(s) committed;
  - 1.) A description of the work each DBE firm will perform. Each DBE firm must be certified in a NAICS code applicable for the kind of work the firm will perform in order to count towards meeting the DBE goal;

- Whether the DBE firm(s) being used to meet the DBE goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity;
- The dollar amount each DBE firm will be utilized for in order to meet the DBE goal;
  - Written documentation of the Offeror's commitment to use a DBE firm whose participation it submits to meet a contract goal; and
  - Written confirmation from each listed DBE firm that it is participating in the contract in the kind and percentage of work provided in the Offeror's commitment.

## **DBE AFFIRMATION**

The DBT shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the Project prior to submittal of any Work Package Proposal. The contract dollar amount(s) and/or DBE firm(s) included in the DBT's DBE Performance Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the DBT shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx> and submit for review and approval by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days of the Work Package Proposal submittal.

The DBT shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the DBT's DBE Performance Plan. The DBT shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal and their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five calendar days of Work Package Proposal submittal, the DBT shall submit a Request to Terminate/Substitute DBE Form, as set forth herein. The Request to Terminate/Substitute DBE Form shall be submitted within five (5) calendar days after Work Package Proposal submittal. The DBT shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the DBT made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the DBT intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the DBT is unable to affirm a DBE firm included in its original DBE Performance Plan at Work Package Proposal submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth calendar day after Work Package Proposal submittal. All GFE documentation submitted for consideration should demonstrate the efforts the DBT made prior to the time of Work Package Proposal submission to secure sufficient DBE participation on the project to meet the DBE goal although the DBT was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the Contractor's Good Faith Efforts in meeting the goal.

**GOOD FAITH EFFORTS (GFE's)**

In the event that the DBE contract goal established by ODOT is not met, the DBT shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the DBT does not meet the goal at Work Package Proposal submittal, the DBT shall submit its Good Faith Efforts (GFE's) documentation within five (5) calendar days of Work Package Proposal submittal. Submission of DBE Affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the DBT's failure to meet the goal at bid time or eliminate the DBT's responsibility of submitting GFE's within five (5) calendar days of the Work Package Proposal submittal.

The DBT shall demonstrate its GFE's by submitting the following information within five (5) calendar days after the Work Package Proposal submittal:

1. All written quotes received from certified DBE firms;
2. All written (including email) communications between the Contractor and DBE firms;
3. All written solicitations to DBE firms, even if unsuccessful;
4. Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract; and
5. Phone logs of communications with DBE firms.

The DBT shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) calendar days of Work Package Proposal submittal. ODOT has provided Good Faith Efforts Guidance located at:

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/DBE%20Goal%20Forms/Contractors%20Good%20Faith%20Efforts%20Guidelines.pdf>.

All other Contractors shall submit documentation of GFE's if notified that the information is required in order for ODOT to complete its bid assessment. Contractors shall have five (5) calendar days from the date of notification to submit all required GFE documentation. Notification will be by phone or email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the DBT has made adequate good faith efforts to meet the goal. The Department and/or its representatives will have ultimate oversight and responsibility to determine compliance with respect to all State and Federal requirements.

**ADMINISTRATIVE RECONSIDERATION**

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. If ODOT determines that the DBT has failed to demonstrate adequate GFE's to meet the goal, the DBT will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the DBT may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

Such written documentation or argument must be provided to ODOT, attention to the Office of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223 (with copy to the Office of Contract Sales, MS 4110), within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The DBT may also include in their written documentation a request for an in person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT's Office of Chief Legal Counsel will respond to the Contractor within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the DBT a written decision on reconsideration explaining the basis for finding that the DBT did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

### **TERMINATION OR REPLACEMENT OF A DBE**

By submitting a DBE Performance Plan, the DBT is committing to use the DBE firms identified in the plan. The DBT shall utilize the specific DBEs listed in the DBE Performance Plan to perform the Work and supply the Materials for which each is listed unless the DBT obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the DBT shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>.

This termination/replacement procedure applies only to DBE firms or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

### **GOOD CAUSE**

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, that the DBT has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause to terminate a DBE includes the following circumstances:

1. The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract;
2. The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor;
3. The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;

5. The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
6. ODOT has determined that the listed DBE firm is not a responsible contractor;
7. The listed DBE firm voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
10. Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided, that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so that the awarded contractor can self-perform the work for which the DBE contractor was engaged or so that the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

## **REPLACEMENT**

When a DBE firm is terminated or fails to complete its work on the contract for any reason the DBT must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the DBT. If ODOT requests documentation under this provision, the DBT shall submit the documentation within seven (7) calendar days, which may be extended for an additional seven (7) calendar days if necessary at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether GFEs have been demonstrated.

## **ADDITION**

In the event additional DBE participation is required beyond the originally approved DBE Performance Plan for each Phase, the DBT shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The executed DBE Affirmation Form will be utilized as written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work on the project and shall be submitted with the monthly DBE Performance Plan.

## **WRITTEN NOTICE TO DBE**

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the DBT must give notice in writing to the DBE firm, with a copy to ODOT, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

The DBT must give the DBE five calendar days to respond to the notice, advising ODOT and the DBT of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the DBT's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five days.



**GOAL ATTAINMENT POST AWARD**

The DBT shall make available upon request a copy of all DBE subcontracts. The DBT shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower tier subcontractors be performed in accordance with this Exhibit L.

Approval of a DBE Performance Plan does not ensure approval of C-92 Requests to Sublet nor does approval of a DBE Performance Plan indicate that the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the DBT to advise ODOT of any changes to the DBE Performance plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly. The Department and/or its representatives will have ultimate oversight and responsibility to determine compliance with respect to all State and Federal requirements.

**SANCTIONS AND ADMINISTRATIVE REMEDIES****POST-BID**

Failure by the DBT to carry out the requirements of this Exhibit L, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

2. Liquidated damages; and/or
3. Disqualifying the Contractor from future bidding as non-responsible; and/or
4. Contract termination; and/or
5. Other remedies available by law including administrative suspension (debarred from pursuing additional contracts).

Factors to be considered in issuing sanctions may include, but are not limited to the following:

6. The magnitude and the type of offense.
7. The degree of the DBT's culpability.
8. Any steps taken to rectify.
9. The DBT's record of performance on other projects including, but not limited to:
  - a. Annual DBE participation;
  - b. Annual DBE participation on projects without goals;
  - c. The number of complaints ODOT has received regarding the DBT; and
  - d. The number of times the DBT has been previously sanctioned by ODOT.

## **EXHIBIT M: DISADVANTAGED BUSINESS ENTERPRISE TRUCKING; DBE MATERIALS AND SUPPLIES VENDORS (MSVS)**

### **COUNTING DBE TRUCKING TOWARDS DBE CONTRACT GOALS**

The DBT may meet a Disadvantaged Business Enterprise (DBE) contract goal using DBE trucking firms, but only when such firms perform a commercially useful function (CUF). The DBT must not include a DBE trucking firm on its DBE Performance Plan if it is aware that the firm will not be performing a CUF. Even if a DBE trucking firm will be performing a CUF, the dollar amount of trucking services it provides may not be fully countable towards the DBE contract goal. When including a DBE trucking firm that will be performing a CUF on its DBE Performance Plan, the DBT must only include the portion of the dollar amount of which it is aware will count towards the DBE contract goal.

The DBT is responsible for performing any Good Faith Efforts (GFEs) that may be necessary if it includes, in good faith, a DBE trucking firm on its DBE Performance Plan and the DBT becomes aware (or is made aware) that the DBE trucking firm is not performing a CUF or that the trucking services provided by the DBE trucking firm are not countable to the extent previously believed. All tiers of subcontractors must be monitored for CUF. The Department and/or its representatives will have ultimate oversight and responsibility to determine compliance with respect to all State and Federal requirements.

A DBE trucking firm performs a CUF only when:

- i. It provided the DBT with a quote. The DBE trucking firm must be given the opportunity to negotiate its rates.
- ii. It is responsible for the management and supervision of its entire trucking operation, including any valid arrangement(s) (as described below) in which its services are countable towards the DBE contract goal. The extent of the DBE trucking firm's management and supervision are considered on a case-by-case basis. The existence of a contract between the Awarded DBT and the DBE trucking firm is not in and of itself an indicator that the DBE trucking firm is performing a CUF, especially if the contract exists for the mere purpose of creating the appearance of DBE participation.
- iii. It must own and operate at least one fully licensed, properly insured, and operational truck used on the contract.

When a DBE trucking firm performs a CUF, the dollar amount of trucking services it provides counts towards the DBE contract goal only in instances meeting at least one of the following criteria:

- vi. It provides trucking services using trucks it owns, properly insures, and operates using drivers it employs (i.e., that are not 1099 "employees"/independent contractors).

It provides trucking services with trucks that are leased on a long-term basis (i.e., one year or more) from a non-DBE truck leasing company, properly insured, and operated by drivers it employs.

The dollar amount of trucking services provided using leased trucks will only be countable in cases where all the following circumstances apply:

- vii. The DBE trucking firm's lease indicates that the DBE trucking firm has exclusive use of and control over the leased truck(s), including responsibility for maintenance and insurance. This does not preclude the leased truck(s) from working for others during the term of the lease with the DBE trucking firm's consent, as long as the lease gives the DBE trucking firm absolute priority for use of the leased truck(s).
- viii. The leased trucks display the DBE trucking firm's name and federal identification number.
- ix. The leased truck(s), when onsite, carry a copy of the lease agreement.

### **DBE TRUCKING DISCLOSURE AFFIDAVITS**

In order to ensure the DBT is monitoring DBE trucking/hauling operations on projects with federal funding, the DBT must complete monthly DBE Trucking Disclosure Affidavits ("Affidavits"). An Affidavit must be completed for all DBE trucking/hauling operations, regardless of whether the work is counting towards a DBE contract goal. The Affidavit will be completed by the DBT and emailed to the designated Compliance Officer (CO) by the 10th of each month. This information will be used to affirm DBE and non-DBE trucking utilized by each DBE firm performing those duties during the previous month.

ODOT will monitor trucking with the following requirements for all ODOT-let projects:

- The DBT will be required to provide a master list of trucks for all anticipated DBE trucking firms to the CO within seven days of executing the changed order for Phase 2 of the contract.

Note: If no DBE trucking is anticipated on a project, the DBT will complete the "No Anticipated DBE Trucking Affidavit" and submit it to the CO within seven days of the execution of the change order for Phase 2 of the contract. If DBE trucking/hauling does occur, the DBT must notify the CO within seven days of the DBE trucking activity. The DBT will then complete the monthly Affidavits as required below.

- The CO will email the Affidavit to the DBT, along with the Pre-Construction documentation. The DBT will be required to complete the Affidavit disclosing the DBE trucking operations during the previous month. The Prime will return the Affidavit by the 10th day of each month (if the 10th day falls on a weekend, the deadline moves to the following Monday).

They will select one of the following options on the Affidavit:

- The DBE firm performed trucking by utilizing their own Equipment and workforce and/or work was subcontracted to another DBE (i.e. only trucking that can be counted for DBE participation was utilized).

Note: No other information is required. The DBT will sign and submit the Affidavit.

- The DBE firm utilized DBE & Non-DBE trucking.

Note: DBT will provide a list of Non-DBE trucking that was utilized (i.e., not all trucking will earn DBE credit).

- No trucking was performed.

Note: No other information is required. The DBT will sign and submit the Affidavit.

- Trucking will continue to be monitored at project sites by construction field staff and the COs.

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

Failure by the DBT to follow the DBE Trucking Disclosure Affidavit requirements may result in the issuance of sanctions as follows:

- 1st Level Occurrence: The Administrator for the Office of Civil Rights Compliance, under the Division of Opportunity, Diversity & Inclusion (ODI), will issue a Letter of Reprimand to the DBT (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the DBT completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the CO within seven days of the activity).
- 2nd Level Occurrence: ODI may withhold an estimate in the amount due to the DBE trucking firm(s) that the Affidavit was not submitted for (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the DBT completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the CO within seven days of the activity).
- 3rd Level Occurrence: If a pattern of not submitting the Affidavit(s) persists or the DBT has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- 1.) The DBT's past project practices;
- 2.) The magnitude and the type of offense;
- 3.) The degree of the DBT's culpability;
- 4.) Any steps taken to rectify;
- 5.) The DBT's record of performance on other projects; and
- 6.) The number of times the DBT has been previously sanctioned by ODOT.

## **COUNTING MATERIALS AND SUPPLIES PURCHASES FROM DBE MATERIALS AND SUPPLIES VENDORS (MSVS)**

The DBE MSV Directory is available within the Ohio Unified DBE Directory at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx> (select MSV only).

The DBT may meet a Disadvantaged Business Enterprise (DBE) contract goal using DBE MSVs. The dollar amount of materials or supplies purchased from a DBE MSV will usually not be fully countable towards the DBE contract goal. When including a DBE MSV on its DBE Performance Plan, the DBT must only include the portion of the dollar amount of which it is aware will count towards the DBE contract goal.

The DBT is responsible for performing any Good Faith Efforts (GFEs) that may be necessary if it includes, in good faith, a DBE MSV on its DBE Performance Plan and the DBT becomes aware (or is made aware) that the materials or supplies purchased from the DBE MSV are not countable to the extent previously believed.

The DBT must seek information from DBE MSVs to allow it to be sufficiently informed about the nature of the transaction and which scenario listed below applies. The DBT must document this information on the DBE Affirmation Form:

<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/business-economic-opportunity/dbe/dbe-resources/pn-013-affirmation>

## BE MSV COUNTING SCENARIOS

- The purchase price of materials and supplies obtained from a DBE MSV may be fully countable only if the DBE MSV:
  - Manufactures the item(s), as indicated by the information provided by the DBE MSV (subject to verification by the Department). A manufacturer DBE MSV is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or Equipment required under the contract and of the general character described by the specifications;
  - Is certified in the correct (manufacturer) NAICS code(s) for the item(s); and
  - Is certified in the correct MSV descriptor(s) for the item(s), if its manufacturing facility is located in Ohio.
- The purchase price of materials and supplies obtained from a DBE MSV may be countable at 60 percent only if the DBE MSV:
  - 26 Does not manufacture the item(s);
  - 27 Owns, operates, or maintains a store, warehouse, or other establishment in which item(s) 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 indicated by the information provided by the DBE MSV (subject to verification by the Department) (See below for an exception to this requirement for items that are considered bulk items.);
  - 28 Is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the item(s);
  - 29 Is certified in the correct (wholesale or retail) NAICS code(s) for the item(s);
  - 30 Is certified in the correct MSV descriptor(s) for the item(s), if its store/warehouse/other establishment is located in Ohio; and
  - 31 Does not drop-ship the item(s).
- 1) The purchase price of materials and supplies that are considered bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and are obtained from a DBE MSV may be countable at 60 percent only if the DBE MSV:
  - 1) Delivers the item(s) using distribution Equipment that it both owns (or for which it has a long-term (one year or more) lease) and operates with its regular (not ad hoc) employees, as indicated by the information provided by the DBE MSV (subject to verification by the Department);
  - 2) Is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale of the item(s);
  - 3) Is certified in the correct (wholesale or retail) NAICS code(s) for the item(s);

- 4) Is certified in the correct MSV descriptor(s) for the item(s), if located in Ohio;
  - 5) Is certified in the correct trucking NAICS code(s); and
  - 6) Does not drop-ship the item(s).
- 2) The purchase price of materials and supplies obtained from a DBE MSV but not in accordance with any of the above scenarios is not countable, but the fees or commissions charged by the DBE MSV are countable if the DBE MSV:
- ❖ Is certified in NAICS code 425120 Wholesale Trade Agents and Brokers; and
  - ❖ Convincingly explains how the Selected/Awarded DBT benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling.

All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

## EXHIBIT N: CONTRACT PROVISIONS FOR FEDERAL AID CONSTRUCTION CONTRACTS

The Work herein proposed will be financed in whole or in part with federal funds, and therefore all of the statutes, rules and regulations promulgated by the federal government and applicable to Work financed in whole or in part with federal funds will apply to such Work. The required contract provisions for federal-aid construction contracts (contained in Form FHWA 1273 revised July 2022 and located in Attachment 1 to Exhibit N) are hereby incorporated by reference as if rewritten herein. Form FHWA-1273 shall be physically incorporated in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreement for supplies or services related to a construction contract). The Contractor shall be responsible for ensuring that the FHWA-1273 is physically incorporated into all lower-tier subcontracts. Whenever in said required FHWA-1273 contract provisions references are made to:

- (A) "contractor," "prime contractor," "bidder" or "prospective primary participant," such references shall be construed to mean the Design-Build Team or any authorized representative thereof or Contractor and any authorized representative thereof, as may be appropriate under the circumstances;
- (B) "contract" or "prime contract," such references shall be construed to mean the PDBC;
- (C) "subcontractor," "supplier," "vendor," "prospective lower tier participant" or "lower tier subcontractor," such references shall be construed to mean, as appropriate, Subconsultant, Subcontractor, Supplier or any other lower-tier entity that is not the Contractor and/or Designer; and
- (D) "department," "agency" or "department or agency entering into this transaction," such references shall be construed to mean the Department, except where a different department or agency is specified.

These statutes, rules and regulations promulgated by the federal government are contained in Attachment 2 to Exhibit N and are hereby incorporated by reference as if rewritten herein and the Contractor shall comply with them as applicable to the performance of the Work and this PDBC. Some of the federal government statutes, rules, and regulations contained in Attachment 2 of Exhibit N may be duplicative of those contained in Attachment 1 of Exhibit N.

The Contractor, DBT, and Designer, hereby acknowledge and agree to comply with (i) any and all of the federal statutes listed herein in this Exhibit N as may be applicable to the Contractor in the performance of the Work, (ii) any additional federal statute, rule, regulation, circulars and/or executive order that may be required under any current source of federal funding, or (iii) any future source of government funding. The Contractor, DBT, and Designer further agree to execute any and all certificates attached hereto.

### SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the Contractor, DBT, and Designer to include the provisions of FHWA-1273 in their contract or in their lower-tier subcontracts may result in the issuance of sanctions as follows:

- (A) 1st Tier: Letter of Reprimand.
- (B) 2nd Tier: Damages equivalent to the daily liquidated damages amount found in C&MS Section 108.07 for each incident of non-compliance.

- (C) 3rd Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- (i) The magnitude and the type of offense;
- (ii) The degree of the Contractor's culpability;
- (iii) Any steps taken to rectify;
- (iv) The Contractor's record of performance on other projects; and
- (v) The number of times the Contractor has been previously sanctioned by ODOT.

### **RECOVERED MATERIALS**

The Contractor, DBT, and Designer and its contractors (at all tiers) shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), including the regulatory provisions of 40 C.F.R., Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R., Part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R., Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **NON-COLLUSION PROVISION**

The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by 23 U.S.C. § 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. § 1746, is included in the Proposal.

### **PERTINENT NON-DISCRIMINATION AUTHORITIES**

During the performance of this Contract, the Contractor, DBT, and Designer, their assignees, and successors in interest agree to comply with the following non-discrimination statutes and authorities; including but not limited to as applicable:



- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21;
- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- (i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

## **DAVIS-BACON ACT AND PREVAILING WAGE**

Construction projects on Federal-aid highways are subject to prevailing wage rate requirements. The Davis-Bacon Act applies to this Project in accordance with Attachments 1 and 2.

**ATTACHMENT 1 TO EXHIBIT N**

FHWA-1273 – Revised October 23, 2023

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

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, 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. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**II. NONDISCRIMINATION** (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**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 (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) 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 provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 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 contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its 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, sexual orientation, gender identity, 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program 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 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 or other knowledgeable company official.

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 minorities and women.

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 minorities and women 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 minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women 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, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such 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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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 its 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 their avenues of appeal.

#### 6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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 employees who are minorities and women 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 good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. 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 good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith 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, sexual orientation, gender identity, 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 contracting agency 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 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, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. 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 contracting agency.

#### 8. Reasonable Accommodation for Applicants /

**Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

#### 9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### 10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. 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 the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours 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; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency 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](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), 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 will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The 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.

(4) In the event the contractor, the laborers or mechanics to be employed in the 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 will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.*

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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

*a. Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

*(2) Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

*(3) Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

*(4) Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

*b. Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

*(2) Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

*(3) Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

*(4) Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.



(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### 4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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 determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. 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. 23 CFR 230.111(e)(2). 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 journeyworkers shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 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 U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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 contracting agency. 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 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased 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 or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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 or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI 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. Pursuant to 23 CFR 635.116(c), 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 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 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 contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

#### **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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 Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the 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. 23 CFR 635.108.

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 Part 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. 3704). 29 CFR 1926.10.

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. 3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

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 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier 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 first tier 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 first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first 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 entering into this transaction. 2 CFR 180.330.

g. The prospective first tier 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 Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective 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. 2 CFR 180.325.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;
- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).
- (5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
- (6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\* \* \* \* \*

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

- a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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. 2 CFR 1200.220 and 1200.332.

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 exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

\* \* \* \* \*

**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

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 its bid or proposal that the participant 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.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  - a. To the extent that qualified persons regularly residing in the area are not available.
  - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.
5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.
6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.





**ATTACHMENT 3 TO EXHIBIT N  
NON-COLLUSION AFFIDAVIT**

TO ACCOMPANY PROPOSALS OR BIDS

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says:  
(Type or print name)

that he or she is the \_\_\_\_\_ of  
(Type or print title)

\_\_\_\_\_, who submits herewith  
(Type or print name of company/firm)

to the \_\_\_\_\_ attached bid/proposal; that he or she is the person whose name is signed to the attached bid/proposal is genuine; that the same is not sham or collusive; that all statements of fact therein are true; and that such bid/proposal as not made in the interest or behalf of any person, partnership, company, association, organization, or corporation not herein name or disclosed.

Affiant further deposes and says: that the bidder/proposer has not directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interests of the public body which is to award the contract, or of any other bidder/proposer, or anyone else interested in the proposed contract; and that the bidder/proposer has not in any manner sought by collusion to secure for himself/herself/themselves, an advantage over any other bidder/proposer.

Affiant further deposes and says that prior to the opening and reading of bids/proposals, said bidder/proposer:

- (i) did not, directly or indirectly, induce or solicit anyone else to submit a false or sham bid/proposal;
- (ii) did not, directly or indirectly, collude, conspire, connive or agree with anyone else hat said bidder/proposer or anyone else would submit a false or sham bid, or that anyone should refrain from biding or withdraw bid/proposal;
- (iii) did not, in any manner, directly or indirectly, seek by agreement communication, or conference with anyone to raise or fix the bid price of said bidder/proposer or of anyone else or to raise or fix any overhead profit or cost element of their price or of that of anyone else;
- (iv) did not, directly or indirectly, submit their bid/proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereof, to any corporation, partnership, company, association organization, bid depository, or to any member or agent, thereof, or to any individual or group individuals, except to the awarding authority or to any person or person who have a partnership or other financial interest with said bidder/proposer in their business.

Signed: \_\_\_\_\_

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

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

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

**WARNING:** Bids will not be considered unless the affidavit hereon is fully executed including the affidavit of the notary and the notarial seal.

**ATTACHMENT 4 TO EXHIBIT N**  
**FEDERAL PREVAILING WAGE RATE**

(Wage determination(s) will be included at a subsequent date prior to the authorization of the Phase 2 Change Order)

**ATTACHMENT 5 TO EXHIBIT N****COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

The Contractor shall comply with the Federal Highway Administration (“FHWA”) Buy America Requirement in 23 C.F.R. § 635.410 and all relevant provisions of the Build America, Buy America Act (“BABA”), contained within the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, §§ 70901-52 enacted November 15, 2021. The BABA requires all iron, steel, manufactured products, and construction materials incorporated permanently into the work in infrastructure projects funded by federal financial assistance to be produced in the United States and all subsequent manufacturing must be performed in the United States.

BABA permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used, and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product and begins with the initial melting and mixing and continues through the bending and coating stages. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

BABA permits FHWA participation in the Contract only if all “construction materials” as defined in the Act are made in the United States. BABA defines “construction materials” to include the following materials: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; and drywall. This requires that all manufacturing processes for the construction material listed above has occurred in the United States. The Contractor’s obligation contained herein is subject to any applicable waiver of BABA requirements.

Furthermore, to provide clarity to item, product, and material manufacturers and processers, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Director may grant specific written permission to use foreign steel or iron in any type of construction so long as the use of foreign steel and iron materials is minimal, provided the cost of such materials does not exceed 0.1% of the total contract price under the Contract or \$2,500.00 whichever is greater. The cost of such materials is the value of the product as delivered to the project. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Finally, BABA permits the continuation of FHWA's current general applicability waivers for manufactured products, raw materials, and ferryboat parts, but these waivers are subject to reevaluation.

Concurrently with execution, the Contractor has completed and submitted, or shall complete and submit, to the Department a Buy America Certificate, in the format below, which certifies to the Department the domestic origin of all products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product. After submittal, the Contractor is bound by its original certification. A false certification is a criminal act in violation of 18 U.S.C. § 1001. The Contractor has the burden of proof to establish that it is in compliance.

At the Contractor's request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist pursuant to 23 C.F.R. § 635.410(c) or any relevant provisions of BABA. However, the Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department.

**BUY AMERICA CERTIFICATE**

**Certificate of Compliance**

The Contractor hereby certifies that it will comply with all relevant provisions of the Build America, Buy America Act, contained within the Infrastructure Investment and Jobs Act, Pub. L. NO. 117-58, §§ 70901-52, the requirements of 23 U.S.C. § 313, and the applicable regulations in 23 C.F.R. § 635.410.

OFFEROR \_\_\_\_\_

SIGNATURE \_\_\_\_\_

NAME (printed or typed) \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

## EXHIBIT O: NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY AND WORKFORCE DIVERSITY REQUIREMENTS ON ALL ODOT ADMINISTERED FEDERALLY FUNDED PROJECTS

The DBT's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

### Workforce Utilization Goals

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found in the Technical Requirements. These goals are based on 2020 census data and represent the area, per craft, minority and female availability pool.

1. **Census Availability Percentages for minority and female workers** by craft per county (applicable to project):
  - a. <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.xlsx>.
  - b. <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.pdf>.
2. **Statewide utilization obligations/ goals for minority workers** by county (applicable to each project).
3. **Statewide utilization obligation/ goal for female workers is 6.9 percent** and applies the same for each county.

**Source: US Department of Labor's, Office of Federal Contract Compliance Programs, Technical Assistance Guide for Construction Contractors (pp. 126 – 127).**

[Construction Contractors Technical Assistance Guide \(dol.gov\)](https://www.dol.gov/eis/whd/technical-assistance-guide).

070 Toledo, OH: SMSA Counties:

8400 Toledo, OH-MI 8.8 MI Monroe; OH Fulton; OH Lucas; OH Ottawa; OH Wood.

Non-SMSA Counties 7.3 MI Lenawee; OH Hancock; OH Henry; OH Sandusky; OH Seneca; OH Wyandot.

### The New Hire Definition for the purposes of on-the-job training and workforce utilization is as follows:

An individual who has a break in service (not on an employer's payroll) for a period of 12 months or longer and the person affected is not a salaried employee but belongs to a union craft. Individuals compensated for training or incidental work which does not cause a break in unemployment compensation, i.e., paid by voucher check or petty cash, are considered new hires if the individual's break in service is 12 months or longer.

The time frame for a new hire shall be associated with the first project worked for the DBT regardless of whether it is public or private. When reporting a newly hired employee, the DBT shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of 12 months or more, would not qualify the employee as a new hire for the DBT.

**Compliance:** The DBT's compliance shall be based on the implementation of affirmative action obligations required by the specifications set forth in 23 CFR Part 230, and its good faith efforts to meet these obligations. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the DBT shall make a good faith effort to employ minorities and females on its project. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the affirmative action obligations shall be a violation of the

contract and regulations in 23 CFR Part 230. The good faith efforts put forth by the DBT will be measured against the total work hours performed.

Under FHWA, ODOT is the authority tasked with ensuring that the DBT adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions, the DBT shall provide immediate written notification to ODOT when referral practices of the union(s) with which the DBT has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), administers and enforces equal employment opportunity laws that apply to Federal government contractors and subcontractors supplying goods and services, including construction, to the Federal Government under 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of VEVRAA. The OFCCP monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the contractor's affirmative action efforts and employment practices. Under Executive Order 11246, the OFCCP may perform contract compliance reviews on contractors involved with federally funded ODOT projects.

Requirements for affirmative action obligations governing OFCCP contract compliance reviews are those listed in the Federal Register for the Economic Area.

[Federal Register: Government Contractors, Affirmative Action Requirements](#) (2000).

[Federal Register: RIN 1250-AA10](#) (2020 updates).

### **Additional requirements for ODOT projects with state funding**

The Ohio Department of Development (ODOD), Minority Business Division, is responsible for ensuring state contractors implement and adhere to the State of Ohio's affirmative action program pursuant to [Ohio Administrative Code \(OAC\) 123: Chapters 123:2-3-01 through 123:2-3-07](#). Specifically, this unit's responsibilities includes the issuance of certificates of compliance under [ORC 9.47](#) and [153.08](#), conducting project site visits, and compliance reviews (desk audits) to ensure contractors utilize minorities and women in the construction trades, and maintain a working environment free of discrimination, harassment, and intimidation. The ODOD may perform contract compliance reviews on contractors involved with state or state assisted projects. Requirements for affirmative action obligations governing ODOD contract compliance reviews are those listed in OAC 123:2-3-02, for the Metropolitan Statistical Area in which a project is located.

The DBT and all subcontractors regardless on the number of employees or the state contract amount are required to submit monthly utilization reports (Input Form 29) to the Ohio Department of Development covering the contractor's total workforce within the state of Ohio (private sector and public sector projects). The reports must be filed electronically by the 10th of each month, beginning with the contract award and continuing until the DBT or subcontractor completes performance of the contract, as set forth in OAC 123:2-9-01.

I-29 monthly reports must be submitted via the Ohio Business Gateway portal: <https://ohio.gov/wps/portal/gov/site/business/resources/ohio-business-gateway> / [Ohio Business Gateway | Ohio.gov | Official Website of the State of Ohio](#).

#### *Steps to Submit the I-29 Form:*

- Visit [Ohio Business Gateway](#)
- Log in using username and password (OH|ID)
- Ensure "Equal Opportunity Division" is among available service areas
- Ensure "Input 29" is among available transactions



- Select "Input 29" and complete the form
- Click "File" button on the Summary page to see a confirmation page
- Submit supporting documentation (if required) to: [das-eod.bccu@das.ohio.gov](mailto:das-eod.bccu@das.ohio.gov)

I-29 reports are used by ODOT to create monthly utilization work hour reports to monitor adherence to on-the-job training requirements and workforce diversity requirements. The DBT and all subcontractors shall provide monthly utilization work hour reports for the DBT's or subcontractor's total workforce within the state of Ohio to the compliance officer of the contracting agency (ODOT). The DBT's or subcontractor's failure to submit a monthly utilization work hour report shall be a basis for invoking any of the sanctions set forth in rule 123:2-7-01 of the Ohio Administrative Code.

### **FEDERAL WORKFORCE DIVERSITY REQUIREMENTS**

Affirmative Action and Equal Employment Opportunity requirements apply to federal transportation projects over \$10,000 (41 CFR 60-4 and Executive Order 11246). As a part of these requirements, there are workforce goals for female and minority workers. There is a statewide goal of 6.9% for female workers on all projects over \$10,000 and the goal for minority workers varies by county. (See availability and goal information in links on page 1). **The DBT is required to meet the workforce diversity goals by the end of a project.**

ODOT will monitor the progress toward meeting these goals throughout the life of the project. The totality of the project workforce hours (including the various trades utilized) must be met and complied with by the DBT. ODOT will monitor compliance using the following process:

1. Present quarterly reports showing the percentage of female and minority workers hired by the DBT on projects. The reports will be generated using certified payroll receipts entered through the AASHTOWare Civil Rights & Labor (CRL) system. These reports will be referred to as "CRL reports";
2. The CRL reports will be distributed by ODOT's ODI Division or the Project Manager at project progress meetings on a quarterly basis;
3. If female and/or minority workforce goals are not being met, ODOT's ODI Division will offer a list of organizations that focus on recruiting a diverse workforce. This list can be used as a resource for the DBT and/or Unions.

A Good Faith Efforts (GFE) check list will be provided to the DBT at the end of the project. (See copy below, pp. 6-9, or on line at: <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/eeo/01-gfe-checklist>)

4. The DBT must complete and return the GFE check list within 30 days of receipt to the Project Manager (PM). The PM will forward the check list to the ODI Outreach Manager (OM) for review. The OM will forward the check list to ODI Outreach Administrator (OA) who will forward it to the ODI Good Faith Efforts Review Committee for final approval.
5. The ODI Good Faith Efforts Review Committee will determine whether the good faith efforts checklist is acceptable within 10 days of receiving the checklist from the DBT or Project Manager and will inform the DBT of the decision.

6. If the GFE checklist is not acceptable, the DBT will continue to make efforts to meet the female and minority workforce goals on future projects that ODOT monitors.

ODOT staff that will be involved in determining if GFE checklists are acceptable include:

ODOT Division of Opportunity, Diversity, & Inclusion (ODI) staff	2-4
ODOT District staff (Project Manager and/or Project Engineer)	1-2
ODOT Central Office staff (Office of Construction Administration, Alternative Delivery, & Local Programs)	3

7. Additionally, at the end of the project, if the workforce diversity goals are not met, ODOT will meet with the DBT to discuss efforts that the DBT can take to meet the diversity workforce goals on the next project over \$20M awarded to the DBT that will be monitored by ODOT. These discussion efforts will be acknowledged by ODOT and made a part of the DBT overall GFE documentation.
8. If the DBT does not meet the female and minority workforce goals on the next project over \$20M that ODOT monitors, a letter will be sent to the CEO of the the DBT and Sub Contractors informing them of their company’s lack of progress in meeting the project’s total workforce utilization goals and inviting the CEO, or his/her representative(s), to talk with ODOT’s leadership regarding any concerns. The minutes from this meeting will be kept on file as a part of the company’s Good Faith Efforts.

Dispute Process

During the life of the project, if there is a disagreement by the DBT with the female and/or minority workforce percentages provided in a CRL report, the DBT can make a request, through the Project Manager, to meet with ODOT ODI staff to discuss discrepancies and obtain more information regarding the process ODOT uses to produce the CRL reports.

Good Faith Efforts Committee

The Good Faith Efforts (GFE) Committee shall be responsible for monitoring and approving the GFE Checklist and supporting documentation submitted by the DBT showing efforts made to meet the female and minority workforce goals on ODOT projects that are being monitored.

The Committee members shall be responsible for:

1. Working with the ODI staff to review and approve the GFE check lists submitted by the DBT and informing the DBT if the check list and documentation are approved or not.
2. Accessing/ Reviewing CRL reports from the SharePoint portal that shall be created by ODI staff.
3. Saving all GFE documentation on the Share Point portal created by the ODI Division.



**Workforce Diversity Requirements - Good Faith Efforts (GFE) Checklist\***

***\*Please return this form and supporting documentation (when applicable) to the ODOT project manager within 30 days of receipt.***

1. This note outlines the Affirmative Action and Equal Opportunity requirements for the federal and state funded transportation projects over \$10,000. As a part of these requirements, there are workforce goals for female and minority workers. ODOT is renewing its efforts to monitor these goals. There is a statewide goal of 6.9% for female workers on all projects over \$10,000 and the goal for minority workers varies by county. The DBT is required to meet the goals by the end of project.
2. The DBT is required to complete and return this Good Faith Efforts (GFE) Checklist (including information for subcontractors when possible) as indicated above. When the GFE Checklist is received, the Project Manager and/or Regional Outreach Manager will inform The DBT within 30 days if the GFE check list is approved by the GFE Review Committee and discuss additional steps that can be taken to meet the workforce diversity goals (if applicable).
3. ODOT’s ODI Division (Office of Outreach) will be responsible for monitoring progress toward meeting the workforce diversity goals.

[In the following sections- check all that apply, including  Prime Contractor and/or  Subcontractor(s)]

**Outreach events:**

1. In the past three months, the DBT attended outreach/recruiting events to increase women, minorities, and disadvantaged persons in the workplace. [Please provide a copy of documentation of at least one of these outreach efforts with this form].

**Outreach contacts:**

2. Which agencies, professional/trade groups, job fairs, training classes, minority and women organizations, workforce development agencies were contacted by the The DBT in order to recruit minorities, women and disadvantaged persons in the workplace? Use additional paper if needed. Provide approximate dates and names of individuals contacted through this process.

**Current employees:**

3. The DBT has connected with current minority and female employees to gain referrals on other minority and female applicants.

**Company recruitment efforts:**

4. The DBT has maintain a database/ spreadsheet/ list of minority, female, and disadvantaged applicants who want to work at the company and applied for employment in the past. The database was utilized to contact those applicants when hiring/ employment opportunities arose. [Please provide a copy of the list with this form- without private or confidential information.]

5. The aforementioned database/ list includes women and minorities referred by unions, community organizations, schools, workforce development agencies, and other recruitment sources.

6. The DBT informed the aforementioned recruitment partners when employment opportunities arose.

7. The DBT sought to include qualified minorities and women in any apprenticeship programs in which the contractor participates.

8. The DBT have advertised in news media oriented towards women and minorities.

9. The DBT reached out to their subcontractor(s) to vet the subcontractors' ability to hire women and minority workers, before the project began or as the project progressed.

**Request to union hall:**

10. If the DBT are unionized and did not meet the female or minority workforce goal, the union hall was informed of the short fall and a request was made to the union hall for female and minority workers.

11. The DBT documented if an individual was sent to the union hiring hall for referral and was not referred back to the contractors by the union or was not hired by the contractors; and the reason why.

**The criteria ODOT will use to determine if GFEs are sufficient include the following:**

- 1. The extent that women and minorities are available within a reasonable area of recruitment
- 2. The potential resources for effective recruitment  Geographic location of project
- 3. Type of work  Duration of the contract  Dollar value of the contract

Feel free to attach an additional document if more space is needed to note Good Faith Efforts that have been used or will be used:

**Person completing this form (name, company, and title)**

***I certify that the information provided on this form and supporting documentation (when applicable) is true and correct to the best of my knowledge.***

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

Signature: \_\_\_\_\_ Company Name: \_\_\_\_\_

\_\_\_\_\_ Position/Title:

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

**\*\* Please note that this checklist is subject to revisions over time, as updates are needed\*\***

**For office use only:** GFE Checklist approval/ denial by ODOT

Regional Outreach Manager Name _____	Project Manager Name _____
1. Approve GFE Checklist 2. Do not approve (request additional documentation)	1. Approve GFE Checklist 2. Do not approve (request additional documentation)

ODOT ODI Deputy Director Name _____(if applicable)	ODOT ODI Administrator Name _____(if applicable)
1. Approve GFE Checklist 2. Do not approve (request additional information)	(a) Approve GFE Checklist (b) Do not approve (request additional information)

Committee Member, ODI Administrator Name _____(if applicable)	Committee Member, Central Office Staff Name _____(if applicable)
(a) Approve GFE Checklist (b) Do not approve (request additional information)	- Approve GFE Checklist - Do not approve (request additional information)

Exhibit O: Notice of Requirement of Affirmative Action to Ensure Equal Employment Opportunity and Workforce Diversity Requirements on all ODOT Administered Federally Funded Projects

ODOT, Central Office Staff Name _____(if applicable)	ODOT, Central Office Staff Name _____(if applicable)
<ul style="list-style-type: none"> <li>• Approve GFE Checklist</li> <li>• Do not approve (request additional information)</li> </ul>	<ol style="list-style-type: none"> <li>1. Approve GFE Checklist</li> <li>2. Do not approve (request additional information)</li> </ol>
ODOT ODI Staff Name _____(if applicable)	ODOT ODI Staff Name _____(if applicable)
<ol style="list-style-type: none"> <li>1. Approve GFE Checklist</li> <li>2. Do not approve (request additional information)</li> </ol>	<ol style="list-style-type: none"> <li>(1) Approve GFE Checklist</li> <li>(2) Do not approve (request additional information)</li> </ol>
ODOT ODI Staff Name _____(if applicable)	ODOT ODI Staff Name _____(if applicable)
<ol style="list-style-type: none"> <li>A. Approve GFE Checklist</li> <li>B. Do not approve (request additional information)</li> </ol>	<ol style="list-style-type: none"> <li>A. Approve GFE Checklist</li> <li>B. Do not approve (request additional information)</li> </ol>

## **EXHIBIT P: ON-THE-JOB TRAINING PROGRAM**

The primary objective of the OJT Program is to offer equal opportunity for the training and upgrading of minorities, women, and disadvantaged persons toward journeyperson status in the highway construction trades, and to establish a plentiful and well diverse pool of skilled workers for the highway construction industry.

The DBT shall adhere to all requirements of the OJT Program as set forth in the most recent version of the ODOT On the Job Training Program Plan located at the link below, and incorporated in its entirety herein by reference.

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/OJTDocs/OJT%20Program%20Plan.pdf>

## EXHIBIT Q: PROMPT PAYMENT – ODOT LET CONSTRUCTION PROJECTS

Prompt payment requirements including prompt and full payment of retainage apply to the Department and, by extension, the Contractor and all tiers of Subcontractors (including DBEs and non-DBEs and including traditional Subcontractors as well as Material Suppliers and trucking firms, collectively referred to herein as Subcontractors). The State of Ohio's laws related to prompt payment and retainage are published in Ohio Revised Code (ORC) 4113.61. ORC 4113.61 applies to all contracts. The DBT must comply with this Exhibit Q, ORC 4113.61, Section 8.7 (Affiliate Subcontracts) of the PDBC and, for contracts with U.S. Department of Transportation financial assistance (i.e., federally-funded contracts), Title 49, Part 26, Section 29 of the Code of Federal Regulations (CFR) (i.e., 49 CFR 26.29).

The Department monitors the payments made by the Contractor and Subcontractors for compliance with this Exhibit Q, ORC 4113.61, Section 8.10 (Prompt Payment) of the PDBC and, for federally funded contracts, 49 CFR 26.29. To facilitate this monitoring, the Department requires the Contractor to report their remitted payments to specified Subcontractors, and Subcontractors to report their remitted payments to specified lower-tier Subcontractors, as follows.

- i. The Contractor must report remitted payments to subcontractors (DBE and non-DBE), suppliers (DBE only, unless the supplier sublets to a lower-tier DBE firm), and trucking firms (DBE only, unless the trucking firm sublets to a lower-tier DBE firm) (collectively, Subcontractors).
- ii. Subcontractors must report remitted payments to lower-tier subcontractors (DBE and non-DBE), suppliers (DBE only), and trucking firms (DBE only) (collectively, "Lower-tier Subcontractors").

The Contractor must report remitted payments to Subcontractors within 10 calendar days of each payment it receives from the Department. Each Subcontractor must report remitted payments to Lower-tier Subcontractors within 10 calendar days of receipt of each payment received from the Contractor. Payers must report return of retainage (and/or other amounts withheld) within 10 calendar days of release to the payee.

The payer (whether Prime Contractor or Subcontractor) must report the following information:

- The name of the payee;
- The dollar amount of the payment to the payee;
- The date the payee was paid; and
- The retainage or other amount withheld (if any), and the reason for the withholding (if other than for retainage).

Payment reporting(s) must be both gross (i.e., the amount owed without factoring in retainage and/or other amounts being withheld) and net. The payer must report its return of retainage (and/or other amounts withheld) in separate, standalone payment entries (i.e., without being commingled with a payment for work performed or materials supplied).



Payees must verify each payment reported by a payer within 10 calendar days of the payment being reported by the payer. This verification includes whether the payment was received, and if so, whether it was as expected or not.

The Contractor must include the above prompt payment, retainage and reporting requirements in all Subcontractor (DBE and non-DBE), supplier (DBE only, unless the supplier sublets to a lower-tier DBE firm), and trucking firm (DBE only, unless the trucking firm sublets to a lower-tier DBE firm) agreements that it enters into and further require that all such subcontractors include the same prompt payment, retainage and reporting obligation in their lower-tier Subcontractor (DBE and non-DBE), supplier (DBE only), and trucking firm (DBE only) agreements.

Note: Payments made to non-DBE suppliers and trucking firms need not be reported. However, as required in C&MS 107.21 and in accordance with ORC 4113.61, contractors are required to make payment to each subcontractor and supplier within 10 calendar days after receipt of payment from the Department for work performed or materials delivered or incorporated into the project—this requirement includes non-DBE suppliers and trucking firms. If a contractor does not comply with this requirement, penalties in accordance with ORC 4113.61 may apply.

### **SUGGESTED SUB AGREEMENT LANGUAGE – FEDERAL-AID CONTRACTS**

Suggested language for the federal-aid Contractor to include in its subcontractor agreements:

*As a Subcontractor, supplier\* and/or trucking firm\*, you (the payee) must verify receipt of payments from the Contractor. You must verify each payment within 10 calendar days of the payment being reported by the Contractor. This verification includes whether the payment was received, and if so, whether it was as expected or not. Furthermore, you must report payments to your lower-tier Subcontractors (DBE and non-DBE), suppliers (DBE only), and trucking firms (DBE only). The payment data reported must include any retainage (and/or other amounts) withheld and any previously withheld amounts released. You must report payments within 10 calendar days of receipt of each payment received from the Contractor. You must also report return of retainage (and/or other amounts withheld) within 10 calendar days of release to the payee. Your payees must then verify each payment reported by you (the payer) within 10 calendar days of the payment being reported. Your lower-tier Subcontractor (DBE and non-DBE), supplier (DBE only), and trucking firm (DBE only) sub agreements must include this prompt payment, retainage and reporting obligation.*

Suggested language for the subcontractor to include in its lower-tier sub agreements:

*As a lower-tier subcontractor (DBE or non-DBE), supplier (except non-DBE) and/or trucking firm (except non-DBE), you (the payee) must verify receipt of payments from the payer (i.e., the maker of this sub agreement with you). Payees must verify each payment reported by the payer within 10 days of the payment being reported. This verification includes whether the payment was received, and if so, whether it was as expected or not.*

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

### **PROMPT PAYMENT**

Failure by the Contractor to follow Prompt Payment requirements may result in the issuance of sanctions listed below. The Contractor may also receive the below sanctions if any of their Subcontractors fail to follow Prompt Payment requirements.

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the Contractor (applies if there is a failure to report payments and/or failure to timely pay subcontractor(s)).
- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the subcontractor(s) that was not reported or paid (applies if there is a failure to report payments and/or failure to timely pay subcontractor(s)).
  - If a Contractor receives a 1<sup>st</sup> Level Occurrence reprimand for a project, all subsequent Prompt Payment violations on that project (same or different subcontractor) may result in withholding. In this situation, no 1<sup>st</sup> Level Occurrence reprimand letters will be sent.
- 3rd Level Occurrence: The Contractor may be required to pay interest in the amount of 18 percent per annum of the payment due, beginning on the eleventh day following the receipt of payment from the owner and ending on the date of full payment of the payment due plus interest (applies if a pattern of not paying subcontractor(s) persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation and/or debarment).

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The Contractor's past project practices;
- The magnitude and the type of offense;
- The degree of the Contractor's culpability;
- Any steps taken to rectify;
- The Contractor's record of performance on other projects; and
- The number of times the Contractor has been previously sanctioned by ODOT.

### **RETURN OF RETAINAGE**

Failure by the Contractor to follow Return of Retainage requirements may result in the issuance of sanctions listed below. The Contractor may also receive the below sanctions if any of their Subcontractors fail to follow Return of Retainage requirements.

- a. 1st Level Occurrence: The Department will issue a Letter of Reprimand to the Contractor (applies if there is a failure to report retainage being held and/or failure to timely return retainage).
- b. 2nd Level Occurrence: The Department may withhold an estimate in the amount of retainage due to the subcontractor(s) (applies if there is a failure to report retainage being held and/or failure to timely return retainage).

- a. If a Contractor receives a 1<sup>st</sup> Level Occurrence reprimand for a project, all subsequent Return of Retainage violations on that project (same or different subcontractor) may result in withholding. In this situation, no 1<sup>st</sup> Level Occurrence reprimand letters will be sent.
- b. Repeat Occurrences: Continued non-compliance is a material breach of contract and will be treated as such. The Department can pursue other remedies available by law including suspension, revocation and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- (a) The Contractor's past project practices;
- (b) The magnitude and the type of offense;
- (c) The degree of the Contractor's culpability;
- (d) Any steps taken to rectify;
- (e) The Contractor's record of performance on other projects; and
- (f) The number of times the Contractor has been previously sanctioned by ODOT.

## **EXHIBIT R: Reserved**

## **EXHIBIT S: Reserved**

## EXHIBIT T: CRITICAL PATH METHOD PROGRESS SCHEDULE

### a. Section Includes

- 1.2 General
- 1.3 Quality Assurance
- 1.4 Interim, Phase 1, and Phase 2 Baseline Schedule Requirements
- 1.5 Monthly Progress Update Schedules
- 1.6 Buildable Unit Phase Submission Schedules
- 1.7 Revision and Delay Schedules
- 1.8 Weather Delay Schedules
- 1.9 Recovery Schedules
- 1.10 Float
- 1.11 Progress Schedule
- 1.12 As-Built Construction Record-Drawing Model Schedule and Documentation
- 1.13 Other Schedule Submittal Requirements

### b. General

The Contractor shall plan and schedule the project and report progress to the Department. The Contractor shall provide the schedule using the Critical Path Method (CPM). The Contractor shall utilize Primavera P6 software. The Department's acceptance of any schedule, whether interim, baseline, update or revised, shall not modify the Contract Documents nor constitute endorsement or validation by Department of the Contractor's logic, activity durations nor assumptions in creating the schedule. By accepting the schedule, the Department does not guarantee that the Project can be performed or completed as scheduled.

Schedules shall represent a practical plan to design, procure, construct, and complete the Work within the applicable Milestone Deadlines and shall convey Contractor's intent in the manner of prosecution and progress of the Work. The submittal of schedules shall be understood to be the Contractor's representation that the schedule meets the requirements of the Contract Documents and that the Work will be executed in the sequence and duration indicated in the schedule.

### c. Quality Assurance

- (i) Scheduler: Contractor's personnel or Specialist Consultant specializing in CPM scheduling with five years minimum experience in scheduling construction work of complexity comparable to this Project, and having use of computer facilities capable of delivering detailed graphic printouts and electronic files within 48 hours of request. The Contractor shall designate a Schedule Representative at the post award kick off meeting who shall be responsible for coordinating with the Department and its representatives during the preparation and maintenance of the schedule.

**d. Interim, Phase 1, and Phase 2 Baseline Schedule Requirements****i. Interim Baseline and Baseline Schedules**

- (i) Definitions:
- a. **Baseline Schedule:** The Baseline represents the contractor's intended plan for prosecuting the Work depicted in the contract documents. The baseline is the reference to which actual progress, delays, and/or acceleration will be compared. The baseline is intended to be the schedule used to plan, organize, and execute the Work, record and report actual performance and progress, aid to evaluate time extensions, and show how the Contractor plans to complete all remaining Work as of the end of each progress reporting period, and to enable Department to monitor, compute the value of progress payments and evaluate Work progress.
  - b. **Interim Baseline Schedule:** The Interim Baseline Schedule represents the Sub-Phase 1A Work of the contractor's intended plan for prosecuting the work depicted in the contract documents. The Interim Baseline Schedule acts as a short term planning and schedule monitoring tool while the Phase 1 Baseline Schedule is being developed.
- (ii) Schedule Levels:
- a. For the purposes of this Exhibit T, Schedule Levels shall be defined as follows:
    - i. **Level 1 - The Project Level:** includes the project name.
    - ii. **Level 2 – The Phase Level:** Includes Sub-Phase 1A, Sub-Phase 1B, and Phase 2 Work
    - iii. **Level 3 - The Work Breakdown Level:** Includes each Buildable Unit of the project (Phase 2 Work only).
    - iv. **Level 4 - Work Element Level:** Includes high level activities for each Buildable Unit. Examples include: perform excavation, install footings, install piers, install structure, place deck, etc.
    - v. **Level 5 - The Activity Level:** Further details the Level 4 activities for each Buildable Unit to discrete and measurable activities. Examples related to a Level 4 "install footing" activity would include excavate footing, install formwork, reinforce footing, place concrete, cure footing, and strip formwork. Level 5 activities shall comply with the 20-Day maximum duration of this Exhibit T.
- (iii) Interim, Phase 1, and Phase Baseline Development Overview:
- a. **Interim Baseline Schedule Submittal:**
    - i. The Contractor shall submit within 15 days of the Sub-Phase 1A NTP an Interim Baseline Schedule depicting the Sub-Phase 1A Work, and include recommended Milestones and Completion Deadlines for Phase 1 and Phase 2 no later than the specified Contract Completion Time for Department's review and approval.
    - ii. The Interim Baseline Schedule shall include the phases as described in Section 1.4.1.C.2 (Design Phase) below.
    - iii. The Contractor shall provide an updated Interim Schedule with its Base Design Submittal Package, including all activities and Milestones for the entirety of the Phase 1 Work. The schedule shall incorporate past feedback from Department

and include recommended Milestones and Completion Deadlines no later than the specified Contract Completion Time.

- iv. The Contractor shall provide a draft Phase 1 Baseline Schedule within 80 Days of the Department's acceptance of the Interim Schedule. The draft Phase 1 Baseline Schedule shall include detailed activities and Milestones for the entirety of the Phase 1 Work and shall include a summary of the major activities, phases, and Milestones of the Phase 2 work.
- b. Design Phase:
    - i. For the Interim, Phase 1, and Phase 2 Baseline Schedules, the design phase shall be a Level 5 schedule per Section 1.4.1.B.1.v (Schedule Levels) of this Exhibit T.
    - ii. The schedule shall include all phase submissions according to the scope of work, along with all applicable review times.
  - c. Construction Phase:
    - i. For the Interim Baseline Schedule, construction activities outside of Sub-Phase 1A Work shall show Level 3 activities, per Section 1.4.1.B.1.iii (Schedule Levels) of this Exhibit T, summarizing major elements and Buildable Units.
    - ii. For the Interim Baseline Schedule, any construction activities following Sub-Phase 1B NTP shall be detailed to Level 4 activities and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.
    - iii. For the Phase 1 Baseline Schedule, all construction activities prior to Sub-Phase 1B NTP and where there are no Released for Construction (RFC) plans shall be detailed to Level 4 activities and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.
    - iv. For the Phase 1 Baseline Schedule, all construction activities shall be detailed to Level 5 activities and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.
    - v. For the Phase 2 Baseline Schedule, all construction activities where there are no RFC plans shall be detailed to Level 4 and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.
- (iv) Interim, Phase 1, and Phase 2 Baseline Schedule Workflow:
- a. Interim Baseline:
    - i. The Interim Baseline Schedule shall include the design phase as indicated in Section 1.4.1.C.2 (Design Phase).
    - ii. Construction Phase work shall be included as indicated in Section 1.4.1.C.3 (Construction Phase).
    - iii. Revisions to the Interim Baseline Schedule will not be permitted after the Department's acceptance that affect the activity ID's, activity descriptions, relationships, or durations.
    - iv. Following the Department's acceptance, the Interim Baseline Schedule shall be updated as per Section 1.5 (Monthly Progress Update Schedules) with actual



progress up to the point that the Phase 1 Baseline is accepted.

- v. The activities in the Interim Baseline Schedule shall correlate directly with the cost loaded schedule per PDBC Section 11.4 (Phase 1 Estimates and Payments) and PDBC Section 11.2 (Compensation for the Sub-Phase 1A Work) from which Progress Payments will be based (for Sub-Phase 1A activities only) until the Phase 1 Baseline is accepted by the Department.
  - vi. Time impacts or weather impacts shall be applied to the Phase 1 Baseline Schedule per Sections 1.6 (Buildable Unit Phase Submission Schedules) and 1.7 (Revision and Delay Schedules), once accepted, until after the Phase 2 Baseline is accepted.
- b. Phase 1 Baseline Schedule:
- i. The Phase 1 Baseline Schedule shall be developed according to Sections 1.4.1.C.2 (Design Phase) and 1.4.1.C.3 (Construction Phase).
  - ii. The Phase 1 Baseline shall include the Interim Baseline Schedule as accepted by the Department and shall be a continuation of the logic and plan developed in the interim phase.
  - iii. Any changes made to the Interim Baseline Schedule and included in the Phase 1 Baseline Schedule will be grounds for immediate rejection.
  - iv. The Phase 1 Baseline Schedule shall not include any impacts or updates known at the time of submittal. Any/all impacts are to be strictly contained within the Interim Schedule until the Baseline Schedule is accepted by the Department in its entirety.
  - v. Upon acceptance of the Phase 1 Baseline Schedule, all accepted updates applied to the Interim Schedule shall be incorporated into the first Phase 1 Schedule Update.
  - vi. Upon acceptance of the Phase 1 Baseline, any/all known impacts shall be incorporated into the schedule and the use of the Interim Schedule shall be discontinued.
  - vii. The Phase 1 Baseline Schedule shall include a summary of the major activities, phases, and Milestones of the Phase 2 Work.
  - viii. Four Week look ahead bar chart schedule. The four week look ahead bar chart schedule shall include all activities scheduled including: activity ID, description, start and finish, total float, original duration, remaining duration, percent complete, responsible party performing the work and pertinent remarks as to activity status.
- c. Phase 2 Baseline Schedule:
- i. The Phase 2 Baseline Schedule shall be developed according to Section 1.4.1.C.2 (Design Phase) and Section 1.4.1.C.3 (Construction Phase).
  - ii. The Phase 2 Baseline shall include the Phase 1 Baseline accepted by the Department and shall be a continuation of the logic and plan developed in the Phase 1 Baseline Schedule.
  - iii. Any changes made to the Phase 1 Baseline Schedule and included in the Phase

- 2 Baseline Schedule will be grounds for immediate rejection.
- iv. The Phase 2 Baseline Schedule shall not include any impacts or updates known at the time of submission. Any/all impacts are to be strictly contained within the Phase 1 Schedule until the Phase 2 Baseline Schedule is accepted by the Department.
  - v. Upon acceptance by the Department of the Phase 2 Baseline Schedule, all accepted updates applied to the Phase 1 Schedule shall be incorporated into the first Phase 2 Schedule Update.
  - vi. Upon acceptance by the Department of the Phase 2 Baseline Schedule, any/all known impacts shall be incorporated into the schedule and the use of the Phase 1 Schedule shall be discontinued.
  - vii. Contractor shall provide Monthly Progress update Schedules based upon the Phase 2 Baseline Schedule through the end of the Completion of the Contract.
  - viii. Four Week look ahead bar chart schedule. The four week look ahead bar chart schedule shall include all activities scheduled including: activity ID, description, start and finish, total float, original duration, remaining duration, percent complete, responsible party performing the work and pertinent remarks as to activity status.
- (v) Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules:
- a. General Requirements:
    - i. The Contractor shall be responsible for assuring all Work, including all Work performed by Subcontractors, is included in the schedule.
    - ii. The Contractor shall be responsible for assuring that all work sequences are logical and that the schedule indicates a coordinated plan.
    - iii. Show the order and interdependence of activities, with the use of appropriate activity relationships, and the sequence for accomplishing the Work.
    - iv. Where Level 4 detail is required (see Section 1.4.1.B.1.iv (Schedule Levels)), describe Buildable Units of the Project in enough detail to provide a general overall duration and sequence of the Buildable Unit. Provide logic indicating required interdependencies with other Buildable Units or other required work such as, but not limited to, utility work.
    - v. Where Level 5 detail is required (see Section 1.4.1.B.1.v (Schedule Levels)), all Level 4 elements shall be broken down into measurable activities which can be identified and tracked by the Department.
    - vi. The Contractor shall provide for and coordinate independent utility work, and/or work provided "by others" into the schedule in such a way as to minimize rework, minimize additional protection of previously installed Work, and in an effort to mitigate delays.
    - vii. The schedule shall include activities, regardless of responsibility, that directly or indirectly relate to or have influence over planning and executing the Work in strict accordance with the Contract Documents, and shall include all design and preconstruction activities, procurement, Contractor's submittals and their forecasted approval dates.

- viii. The Contractor shall be responsible for planning the design and construction of the Project and must consider the Work to be performed, the Contract tie, the resources available, vendors, Subcontractors, external constraints, and other factors affecting the successful completion of the Work.
  - ix. The Contractor shall not be entitled to establish a Claim if the Department disallows Contractor from finishing early.
  - x. The Contractor shall involve and coordinate with all Subconsultants, Subcontractors, third parties, stakeholders, and Material suppliers in the development and updating of schedules.
  - xi. Review, acceptance, or approval of schedules by Department shall not waive any Contract requirements and shall not relieve the Contractor of any obligation or responsibility for submitting complete and accurate information.
  - xii. Failure by the Contractor to include any element of Work required for performance of the Contract shall not excuse the Contractor from completing all Work within the Contract Completion Time.
  - xiii. Acceptance by the Department shall not relieve the Contractor of any of its responsibilities for the accuracy or feasibility of the schedule.
  - xiv. Omissions and errors shall be corrected as described in Section 1.6 (Buildable Unit Phase Submission Schedules) of this Exhibit T and will not entitle the Contractor to an extension of the Contract Completion Time.
- b. General Settings:
- i. Calculate the Critical Path as “longest path.”
  - ii. The schedule may only be calculated using retained logic.
  - iii. Show open ends as non-critical.
  - iv. Total Float shall be calculated as finish Float.
  - v. Ignore relationships to and from other projects.
  - vi. Use “Duration” as the activity percent complete type.
- c. Calendars:
- i. All calendars shall be Project level calendars, not global or resource calendars.
  - ii. Calendar names should include the ODOT project number and a describing function (i.e. YY-##### - five day w/ holidays and weather, YY-##### - seven day cure, YY-##### - five day asphalt w/ weather).
  - iii. At a minimum, calendars should be established for Department reviews, standard work week, cure/settlement periods, milestones, and any items with temperature restrictions as per the specifications.
  - iv. Seasonal (winter) and environmental shutdown periods shall be shown using non-working calendars.
  - v. Weather and Seasonal Conditions shall be entered into all calendars containing physical work as non-work days per month as per Table T-1 (Weather and Seasonal Conditions Table). Anticipated Days lost due to weather shall be randomly distributed throughout each calendar containing physical work and

should not be tightly grouped or concentrated on particular days within each week.

- vi. All Project Milestones shall be on a seven day/week calendar with no non-work days.
- vii. All review periods for Department shall be included on a designated calendar of five days/week and shall include typical government holidays.
- viii. Anticipated weather and/or shutdown periods shall not be included for any days past the contract completion date. In the event the contract completion date is amended to a later date, weather days will be granted on a day for day basis pending an Accepted Weather Delay Analysis according to Section 1.7 (Revision and Delay Schedules).

**TABLE T-1: WEATHER AND SEASONAL CONDITIONS TABLE**

<i><b>Weather and Seasonal Conditions</b></i>	
<i><b>Month</b></i>	<i><b>Anticipated Days Lost days due to weather</b></i>
January	8
February	8
March	7
April	6
May	5
June	5
July	4
August	4
September	5
October	6
November	6
December	6

- d. Work Breakdown Structure / Activity Codes:
  - i. The Contractor shall provide an organizational structure consisting of a Work Area, Phase, and Responsibility (at a minimum).
  - ii. The structure shall be formed using project activity codes.
  - iii. A WBS structure may be used, but shall still include the activity codes as

indicated above.

e. Constraints:

- i. Use constraints sparingly in the schedule. Constraints should only be used for contractual Milestones such as the start, interim Milestone Deadlines, Companion Bridge Opening Deadline, and the finish deadlines.
- ii. Constraints should never be used in place of relationship ties. Activities should be split, if necessary, to create logical ties in lieu of constraining activities.
- iii. The start and finish Milestones may contain mandatory start and finish constraints respectively.
- iv. Interim Milestones should use only early or late constraints.

f. Milestones:

- i. Start Project: The Contractor shall include as the first Milestone in the schedule, a Milestone named "Start Project". The date used for this Milestone is the date the Sub-Phase 1A NTP is issued by the Department and shall be constrained to Start On said date.
- ii. End Project Milestone: The Contractor shall include as the last activity in the project schedule, a Milestone named "End Project". The date used for this milestone is considered the project completion date and shall be constrained to Finish On or Before said date.
- iii. Start Phase Milestone: The Contractor shall include as the first activity for a project phase, an activity named "start Phase X", where "X" identifies the phase of work.
- iv. Start Buildable Unit Milestone: The Contractor shall include as the first activity for a Buildable Unit, an activity named "start BU X", where "X" identifies the Buildable Unit.
- v. End Phase Milestone: The Contractor shall include as the last activity in a project phase, an activity named "end Phase X" where "X" identifies the phase of Work, and shall be tied as the predecessor to the Start of the next plan phase Milestone.
- vi. End Buildable Unit Milestone: The Contractor shall include as the last activity in a Buildable Unit, an activity named "end BU X" where "X" identifies the Buildable Unit.
- vii. The Contractor may include additional Milestones but, as a minimum, shall include all contractual Milestones. Milestones added by the Contractor, but that are not contractual Milestones may be tied via activity logic to other activities but cannot be constrained.

g. Activities:

- i. Level 4 Activities shall be included in sufficient detail to represent the contract scope of work and provide for logical sequencing of major work elements of Work packages with Buildable Units and demonstrate a logical, reasonable, workable plan to complete the work on or before the contract completion date.
- ii. Level 5 Activities shall be included in sufficient and traceable detail to indicate the

- plan for constructing the major work elements within the Buildable Unit. The activities shall comply with the scope, specifications, and any/all other contract requirements required to construct the project.
- iii. Activity Identification (ID). Assign each activity a unique identification number. The activity ID may contain additional information but is not to exceed 20 characters in total length. Once accepted, the activity ID shall be used for the duration of the Project.
  - iv. Activity Description. Each activity shall have a narrative description consisting of a verb or work function (e.g.; form, pour, excavate) and an object (e.g.; slab, footing, underdrain).
  - v. Assign a planned duration in Working Days for each activity.
  - vi. Assign an appropriate project calendar to each activity in the schedule.
  - vii. Include activities for submittals, Working Drawings, Shop Drawing preparation, Material procurement and fabrication, delivery of Materials, plant, and Equipment, long lead items and other similar activities.
  - viii. Include review activities by the Department with a duration of not less than 10 Working Days on a calendar containing typical government holidays.
  - ix. Do not exceed a duration of 20 Working Days for any construction activity except as follows:
    1. Level 4 activities.
    2. Settlement Periods.
    3. Long Lead Items.
    4. Fabrication Items.
    5. Shop drawing preparation.
    6. Other items upon Acceptance from Department or their Representative.
  - x. Do not represent the maintenance of traffic, erosion control, or any other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities such as initial setup, and/or tear down in order to meet the duration requirements of this Section 1.4.
  - xi. Include activities such as cure times and/or settlement periods as per the applicable specifications.
- h. Activity Relationships and Logic:
- i. All activities, except the first activity, shall have a predecessor(s).
  - ii. All activities, except the final activity, shall have a successor(s).
  - iii. All Construction activities shall have a Design Submittal activity as a Predecessor.
  - iv. All Final Design activities shall have a Construction activity as a successor.
  - v. Use only finish-to-start relationships with no leads or lags to link activities, or use start-to-start relationships with lags no greater than the predecessor duration to link activities.

- vi. Use of finish-to-finish relationship is required when both activities are already linked with a start-to-start relationship unless all activities have a successor with a finish to start relationship.
- i. Lag:
  - i. The use of lag is discouraged and should be used sparingly. Split activities into initial and final stages with appropriate durations to create logical link points in lieu of using lag.
  - ii. Lead is not permitted.
  - iii. Use lags no greater than the predecessor duration.
- j. Level of Effort (LOE) Activities:
  - i. Use level of effort activities to show the duration of specified contract work periods, phases and road closures.
  - ii. The level of effort activity type is allowed to have a start-to-start relationship with the first activity in a series of activities and a finish-to-finish relationship with the last activity in a series of activities.
  - iii. Level of effort activities shall be included to summarize the overall duration of each Buildable Unit or division of work (Work Package with Buildable Units) for both Level 4 and Level 5 schedules. The LOE activities shall be tied with a SS relationship to the "Start BU X" Milestone and as a FF to the "End BU X" Milestone.
  - iv. As the Project progresses during Sub-Phase 1A and Sub-Phase 1B and additional details are required within the schedule, it is permissible for the Contractor to convert a scheduled activity into a LOE activity. In this instance, the revenue and resources applied to the original scheduled activity will need to be spread amongst the newly added subsequent scheduled activities.
- (vi) Submission Requirements:
  - a. Interim Baseline Schedule Submission:
    - i. At the pre-design meeting, a formal schedule presentation will be conducted by the contractor describing the elements of the Scope of Work as depicted by the schedule in terms of the design, logic, phasing, Milestones, closures, and Utility Relocations.
    - ii. No Design Submittals shall occur prior to the Department's acceptance of an Interim Baseline Schedule.
    - iii. Furnish an Interim Baseline Schedule to the Department for review at or before the Pre-Design Meeting. The Department will review the schedule and within 14 Days of receipt, will either accept the schedule or provide the Contractor with comments. The Department's acceptance of the schedule does not revise the Contract Documents. Provide clarification or any needed additional information within 10 Days of a written request by the Department. The Department will withhold payment of appropriate amounts in Estimates until the Department accepts the schedule. The Department will not measure or pay for the preparation of the schedule and schedule updates directly. Include the following Administrative Identifier Information:

1. Project Number.
  2. County.
  3. Route Number.
  4. FHWA Number.
  5. PID Number.
  6. Contract Number.
  7. Date of Contract.
  8. Completion Date.
  9. Contractor's Name.
  10. Contractor's Dated Signature.
  11. ODOT's Dated Acceptance Signature.
- iv. Provide a Working Day schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to achieve each Milestone and complete the Project by the Substantial Completion Deadline. Show the order and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Department can readily identify the Work and measure the progress of each activity. The CPM schedule shall reflect the scope of work, design Submittals, Department (and/or other designated agency) Submittal review times, required phasing, Maintenance of Traffic requirements, Milestone Deadlines, the Substantial Completion Deadline, and other Milestones established in the Contract Documents. Include activities for Submittals, Working Drawings and Shop Drawing preparation, Submittal review time for the Department, Material procurement and fabrication, and the delivery of Materials, plant, and Equipment, and other similar activities. The schedule must be detailed on letter or legal sized paper.
- v. Submit per Section 1.4.1.F.3 (General Requirements); additionally, 11x17 schedule hard copies and 8.5x11 copies of the narrative shall be provided and distributed by the Contractor at the pre-design meeting.
- b. Baseline Schedule Submission:
- i. The Contractor shall provide a draft Phase 1 Baseline Schedule within 80 Days of the Department's acceptance of the Interim Schedule. At the pre-construction meeting, a formal schedule presentation shall be conducted by the Contractor describing the elements of the Scope of Work as depicted by the schedule in terms of the design, logic, phasing, Milestones, closures, and Utility Relocations.
  - ii. No physical construction work shall commence prior to "Acceptance" of a Phase 2 Baseline schedule.
  - iii. Submit per Section 1.4.1.F.3 (General Requirements).
- c. General Requirements:
- i. Submit all schedules within the time frames specified.
  - ii. Provide an electronic .xer or .xml file (to be determined by the Department) prepared in Primavera P6 software manufactured by Oracle.



- iii. Provide an electronic .pdf print out of the full schedule, displaying the Gantt Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date, and Total Float.
- iv. Provide a written schedule narrative in .pdf format describing the following:
  - 1. Current schedule interim Milestone dates and Completion Deadlines.
  - 2. A general description of the Critical Path.
  - 3. Current delays.
  - 4. Anticipated delays.
- v. Name the .xer or .xml file as follows:

**TABLE T-2: SCHEDULE FILENAME CONVENTION**

<i>Progress Schedule</i>	<i>1<sup>st</sup> Submission</i>	<i>2<sup>nd</sup> Submission</i>	<i>3<sup>rd</sup> Submission</i>
<b>Interim Schedule</b>	YYPPPP01IS	YYPPP02IS	YYPPPP03IS
<b>Phase 1 Baseline Schedule</b>	YYPPPP011B	YYPPPP012B	YYPPPP013B
<b>Phase 2 Baseline Schedule</b>	YYPPPP021B	YYPPPP022B	YYPPPP023B
<b>Schedule Update #1</b>	YYPPPP01SU01	YYPPPP02SU01	YYPPPP02SU01
<b>Schedule Update #2</b>	YYPPPP01SU02	YYPPPP02SU02	YYPPPP03SU02
<b>Delay Analysis</b>	YYPPPP01TIA01	YYPPPP02TIA01	YYPPPP03TIA01
<b>Weather Delay Analysis</b>	YYPPPP01WD01	YYPPPP02WD01	YYPPPP03WD01
<b>Recovery Schedule</b>	YYPPPP01RS01	YYPPPP02RS01	YYPPPP03RS01
<b>Revision Schedule</b>	YYPPPP01RV01	YYPPPP02RV01	YYPPPP03RV01
<b>Buildable Unit Phase Submission</b>	YYPPPP01BU01	YYPPPP02BU01	YYPPPP03BU01
<b>Note: YY – Project Year PPPP – Project Number</b>			

- (vii) Interim Baseline and Baseline Schedule Review:
  - a. Interim Baseline Schedule Review:
    - i. The Interim Baseline Schedule shall be presented by the Contractor, as a formal presentation, at the pre-design meeting and will be discussed as a part of said meeting.
    - ii. The Interim Baseline Schedule will be accepted or rejected by the Department within 14 Days. Upon its acceptance, the Phase 1 Baseline Schedule shall adopt the same interim schedule data and no changes to such data will be permitted.
    - iii. If the schedule is rejected the Contractor shall revise the schedule and resubmit within seven Days. The re-submission of the schedule shall occur at a schedule meeting.
    - iv. The Department shall have seven (7) Working Days to review the resubmission of the Interim Baseline Schedule.
    - v. The Department is entitled to withhold payment associated with Estimates until

the Interim Baseline Schedule is accepted.

b. Phase 1 Baseline Schedule Review:

- i. The Draft Phase 1 Baseline Schedule shall be presented by the Contractor, as a formal presentation, no later than five (5) Working Days after the Department's receipt of the draft Phase 1 Baseline Schedule Submittal. This meeting will serve as the Contractor's meeting to review, explain, and discuss the Phase 1 Baseline Schedule with the Department. The Department reserves the right to invite any Department staff or representatives deemed necessary for this meeting. Additional meetings may be held between the Department, the Contractor, the Contractor's Scheduler, and applicable Major Subcontractors and Suppliers to resolve any conflicts between the Contractor's Phase 1 Baseline Project Schedule and the intent of the Contract.
- ii. The Contractor shall submit the draft Phase 1 Baseline Schedule to the Department within 80 Days of acceptance of the Interim Baseline Schedule.
- iii. The review of the Phase 1 Baseline Schedule shall commence the day after it is received by the Department and shall span twenty-one (21) Working Days (excepting holidays) in which the Department will either accept, reject, or accept as noted the Phase 1 Baseline Schedule.
- iv. If the Phase 1 Baseline Schedule is "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within seven Days. Revisions to the Phase 1 Baseline Schedule beyond those requested by the Department as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
- v. If the Phase 1 Baseline Schedule is "rejected", the Department will indicate in writing all portions of the schedule that are not in compliance with the Contract Documents. The contractor and the Contractor's Schedule Representative shall attend a meeting with the Department within five (5) Working Days of the Department's Notice. The purpose of this meeting is to resolve all issues with the baseline schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for the Department to "Accept" the baseline schedule.
- vi. Acceptance of the Phase 1 Baseline Schedule does not revise the Contract Documents. The Department will not commence the evaluation of any Claim for extension of time until the Phase 1 Baseline Schedule has been "Accepted" or "Accepted as noted" by the Department.
- vii. The Schedule will be used to negotiate various components of the Contract and will be used as a basis for developing a detailed Phase 2 Baseline Schedule during the Sub-Phase 1B Work.

c. Phase 2 Baseline Schedule Review:

- i. Provide a Phase 2 Baseline Schedule with the Phase 2 Proposal for the Department's review and acceptance.
- ii. The Department will review and respond to the Phase 2 Baseline Schedule Submittal within twenty-one (21) Working Days (excepting holidays).
- iii. The Contractor shall schedule a meeting to review the Phase 2 Baseline

Schedule Submittal no later than five Working Days after Department's receipt of the Phase 2 Baseline Schedule Submittal. This meeting will serve as the Contractor's meeting to review, explain, and discuss the Contractor's Baseline Schedule with the Department. The Department reserves the right to invite any representatives deemed necessary for this meeting. Additional meetings may be held between Department, Contractor, Contractor Scheduler, and all major Subcontractors and Suppliers to resolve any conflicts between Contractor's Baseline Project Schedule and the intent of the Contract.

- iv. Department will review and make comments on the Contractor's Phase 2 Baseline Schedule. Comments made by Department on Contractor's schedule, during review, will not relieve the Contractor from compliance with the requirements of the Contract Documents. To the extent that there are any conflicts between the accepted Phase 1 Baseline Schedule and the requirements of the Contract Documents, the Contract Documents shall govern.
- v. The Contractor's Scheduler, and all Major Subcontractors and Suppliers shall be required to participate in all meetings necessary to reach mutual agreement and the Department's acceptance of the Contractor's Phase 2 Baseline Schedule.
- vi. The Department will Accept, Accept as noted, or reject in writing Contractor's Submittal within twenty-one (21) Working Days (excepting holidays).
- vii. If the Phase 2 Baseline Schedule is "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within seven Days. Revisions to the Phase 2 Baseline Schedule beyond those requested by the Department as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
- viii. If the Phase 2 Baseline Schedule is "rejected", the Department will indicate in writing all portions of the schedule that are not in compliance with the contract requirements. The Contractor and the Contractor's Schedule Representative shall attend a meeting with within five (5) Working Days of the Department's Notice. The purpose of this meeting is to resolve all issues with the baseline schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for the Department to "Accept" the baseline schedule.
- ix. Upon the Contractor's successful development of the Phase 2 Baseline Schedule, the schedule will be accepted by the Department. The Department's acceptance is solely acknowledgement that the schedule conforms to the requirements of this Exhibit T and other requirements of the Contract Documents. However, acceptance by the Department does not relieve the Contractor from subsequently correcting errors and omissions, Float sequestering logic/duration or any other misrepresentation that may have been included in the approved schedule.

## **1.5 Monthly Progress Update Schedules**

### **(i) Definition:**

1. Monthly Progress Update Schedule: The update schedule indicates the actual progress achieved within a given period (i.e. monthly) and the impact of the actual progress on the remainder of the activities in the project. The impacts of actual

- progress to the remaining activities provides for a predictive measure on the future course of the project. The Monthly Progress Update Schedule shall only contain updates to the start, finish, or progress of activities in the schedule from the previous data date to the current data date. No revisions shall be included in a Monthly Progress Update Schedule. The actual progress is compared to the Baseline Schedule, or the latest previously accepted Monthly Progress Update Schedule to ascertain the actual progress of the project.
- (ii) Monthly Progress Update Schedule Preparation – Interim Schedule:
- (i) Once the Interim Schedule has been accepted by the Department it shall be updated in accordance with this Exhibit T.
  - (ii) Enter the “Actual Start”, “Actual Finish”, “Remaining Duration”, or “Percent Complete” as appropriate for each activity within the update period.
  - (iii) Any activity with an actual start shall also contain an appropriate percent complete.
  - (iv) Update the data date to the end of the update period.
  - (v) The Contractor shall provide an updated Interim Schedule on a monthly basis, until a Phase 1 Baseline Schedule has been submitted by the Contractor and accepted by the Department.
- (iii) Monthly Progress Update Schedule Preparation – Phase 1 and Phase 2 Baseline Schedule:
1. Enter the “Actual Start”, “Actual Finish”, “Remaining Duration”, or “Percent Complete” as appropriate for each activity within the update period.
  2. Any activity with an actual start shall also contain an appropriate percent complete.
  3. Update the data date to the end of the update period.
  4. The Contractor shall provide an updated Phase 1 Baseline Schedule on a monthly basis until a Phase 2 Baseline Schedule has been submitted by the Contractor and accepted by the Department.
- (iv) Submission Requirements:
1. Monthly Progress Update Schedule Submission Deadlines:
    1. The monthly update period shall begin on the 1<sup>st</sup> day of the month and will terminate on the last day of the month. The Department may adjust these dates as necessary to meet project conditions or other requirements.
    2. The Contractor shall submit its Monthly Progress Update Schedule, with a data date of the first day of the month following the update period, no later than the 10<sup>th</sup> of the month, throughout the Completion of the Contract.
    3. Submit per Section 1.5.D.2 (General Requirements).
  2. General Requirements:
    - i. Submit all schedules within the time frames specified.
    - ii. Provide an electronic .xer or.xml file prepared in Primavera P6.
    - iii. Provide an electronic .pdf print out of the full schedule, displaying the Gantt

Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date, and Total Float.

- iv. Provide a written schedule narrative in .pdf format describing the following:
    1. Current schedule interim Milestone Deadlines and Completion Deadlines.
    2. A general description of the Critical Path.
    3. Changes or shifts in the Critical Path and the reason for these changes or shifts.
    4. Overall project status (ahead, on, or behind schedule).
    5. Current Delays.
    6. Anticipated Delays.
  - v. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).
- (v) Monthly Progress Update Schedule Review:
- (a) The Department will review the Monthly Progress Update Schedule within seven Days (excepting holidays) beginning on the first Working Day after the contractor's submission.
  - (b) The Department will review the Contractor's actual dates compared to the project records to verify the accuracy of the information.
    - Alternatively, the Department may provide a listing of the schedule activities for the update period along with the recorded dates to the Contractor prior to the update schedule submission.
    - If the Department provides its dates to the Contractor, the Contractor shall provide a disposition on the variance of any dates which are more than three days apart between the recorded dates of the contractor and the recorded dates of the Department.
  - (c) Any discrepancies between the Contractor's recorded dates, and the dates recorded by the Department shall be reconciled before the last day of the month in which the schedule was submitted. Failure to reconcile before the last day of the month in which the schedule was submitted shall be grounds for withholding payment with respect to Estimates.
  - (d) Added work/activities, revisions made to logic, descriptions, calendars or any adjustments that may manipulate the schedule calculations will result in an immediate rejection of the schedule.
  - (e) The Department will not process payments associated with Estimates until the Monthly Progress Update Schedule has been received for the previous period.

## 1.6 Buildable Unit Phase Submission Schedules

### i. Definition:

1. Buildable Unit Phase Submission Schedules: The Phase 1 and Phase 2 baseline schedules include a combination of Level 4 and Level 5 detail which would be reasonably understood by the time of the baseline submission. As Buildable Units are completed to a 100 % stage of design, the Level 4 schedule data from the

baseline submission will be refined and detailed to a Level 5 schedule for each Buildable Unit. The Buildable Unit Submission indicates the full and complete schedule for the Buildable Unit along with its logical relationships with other Buildable Units and required work elements. Upon completion of the design of all Buildable Units, all elements of the schedule shall be at Level 5 and shall represent the full and accurate accounting of all activities required to construct all elements of the project.

ii. Buildable Unit Phase Submission Overview:

- i. Upon Submission of the 100% review plans for each Buildable Unit or group of Buildable Units, a Buildable Unit Phase Submission schedule shall be submitted replacing the Level 4 Buildable Unit details with Level 5 detail. The 100% plan submission design review period will not begin unless the Buildable Unit Phase submission is included.
- ii. Buildable Unit Phase submissions shall not be permitted to contribute to negative float, nor reduce positive float without the expressed consent of the Department upon review of Buildable Unit Phase submission.

iii. Buildable Unit Phase Submission Preparation:

- A. The Buildable Unit Phase submission shall be developed using the latest "Accepted" Phase 2 Baseline, or the most recent "Accepted" update schedule.
- B. The Buildable Unit Phase Submission Schedule may include a single buildable unit or may cover multiple Buildable Units.
- C. No changes shall be permitted to any previously "Accepted" Buildable Units. The submission shall only include details specifically related to the submitted Buildable Unit(s).
- D. Buildable Unit Phase Submission schedules shall be submitted as an independent schedule from any revision schedules.
- E. Each Buildable Unit shall be inserted into the schedule in such a way that the first activity of the Level 5 schedule utilizes the appropriate predecessors as the first activity of the Level 4 schedule and the last activity of the Level 5 schedule utilizes the appropriate successors of the last activity of Level 4 schedule.
- F. The Level 4 information shall remain in the schedule until the Level 5 data is "Accepted" at which time it may be dissolved from the schedule.
- G. The Level 5 data shall be constructed according to the applicable requirements of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).

iv. Submission Requirements:

i. Buildable Unit Phase Submission Deadlines:

1. The Phase submission shall be submitted along with the 100% design review plans. The 100% design review plans will not be accepted by the Department without inclusion of the Buildable Unit Schedule submission.
2. Submit per Section 1.6.D.2 (General Requirements).

- ii. General Requirements:
  - 1. Submit all schedules within the time frames specified.
  - 2. Provide an electronic .xer or .xml file prepared in Primavera P6.
  - 3. Provide an electronic .pdf print out of the full schedule, displaying the Gantt Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date, and Total Float.
- a. Provide a written schedule narrative in .pdf format describing the following:
  - A. Current schedule interim Milestone Deadlines and Completion Deadlines.
  - B. A general description of the Critical Path.
  - C. Changes or shifts in the Critical Path and the reason for these changes or shifts.
  - D. Overall project status (ahead, on, or behind schedule).
  - E. Current delays.
  - F. Anticipated delays.
- vi. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).
- v. Buildable Unit Phase Submission Review:
  - i. The Department will review the schedule within ten (10) Working Days (excepting holidays) beginning on the first business day after the Contractor's submission.
  - ii. Upon "Acceptance" of the Buildable Unit Phase Submission, any all update or impact data shall be transferred to the "Accepted" Phase Submission Schedule and submitted to the Department within five (5) Working Days.

## 1.7 Revision and Delay Schedules

### 1 Definition:

1. Delay Schedule: During the course of the project, issues may arise that could not have been anticipated at the Phase 2 Change Order. These issues are entered into a Delay schedule in order to show the impact of the issue on the contractor's schedule. Extra work added by the owner and eligible for a time extension is not considered a delay, but shall be included in a revision schedule.
2. Fragmentary Network (fragnet): A fragnet is defined as the sequence of new activities that are proposed to be added to the existing schedule. The fragnet shall identify the predecessors to the new activities and demonstrate the impacts to successor activities. Alternatively, the fragnet may indicate a sequence of activities that have already happened.
3. Revision Schedule: The Work may require, the Department may request, and/or the Contractor may make revisions to the CPM schedule in order to align the schedule to the physical work in the field and to maintain the predictive nature of the schedule as established in the baseline schedule. Addition of new activities or new calendars or changes to existing activities, calendars or logic constitute a revision. The revision shall incorporate all actualized activities up to the date of the revision. For revisions involving extra work requested by the Department, no time extensions will be granted

- unless justified in a revision schedule including said work. Any revisions which add or remove activities from the schedule shall be tracked and be submitted with a narrative stating the reason for the addition or deletion of activities. The Department shall review and “approve” or “reject” the revisions. No cost may be added or removed from the schedule, which affects the overall contract value unless accompanied by an approved change order. If activities are added or removed from the CPM, the Contractor may redistribute cost from like activities to account for cost on the newly added or subtracted schedule activities.
- 2 Reasons for Revisions:
- A. The Contractor shall revise the schedule to correct out-of-sequence logic errors that impact the critical path.
  - B. A revision schedule must be compiled in order to justify any time extension related to extra work.
  - C. The Contractor may elect to revise the schedule in order to reflect actual/intended prosecution of the work or as per any part of Section 1.7.B.5.(i-v) (Reasons for Revisions) below.
  - D. Department or their Representative may request a schedule revision when the current schedule does not accurately reflect the current prosecution of the work in order to align the schedule to actual field operations.
  - E. Department or their Representative may request a schedule revision when the current schedule no longer serves as a predictive tool to plan the course of the project due to:
    - i. Additional or non-performed work.
    - ii. Deviations from the schedule by the contractor’s operations.
    - iii. Progress has accelerated or decelerated.
    - iv. There is a general deviation in the planned activity dates as compared to commonly held project knowledge regarding the project’s progress.
    - v. Accepted phasing adjustments.
- 3 Revision Schedule Preparation:
- A. The basis of any revision or delay schedule shall be the most recently accepted Monthly Progress Update Schedule.
  - B. Based on the most recently accepted Monthly Progress Update Schedule, revise the schedule to provide a predictive tool reflecting the planned course of the project to achieve the completion of the project by the current contract completion.
  - C. All revisions shall comply with applicable sections of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).
- 4 Delay Schedule Preparation:
- A. Determine project progress prior to circumstance(s) necessitating the time impact analysis. The previous accepted monthly update schedule, updated to the date of the circumstance(s) alleging to have caused delay, shall be used to display the prior progress of the project. This schedule is referred to as the Un-impacted Schedule.



- B. In a copy of the Un-impacted Schedule, prepare a new Project activity code for the fragmentary network (fragnet).
  - C. Prepare a fragnet depicting the circumstance that is believed to have delayed the project within the new activity code.
  - D. Insert the fragnet into the schedule logic:
    - i. The first activity of the fragnet shall be the successor to the last activity that was completed prior to the alleged delay.
    - ii. The last activity of the fragnet shall be the predecessor to the first activity that could not commence due to the alleged delay.
  - E. Run the schedule calculations and determine the finish date. This schedule is referred to as the Impacted Schedule.
  - F. Compare the impacted Schedule finish date with the un-impacted Schedule finish date in order to determine the duration of any warranted time extension.
- 5 Submission Requirements:
- 1. Revision Schedule Submission Deadlines.
    - 1. Revision schedules shall be submitted with a Monthly Progress Update, or within five (5) Working Days of “acceptance” of a progress update.
    - 2. In the event discrepancies are discovered in the Monthly Progress Update, said discrepancies shall be resolved prior to the submission of the Revision schedule or shall be resolved in both the Monthly Update AND the Revision if submitted simultaneously.
    - 3. Revision schedules resulting from extra work believed to have an effect on the critical path shall be submitted with the cost proposal for the extra work.
    - 4. Revision schedules shall be separated from Buildable Unit Phase Submissions.
    - 5. Delay Schedule Submission Deadlines.
      - i. Delay schedule submissions shall occur within five (5) Working Days of the alleged delay event.
  - 2. General Requirements:
    - 1. Submit all schedules within the time frames specified.
    - 2. Revisions shall be based on the latest accepted Monthly Progress Update. The Revision Schedule shall be submitted with the latest “accepted” Monthly Progress Update in which it was based on.
    - 3. Provide an electronic .xer or .xml file prepared in Primavera P6 for both the Revision schedule as well as the latest “accepted” Monthly Update Schedule.
    - 4. Provide an electronic .pdf print out of the full schedule, displaying the gantt chart, activity ID, activity description, original duration, start date, finish date, and Total Float.
    - 5. Provide a written schedule narrative in .pdf format describing the following:
      - A. Current schedule interim Milestone Deadlines and Completion Deadlines.

- B. A general description of the Critical Path.
  - C. The specific reason(s) for the revision or delay.
  - D. Changes or shifts in the critical path and the reason for these changes or shifts.
  - E. Overall project status (ahead, on, or behind schedule).
  - F. Current delays.
  - G. Anticipated delays.
- vii. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).
- 6 Revision/Delay Schedule Review:
- A. Department or their Representative will review the schedule within ten (10) Working days (excepting holidays) beginning on the first business day after the contractor's submission.
  - B. If Department or their Representative does not provide written notification regarding the disposition of the revision schedule within ten (10) Working Days, the submission will be considered Accepted.
  - C. For revision schedules that are "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within five (5) Working Days. Revisions to the revision schedule beyond those requested by ODOT or their Representative as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
  - D. For revision schedules that are "rejected", ODOT or their Representative shall indicate in writing all portions of the schedule that are not in compliance with the contract requirements. ODOT or their Representative shall conduct a mandatory meeting with the Contractor and the Contractor's Schedule Representative within five (5) Working Days of ODOT or their Representative's written notice. The purpose of this meeting is to resolve all issues with the revision schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for ODOT or their Representative to "Accept" the revision schedule.
  - E. Acceptance of the revision schedule does not revise the Contract Documents. The revision schedule shall be "Accepted" or "Accepted as noted" by ODOT or their Representative prior to ODOT or their Representative evaluating any contractor claims associated with time impacts.
  - F. Upon acceptance, the revision schedule shall be the basis for evaluations replacing the original baseline logic.

## 1.8 Weather Delay Schedules

### 1. Definition:

1. Weather Delay Schedule: The schedule which indicates the effect of the actual weather experienced in a given period as compared to the anticipated weather included in the baseline schedule as depicted in Table T-1 (Weather and Seasonal Conditions Table). The Weather Delay Schedule is a calculation performed by the software after the anticipated weather days have been removed and the actual

- Weather Days have been inserted into the appropriate calendar.
2. Weather Delay Schedule Preparation:
    1. Make a copy of the previously accepted Monthly Progress Schedule file. This copy is referred to as the Weather Delay Schedule.
    2. For the month that incurred actual weather days, remove the anticipated weather only from calendars associated with the work that was delayed and input the actual weather days experienced into the Weather Impacted Schedule.
    3. Schedule the project WITHOUT changing the data date.
  3. Submission Requirements:
    - A. Weather Delay Schedule Submission Deadlines.
      1. The Weather Delay Schedule shall be submitted no later than the 5<sup>th</sup> of the month following the weather impacted work.
    - B. General Requirements:
      - i. Submit all schedules within the time frames specified.
      - ii. Submit the weather impacted schedule, and the previously accepted un-impacted Monthly Update Schedule.
      - iii. Provide an electronic .xer or .xml file prepared in Primavera P6 for both schedules.
      - iv. Provide an electronic .pdf print out of the full schedule, displaying the gantt chart, activity ID, activity description, original duration, start date, finish date, and Total Float.
    - viii. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).
  4. Weather Delay Schedule Review:
    1. Department or their Representative will review the schedule within five(5) Working Days (excepting holidays) beginning on the first business day after the contractor's submission.
    2. Department or their Representative will confirm or dispute the requested weather days and reconcile with the Contractor within the five (5) Working day period.
    3. If warranted, a time extension will be granted for the weather days experienced in the requested month.

## 1.9 Recovery Schedules

1. Definition:
  - i. Recovery Schedule: If an update is submitted showing the Companion Bridge Opening Deadline, Substantial Completion Deadline, or Completion of the Contract Deadline more than fourteen (14) calendar days behind schedule, the contractor shall submit a plan of action for recovering the lost time in order to complete the project by the established contract completion date. This plan shall be in the form of a recovery schedule, along with a written narrative.
2. Recovery Schedule Preparation:

- i. Make a copy of the latest submitted Monthly Progress Schedule file. This copy will be used to develop the recovery schedule.
  - ii. Revise the schedule to provide a workable plan for completing the project by the current contract completion date.
  - iii. All revisions shall comply with applicable sections of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).
3. Submission Requirements:
- A. Recovery Schedule Submission Deadlines:
1. The Recovery Schedule shall be submitted no more than five (5) Working Days after the submission of an Update Schedule indicating a completion more than 14 calendar days behind schedule.
- B. General Requirements:
1. Submit all schedules within the time frames specified.
  2. Provide an electronic .xer or .xml file prepared in Primavera P6.
  3. Provide an electronic .pdf print out of the full schedule, displaying the Gantt Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date, and Total Float.
  4. Provide a written schedule narrative in .pdf format describing the following:
    1. Current schedule interim Milestone Deadlines and Completion Deadlines.
    2. A general description of the Critical Path.
    3. The specific plan for recovering time to meet the contract completion date.
    4. Changes or shifts in the Critical Path and the reason for these changes or shifts.
  5. Name the .xer or .xml as per Table T-2 (Schedule Filename Convention).
4. Recovery Schedule Review:
- A. Department or their Representative will review the schedule within ten (10) Working Days (excepting holidays) beginning on the first business day after the contractor's submission.
- B. If Department or their Representative does not provide written notification regarding the disposition of the revision schedule within ten (10) Working Days, the submission will be considered Accepted.
- C. For revision schedules that are "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within five (5) Working Days. Revisions to the recovery schedule beyond those requested by Department or their Representative as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
- D. For revision schedules that are "rejected", Department or their Representative shall indicate in writing all portions of the schedule that are not in compliance with the contract requirements. Department or their Representative shall conduct a

- mandatory meeting with the Contractor and the Contractor's Schedule Representative within five (5) Working Days of Department or their Representative's written notice. The purpose of this meeting is to resolve all issues with the revision schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for Department or their Representative to "Accept" the revision schedule.
- E. Acceptance of the revision schedule does not revise the Contract Documents. The Recovery schedule shall be "Accepted" or "Accepted as noted" by Department or their Representative prior to Department or their Representative evaluating any contractor claims associated with time impacts.
  - F. Upon acceptance, the revision schedule shall be the basis for evaluations replacing the original baseline logic.
  - G. Department will withhold pay applications until Department or their Representative Accepts the Recovery Schedule.
  - H. In the event the current Completion Date is in dispute, the recovery schedule will need to be submitted once the dispute has been resolved.

### **1.10 Float**

Use of float suppression techniques, such as; preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), lag logic restraints, zero total or free float constraints, extending activity times, or imposing constraint dates other than as required by the contract, shall be cause for rejection of the project schedule or its updates.

- a. Definitions of Float: Total Float is the length of time along a given network path that the actual start and finish of activity(s) can be delayed without delaying the project completion date. Project Float is the length of time between the End Project Milestone and the Contract Completion Deadline.
- b. Ownership of Float: Float available in the schedule, at any time shall not be considered for the exclusive use of either Department or the Contractor. During the course of contract execution, any float generated due to the efficiencies of either party is not for the sole use of the party generating the float; rather it is a shared commodity to be reasonably used by either party for project issues. Efficiencies gained as a result of favorable weather within a calendar month, where the number of days of normally anticipated weather is less than expected, will also contribute to the Project Float. A schedule showing work completing in less time than the contract time, and accepted by Department, will be considered to have Project Float. No time extensions will be granted nor delay damages paid unless a delay occurs which impacts the project's critical path, consumes all available float and extends the work beyond the Contract Completion Date.
- c. Negative Float: Negative float will not be a basis for requesting time extensions. Any extension of time will be addressed in accordance with the applicable sections of this specification. Scheduled completion date(s) that extend beyond the contract (or phase) completion date(s) may be used in computations for assessment of liquidated damages. The use of this computation is not to be construed as an order by Department to accelerate the project.

**1.11 Progress Schedule**

Submit an updated progress schedule when requested by the Department. The Department may request an updated progress schedule when progress on the Work has fallen more than fourteen (14) calendar Days behind the latest accepted progress schedule. Information in the updated progress schedule must include a current percentage of completion for each cost loaded schedule activity "% Work completed" value for each activity.

## **EXHIBIT U: NOT USED**

## **EXHIBIT V: Reserved**



## **EXHIBIT W: PRICE FLUCTUATION CLAUSES**

All price adjustment mechanisms which refer to Bid Date shall be interpreted as the execution date of the Phase 2 Change Order.

### **Fuel Price adjustment**

The Department anticipates incorporating within the Phase 2 Change Order a fuel price adjustment mechanism based upon ODOT's PN 520 (07/15/2022)

### **Steel Price Adjustment**

The Department anticipates incorporating within the Phase 2 Change Order a steel price adjustment mechanism based upon ODOT's PN 525 (07/15/2022)

### **Asphalt Binder Price Adjustment**

The Department anticipates incorporating within the Phase 2 Change Order an asphalt binder price adjustment mechanism based upon ODOT's PN 534 (01/21/2022)

### **Portland Cement Price Adjustment**

The Department anticipates incorporating within the Phase 2 Change Order a Portland cement price adjustment mechanism based upon ODOT's PN 540 (10/19/2018)

## EXHIBIT X: DIGITAL DATA FOR MATERIAL TICKETING

### (i) General

This Exhibit X describes the Contractor's responsibilities for transfer of digital data to the Department for asphalt, concrete and aggregate material weight ticket information.

The Contractor shall provide material ticket information in a digital format directly recorded from the material loading source as described below.

This Exhibit X in no way supersedes any other commercial regulations or any other legal requirements regulating the transportation of commercial materials. This does not preclude or dismiss any requirement for paper tickets required by other rules and regulations.

### (ii) Requirements

The Contractor shall send digital ticket information to the Department's Digital Ticketing Portal as the individual material loads are generated and shipped to the Project. The digital material ticket ("e-Ticket") shall contain information as required per the applicable material specification for weight measurement and other material characteristics.

The Department will reject any load that does not have a corresponding e-Ticket unless the cause is beyond the Contractor's control, as determined by the Department. In such circumstances, paper tickets may be permitted.

### (iii) Setup, Calibration, and Data Integration

The Contractor shall cause Suppliers to cooperate with the Department and the Department's e-Ticketing vendor to establish digital information transfer from the Supplier's ticketing system to the Department's e-Ticketing portal. No earlier than 14 Days after NTP for Construction for any Work Package, but not later than 30 Days prior to initiating Construction Work, the Contractor shall identify in writing the material source load read-out weighing system the Supplier utilizes.

The Contractor shall cause its Suppliers to cooperate with the Ohio Department of Transportation's (ODOT's) e-Ticketing Portal vendor in the creation of an Application Programming Interface (API) to integrate material source load read-out data with the Department's e-Ticketing Portal. The Department's e-Ticketing portal vendor shall be responsible for leading the API creation. Upon API creation, the Contractor shall utilize the API to provide digital material source load read-out data from the material source load read-out weighing system to the Department's e-Ticketing Portal.

The Contractor shall conduct a test of each Supplier's integration with the Department's e-Ticketing Portal prior to shipping material to the Project. Complete test at least 14 days prior to shipping material unless otherwise approved by the Department. The test must involve at least four test e-Tickets from each Supplier approved for used on the Project for materials to be used on the Project. The test e-Tickets must accurately reflect the proper nomenclature and accuracy defined; all other categories shall be marked "TEST". After the Department confirms the test e-Tickets have been entered into the Department's e-Ticket Portal, void the test e-Tickets with the reason "Setup Testing". If any load read-out weighing system changes are intended by the Supplier after the creation of the Supplier-specific API, coordinate with the Department to ensure API compatibility.

The Contractor shall ensure continued internet connectivity during the API usage to maintain connection the Department's e-Ticketing Portal during material production and delivery to the Project. The Contractor shall ensure delivery of e-Ticket prior to the material arriving on the Project, but not prior to the loading of material at the source.

Upon successful testing of the data integration, physical material tickets are not required to be submitted to the Department, but may be necessary for truck drivers per Ohio Revised Code Section 5577.043.

## **EXHIBIT Y: Not Used**

# EXHIBIT Z: RISK REGISTER

The project risk register is a preliminary working document. Risk assessment, risk allocation, risk acknowledgement, and potential mitigation measures will continue through project development. Potential mitigation measures listed may or may not be implemented through procurement/project delivery/design/construction. While grouped, the project risk register is not in any order.

Risk Category	Sub-Category	Title	Cause ("Due to")	Risk Description	Effect ("Leads to")	Potential Risk Mitigation Measures	Risk Assignment (Department Risk or Contractor Risk)	Relief/ Provisional Sum Details	Contractor Required Mitigation Efforts	Department Approved Effective Date of Risk Register Event
Utilities	Utility Encounters	Discovery of unknown, unforeseeable utility within Project Limits	Contractor discovers a previously unknown subsurface utility		Research to determine what the utility is, coordination with the utility owner, removal/relocation of the utility		Shared	All costs associated with the removal/relocation of the utility will be shared equally between the Contractor and the Department	Pursue the lowest cost to progress the Project	XX/XX/XXXX

Under development

ODOT

PROGRESSIVE DESIGN BUILD

TECHNICAL REQUIREMENTS (SCOPE OF SERVICES)

PID: 117545 State Project Number: 243001

County: Wood Route: 23 Section: 17.88

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# 1 PROJECT IDENTIFICATION & GENERAL INFORMATION

Table 1-1: Project Identification

<b>PID</b>	117545
<b>State Project Number</b>	(24)3001
<b>County-Route-Section</b>	WOO-23-17.88
<b>Local Route Name (if applicable)</b>	
<b>Highway Functional Classification &amp; Federal Aid System</b>	

## 1.1 Design Designation

The DBT shall use the design designations for each of the facilities below various design elements as specified within the Scope of Services.

Table 1-2: Design Designation

<b>Location:</b>	US-23 N	US-23 S	SR-105 E	SR-105 W
<b>Current ADT:</b>	3800	4800	1700	1400
<b>Design Year ADT:</b>	4500	5400	1800	1500
<b>Design Hourly Volume:</b>	500	550	200	200
<b>Directional Distribution:</b>	62%	59%	61%	65%
<b>Trucks:</b>	22%	16%	12%	10%
<b>Design Speed:</b>	60 MPH	60 MPH	60 MPH	60 MPH
<b>Legal Speed:</b>	55 MPH	55 MPH	55 MPH	55 MPH
<b>Design Functional Classification:</b>	Rural Principal Arterial	Rural Principal Arterial	Rural Major Collector	Rural Major Collector
<b>NHS Project:</b>	No			

## 1.2 Existing Plans and Project Information (RIDS)

Available information related to the Project is available in the Document Inventory shown in Table 1-3. The Document Inventory will identify whether the document is designated as “Reference Documents” or “Contractual Appendices”.

Reference Documents appendices are provided for informational purposes only. The Department makes no representation or warranty as to the accuracy, adequacy, applicability, or completeness of the Reference Documents. Except to the extent set forth to the contrary in the Contract Documents, reliance upon the Reference Documents shall be at the Proposer’s risk, and the Department shall have no liability or obligation because of the inaccuracy, inadequacy, inapplicability, or incompleteness of the Reference Documents, regardless of the contents thereof.

Contractual Appendices in the Document Inventory are considered binding obligations of the DBT. The DBT shall meet requirements identified in the Contractual Appendices and shall implement the Work in accordance with these requirements.

The Offerors (i.e. prospective Design-Build Teams) shall examine the information provided in the Document Inventory to determine if the information accurately depicts existing field conditions.

The following existing plans are considered part of the Document Inventory and are available for review:

PID 85250 WOO-23/VAR-17.70/VAR

PID 93443 WOO-105-9.76

PID 25524 SAN/OTT-105-0.00/0.00

The plans identified in the Document Inventory are not as-built plans. All existing plans are considered Reference Documents.

In addition to the existing plans, appendices to the Scope of Services are listed in the Document Inventory and posted on the FTP site.

<https://ftp.dot.state.oh.us/pub/Construction/WOO23Rndabout-PDB-BIM-RFQ/RIDS/>

### **1.3 Airway/Highway Clearance**

Not Applicable

## **2 MEETINGS**

### **2.1 Pre-Proposal Meeting**

Schedules of pre-proposal meetings will be per the Instructions to Offerors.

This meeting is to discuss and clarify all issues that the project may have. Offeror attendance at the pre-proposal meeting is mandatory.

Location: District 2 or Central Office  
Date: January 16, 2024  
Time: TBD

## 2.2 Phase 1 Meetings

The meetings described below are currently anticipated to occur during Phase 1. The meetings and their frequency, duration, and attendees are subject to modification based on discussions with the selected Contractor. This is not an exhaustive list of anticipated meetings, nor does this list intend to relieve the Contractor of any other PDBC-required meetings.

### 2.2.1 Pre-Sub-Phase 1A Meetings

- A. Immediately after PDBC Execution, the Contractor Project Manager, Contractor Model Design Manager, and Contractor Model Construction Manager shall attend weekly meetings with the Department to finalize the Sub-Phase 1A Project Scope.

### 2.2.2 Risk Management Meetings

- A. The Contractor shall participate in and attend risk management meetings with the Department monthly together with a kick-off risk management meeting within 30 Days of the Sub-Phase 1B NTP.
- B. The agenda for the kick-off risk management meeting will be set by the Department and will include a presentation of the then current Risk Register. The agenda for subsequent risk management meetings will be set by the Department in consultation with the Contractor.
- C. Each of the Parties shall ensure that each risk management meeting is attended by team members that:
  1. Are consistent across all risk management meetings (as practicable);
  2. Include the Department's Project Manager, ODOT Construction Leads, and ODOT Design Leads;
  3. Include the Contractor's Project Manager, the Model Construction Manager, the Model Design Manager; and any other Key Personnel requested by the Department (see Section 10 (Authorized Representative and Key Personnel));
  4. Include the Contractor's Scheduler as defined in Exhibit T (Critical Path Method Progress Schedule) and the person within the Contractor's organization responsible for generating the Cost Model and Opinions of Probable Cost;
  5. Have specialist knowledge to effectively consider key Project risks and complex matters relating to the Work;
  6. Are authorized to discuss key Project matters on behalf of their organization; and

- 7. If requested by the Department, or if requested by the Contractor and with the Department's approval, include representatives of a Subcontractor.
- D. Following the risk management meetings, the Contractor shall summarize the discussed risk and memorialize the Meeting's results.

**2.2.3 Approach to Cost Model Meeting**

- A. No later than 30 Days after the Sub-Phase 1B NTP, the Contractor shall convene, attend, and actively participate in a meeting to discuss and develop an initial approach to costing the Project with the Department. The purpose of this meeting is to establish the baseline Cost Model for the development of OPCs and GMP Price Proposals, including design and construction cost and Project Schedule estimates. This initial meeting will also establish the plan to communicate changes in scope, quantity, risk, and other information required to affirm a consistent foundation for cost and schedule estimation.

**2.2.4 Design Progress Meetings**

- A. No later than 14 Days after the Sub-Phase 1B NTP, the Contractor shall convene, attend, and actively participate in meetings to discuss anticipated BIM Model format and requirements, design approaches, anticipated submissions, and status of design submissions being reviewed by the Department.

**2.2.5 [RESERVED FOR ADDITIONAL MEETINGS]**

**3 CONTRACTOR PRE-QUALIFICATION**

The Design Build Team must meet all "By Project Award" Contractor Prequalifications at the time of submitting a bid. These Prequalifications include:

- A. Roadway Excavation & Embankment Construction

The Design Build Team is also required to have engaged the services of an ODOT pre-qualified Consultant (Designer) in accordance with Section 4 of the Scope of Services to constitute the DBT.

If the Contractor, Designer, and/or the sub-consultant(s) submitted do not meet all the required qualifications, the Office of Contract Sales may reject the bid.

**4 DESIGNER**

The Designer or sub-consultants of the Designer must be prequalified to perform design work associated with the following prequalification categories:

Bicycle Facilities and Enhancement Design Roadway

Non-Complex Roadway Design

Limited Lighting Design

Complex Lighting Design

Geotechnical Engineering Services

- Geotechnical Testing Laboratory
- Geotechnical Field Exploration Services
- Geotechnical Drilling Inspection Services
- Subsurface Utility Location Services

Design services that require prequalification may only be performed by firms that are prequalified for those services at the time of performance of the services.

Restrictions on Participation in design-build contracts:

Any Consultant who provided services to the Department that have been directly utilized in this design-build Proposal or Scope of Services document will NOT be eligible to participate in this design-build contract for this Project, either as a prime consultant or as a sub-consultant.

The following consultants have been identified as being precluded from participation:

## 5 SCOPE OF WORK

<b>Project Description:</b>	<i>Construct a single lane roundabout at the intersection of US 23 and SR 105 in Wood County and Sandusky County. The roundabout will need to meet the requirements in the Location and Design Manual, Volume 1 concerning all geometrics. Special consideration in the design of the roundabout needs to be given to the accommodation of large vehicles (Farm Equipment, Construction Equipment, WB-67 Semis).</i>
<b>Completion Date:</b>	<i>Sub-Phase 1A (BIM Proof-of-Concept) Interim Completion Date: 8-21-24 Sub-Phase 1B (Project Development) Proposal NTP: 9-20-24 Sub-Phase 1B (Project Development) Interim Completion Date: 3-19-25 Phase 2 (Engineering &amp; Construction) Proposal NTP: 4-1-25 Substantial Construction Completion Deadline: 10-15-25</i>
<b>Warranties:</b>	<i>None</i>

The approximate Project Limits for each applicable roadway are provided in Table 5-1.

Table 5-1: Approximate Project Limits

Roadway Name	Begin	End
SR-105 (WOO)	SLM 12.1	SLM 12.225
SR-105 (SAN)	SLM 0.00	SLM 0.2
US-23	SLM 17.8	SLM 18.04

Work Limits shall be determined by the DBT.

The Consultant shall provide for the engineering services, design, and preparation of detail construction digital model for the construction of the proposed project.

The Contractor shall provide for the furnishing of materials, construction and completion in every detail of all the work described in the Contract Documents to fulfill the intent of the Contract.

The Project will require Building Information Modeling (BIM) processes to be incorporated and will require usage of a digital model during the construction of the Project. This digital information format shall be agreed through a cooperative mutual iterative process during Phase 1 of the Project as defined in the PDBC.

## **6 FIELD OFFICE**

Field office will not be required.

## **7 GENERAL PROVISIONS FOR THE WORK**

### **7.1 Governing Regulations**

All services, including but not limited to survey, design and construction work, performed by the DBT and all subcontractors (including sub-consultants), shall be in compliance with all applicable ODOT Manuals and Guidelines.

It will be the responsibility of the DBT to acquire and utilize the necessary ODOT manuals that apply to the design and construction work required to complete this project.

The current edition, including updates released on or before the date of original RFP release, of the following ODOT Manuals and Guidelines shall be met or exceeded in the performance of the design and construction work required to complete this project. For clarity, the Governing Regulations in effect at the time of the GMP submittal shall control, subject to any Standards Deviations in accordance with PDBC Section 4.1.5:

Bridge Design Manual  
CADD Engineering Standards Manual  
CADD Standards for MicroStation and GEOPAK and other applications  
Construction and Material Specifications  
Environmental Services Handbooks and Guidelines  
Geotechnical Design Manual  
Geotechnical: Manual for Abandoned Underground Mine - Inventory and Risk Assessment  
Geotechnical: Specifications for Geotechnical Explorations  
Item Master  
Lighting Design Reference Packet (LDRP)  
Location and Design Manual, Volume One - Roadway Design  
Location and Design Manual, Volume Three - Plan Preparation  
Location and Design Manual, Volume Two - Drainage Design  
Multimodal Design Guide  
ODOT Analysis and Traffic Simulation (OATS) Manual

Ohio Manual of Uniform Traffic Control Devices  
Pavement Design Manual  
Proposal Notes for Construction and Material Specifications  
Quality Standards for TTCDs & Acceptable Delineation Methods for Vehicles  
Real Estate Policies and Procedures Manual: Acquisition Manual  
Real Estate Policies and Procedures Manual: Appraisal  
Real Estate Policies and Procedures Manual: Certification of Right of Way Control  
Real Estate Policies and Procedures Manual: Property Management  
Real Estate Policies and Procedures Manual: Railroad Coordination  
Real Estate Policies and Procedures Manual: Relocation  
Real Estate Policies and Procedures Manual: ROW Plans  
Real Estate Policies and Procedures Manual: Utilities  
Sign Designs & Markings Manual (SDMM)  
Signal Design Reference Packet  
Standard Drawings: Bridges | Plan Insert Sheets  
Standard Drawings: Construction - Hydraulics | Plan Insert Sheets  
Standard Drawings: Construction - Pavement | Plan Insert Sheets  
Standard Drawings: Construction - Roadway and Roadside | Plan Insert Sheets  
Standard Drawings: Traffic | Plan Insert Sheets  
State Highway Access Management Manual  
Supplemental Specifications for Construction and Material Specifications  
Survey & Mapping Specifications  
Traffic Engineering Manual  
Waterway Permits Manual

The above required design requirements shall be modified, as agreed, through the iterative model development process in Phase 1 of the PDBC.

## 7.2 CADD files supplied by the DBT

The Project shall be designed using a digital model and Building Information Modeling state of the art techniques.

Standards of the BIM modeling shall be coordinated and determined in cooperation with the Department after project award.

## 7.3 [RESERVED]

## 7.4 Partnering Agreement

The DBT is required to enter into a partnering agreement with the Department that is:

- Facilitated
- Self-Facilitated

A partnering agreement with the Department on this project. The objective of this agreement is the timely completion of the work and a quality product that will be a source of pride to both the Department and the DBT. Partnering will not affect the terms and conditions of the contract. The partnering agreement is a document which is solely intended

to establish an environment of cooperation between the parties. The costs associated with the partnering process will be in accordance with *Section 108.02 of PN 126*.

### 7.5 Communication

All communication during design and construction shall be with the District Project Manager and the District Project Engineer.

District’s Project Manager’s Name:	John Erford
Phone number:	419-373-4313
E-mail:	john.erford@dot.ohio.gov

District’s Project Engineer’s Name:	The District Project Engineer will be named at the Pre-Design Meeting.
Phone number:	[Insert Text - if known]
E-mail:	[Insert Text - if known]

At the Pre-Design Meeting, the DBT shall name a Project Manager who will act as a liaison between the DBT and the Department.

#### 7.5.1 Task Force Design Meetings

- Required
- Not Applicable

The DBT shall conduct Task Force Design meetings. These meetings will be held to discuss specific DB solutions, resolve issues with the design and update the Department with the status of the design. These meetings shall be ongoing during the Phase 1 portion of the Contract.

These meetings shall determine the BIM standards and expectations to be followed during the design and construction of the Project. The DBT shall develop a BIM Execution Plan for review and approval through ongoing coordination with the Department during Phase 1.

At a minimum, these meetings shall include the Designer (and specifically the design element lead engineer or representative) and the Contractor. The DBT shall invite the Department to each Task Force Design meeting. The Task Force Design meetings shall be held every other week for the duration of the design or until mutually agreed by the Department and the DBT.

The Task Force Design meetings shall be integrated multi-discipline design meetings, led by the DBT, focusing on integrating design elements into a single, comprehensive, and buildable design. The Department will participate, but the Department’s participation will be limited to general opinions and suggestions which shall not be deemed to be direction. The DBT shall



maintain its responsibility to ensure adherence to the contract, including design requirements and schedule.

During the design process, these meetings shall occur at a location agreeable and accessible to all parties. If the co-located field offices are utilized and operational, these meetings should be held at the Department's or DBT's Field Office. The DBT shall provide an agenda two days prior to the meeting.

The DBT shall be responsible to notify any interested or affected third-parties at least two days prior to the meeting . "On-line" meetings (i.e. Skype, WebEx) may be acceptable, if approved by the Department.

## **7.6 Permits**

The DBT shall ensure that the Project is constructed and maintained in accordance with all requirements, regulations, and applicable permits required for the Project. This includes the permits described herein and any additional permits not specifically identified in the Contract Documents.

Unless noted otherwise in the Contract Documents, the DBT shall obtain all necessary permits and pay all charges, fees and taxes associated with these permits (e.g., city street opening permits, street crossing/equipment moving permits, water department fees, sewer permits, rail permits and fees, etc.). The DBT shall be responsible for any fines levied by regulatory agencies because of their construction activities or non-compliance with any permit special or general conditions.

The DBT shall obtain a permit from the State or local government having jurisdiction to perform any non-construction work within the existing Right of Way and/or limited access.

## **7.7 Entry on Private Property**

The DBT, acting as the Department's agent, may enter upon any lands within the State for the purpose of inspecting, surveying, leveling, digging, drilling, or doing any work deemed necessary in the execution of any survey authorized by the Director of Transportation in accordance with Section 5517.01 of the Ohio Revised Code and ODOT's Survey Manual. Prior to performing said survey, the DBT will send notification letters indicating the date and duration of entry to the affected property owners no less than forty-eight hours nor more than 30 days prior to the date of entry for said survey in accordance with ODOT's Survey Manual. The DBT shall forward copies of all notification letters distributed to ODOT's Project Manager.

Any subsequent claims for compensation due to damages incurred while said activities were performed will be negotiated between the DBT and the affected property owners with final approval from ODOT's Project Manager. Crop and property damage minimization and reimbursement information, together with the crop damage reimbursement formula and Special Waiver of Damage form, will be provided to the DBT by ODOT's Project Manager.

Any subsequent entries onto private property for the purpose of obtaining additional survey or soil information prior to the submission of the Bid will be made in accordance with the procedures outlined in this section.

## **8 ENVIRONMENTAL**

The DBT shall ensure that the Project is designed, constructed and maintained in accordance with all environmental requirements, regulations, and applicable permits required for this Project.

### **8.1 NEPA & Environmental Commitments**

NEPA Status to be finalized. See PDBC Section 1.6.C for more information.

### **8.2 Environmental Permits**

The DBT shall:

1. Be aware of all applicable environmental permits related to the Work.
2. Coordinate with the Department and prepare applications and other relevant information necessary to obtain all environmental permits required to perform the Work.
3. Comply with all conditions imposed by environmental permits in design and construction.
4. Notify the Department regarding any failure to comply with conditions of the environmental permits.
5. Maintain and update environmental permits to ensure they are in effect during the Work.
6. Coordinate with the Department and submit any documents regarding updates required for environmental approvals to the Department for coordination with the regulatory agency.

If the DBT modifies elements of the Conceptual Design used as the basis for obtaining a permit, the DBT accepts all responsibility for associated cost and schedule impacts resulting from the permit modification process and accepts the risk that the regulatory agency may not approve the proposed permit modification.

At no time shall the DBT coordinate environmental permitting issues directly with the regulatory agencies, unless directed to do so by the Department. The DBT shall not commence with Work covered by environmental permits until the applicable permits approval are obtained from the regulatory agencies.

Table 8-2 identifies work performed by the Department related to various environmental permits and the status of Department activities. Table 8-2 is not a comprehensive list of the environmental permits required to perform the Work. Unless otherwise noted, the DBT shall

be responsible to obtain all necessary environmental permits and pay all charges, fees and taxes associated with these permits.

*Table 8-1: Status of Department Activities for Environmental Permits*

Agency	Permit/Approval	Status
OEPA	NOI	Information Required from DBT

The DBT shall acquire required noise permits and/or variances from the local jurisdiction.

The DBT shall be responsible for any fines levied by regulatory agencies because of their construction activities or non-compliance with any permit special or general conditions.

### **8.3 Temporary Sediment and Erosion Control**

The DBT shall be responsible for designing and implementing all temporary sediment and erosion controls in accordance with SS 832 and the Ohio NPDES general permit for storm water discharges from construction activities (NPDES Permit). For information about OEPA's NPDES Permit requirements, see:

[https://epa.ohio.gov/dsw/permits/GP\\_ConstructionSiteStormWater](https://epa.ohio.gov/dsw/permits/GP_ConstructionSiteStormWater).

The DBT shall submit information to the Department for development of the Notice of Intent for the NPDES Permit, including the total acreage of earth disturbing activities for both off project and on project work. The DBT shall assume that approval from OEPA will require a minimum of 31 days following submittal to the ODOT Project Manager. Earth disturbing activity is not permitted prior to approval of coverage under the NPDES Permit.

For projects that require an NOI, the DBT must develop a Storm Water Pollution Prevention Plan in accordance with SS832 and the NPDES Permit. The DBT shall not initiate any earth disturbing activity until the SWPPP is approved.

The DBT shall be compensated for furnishing and installing items related to temporary sediment and erosion control requirements. The Department will compensate the DBT through an encumbered amount included in the Proposal as a non-bid reference number. The Proposal specifies the unit prices for the temporary sediment and erosion control items. Payments for temporary sediment and erosion control items that exceed the encumbered amount will be made through an Extra Work Change Order using the specified unit prices. The specified unit prices are fixed for the Contract Documents and may not be negotiated or adjusted for inflation or claimed changed condition.

All temporary erosion control items shall be removed before the project is accepted. Removed materials shall become the property of the DBT and shall be disposed of in accordance with the appropriate C&MS specifications.

### **8.4 Regulated Materials**

The DBT shall meet all regulatory conditions imposed with regulated materials, including hazardous materials, associated with the Project. The DBT shall characterize, collect, contain, and properly dispose of all waste generated or encountered during the Work. The DBT shall ensure that the site is properly contained during construction so that regulated materials do not migrate off-site. The DBT shall prepare and implement a spill prevention and response plan that will address the proper storage and management of all fuels, oils, and chemicals being stored and/or used on the project and the actions to be taken if a release occurs on the project including notifying reportable releases and spills to the National Response Center and Ohio EPA Spill Hotline. The DBT is to address the project's known areas of regulated materials in their health and safety plan. The DBT is to take reasonable actions to prevent the general public from accessing the regulated materials areas to prevent an exposure and/or a release of the regulated materials.

If any unknown regulated materials are discovered through work on the Project, the DBT shall notify the Department immediately and shall follow the spill prevention and response plan, as well as all appropriate regulations.

## **8.5 Noise Analysis and Noise Barriers**

Not Applicable

## **9 RIGHT OF WAY (ROW)**

RW Status Matrix to be finalized

The DBT shall perform all necessary construction work for the project within the Project Right of Way (ROW). The Department desires the ROW Plans to be complete as early in Phase 1B as possible.

The DBT shall locate existing right of way lines based on requirements specified in Chapter 4733-37 of the Ohio Revised Administrative Code (Board Rules) governed by regulations outlined in Chapter 4733, Ohio Revised Code (Regulation Laws).

The DBT will stake and flag the existing right of way in the field prior to the start of construction and will maintain stakes and flags throughout the duration of the Project.

The DBT shall identify all right of way encroachments on the construction digital model with the Interim Design submission. ODOT's Project Manager will be responsible for clearing all encroachments on Federal-aid projects in accordance with standard encroachment removal.

### **9.1 Temporary Easements**

To be finalized

## **10 UTILITIES**

### **10.1 Existing Utilities**

The District Utility Coordinator, in coordination with the registered underground utility protection services, Oil and Gas Producers Underground Protection Service (OGPUPS), and other utility owners that are non-members of any utility protection services, has determined that the utilities identified in Table 10-1 are located in the area of the Project.

List all known utilities on the Project site in Table 10-1.

*Table 10-1: Utility Contacts and Status*

Utility Owner	Utility Contact	Relocation Status
<b>[Insert utility owner name and mailing address]</b>	<b>[Insert contact person name, phone, and email]</b>	<b>[Describe utility relocation status and any committed completion dates]</b>
<b>Amplex Electric</b>	Kathy Baugher 22690 Pemberville Rd. Luckey, OH 43443 419-837-5015 kbaugher@amplex.net	Utility conflicts to be determined
<b>Buckeye CATV</b>	Michael Sheahan 2700 Oregon Rd. Northwood, OH 43619 419-724-3713 <a href="mailto:msheahan@sharedsvcs.com">msheahan@sharedsvcs.com</a>	Utility conflicts to be determined
<b>Brightspeed</b>	Bill Parsons 1120 South Tyron St. Suite 700 Charlotte, NC 28203 952-500-1596 Bill.parsons@brightspeed.com	Utility conflicts to be determined
<b>Frontier Com (Former Verizon)</b>	Amy Roth 3126 N McCord Rd. Toledo, OH 43617 419-631-2823 <a href="mailto:Amy.l.roth@ftr.com">Amy.l.roth@ftr.com</a>	Utility conflicts to be determined

<b>North Coast Gas Transmission</b>	Jason Hill 445 Hutchinson Ave #810 Columbus, OH 43235 419-217-1722 <a href="mailto:JHill@somersetgas.com">JHill@somersetgas.com</a>	Utility conflicts to be determined
<b>Toledo Edison</b>	Andrew Stambaugh 6099 Angola Rd. Holland, OH 43528 419-249-5178 <a href="mailto:astambaugh@firstenergycorp.com">astambaugh@firstenergycorp.com</a>	Utility conflicts to be determined

### 10.2 Utility Coordination Responsibilities

The DBT shall coordinate all utility adjustments for construction activities on the Project.

As soon as it is feasible, the DBT shall stake the existing ROW (and new ROW, if additional ROW has been acquired) in the field and shall perform clearing and grubbing within that ROW in accordance with the Contract Documents to facilitate utility relocation. The DBT shall maintain and update ROW stakes as needed throughout the Project Limits for the duration of the Project.

The DBT shall design the project and perform construction work in a manner that minimizes the scope and extent of utility conflicts and adjustments. The DBT shall not design or construct the Work in a way that precludes legal occupancy of the highway right-of-way by the adjusted utility. The DBT shall minimize potential delays and coordinate efficient adjustments of utilities.

The DBT shall copy the ODOT Project Manager and the District Utility Coordinator on all correspondence or phone calls between the DBT and each utility. This shall include the submittal of plans to each utility. A meeting at or near the 30% OPC shall be held between the DBT, the District Utility Coordinator and the utility owners to determine if any significant utility relocations can be eliminated or mitigated.

Any betterment to the utility's facility and ineligible, or unnecessary, work shall not be included in the Project without Department approval. The Department will not compensate for betterments or other ineligible utility work. The DBT shall coordinate determination of eligibility through the District Utility Coordinator.

### 10.3 Subsurface Utilities Engineering (SUE)

Subsurface Utility Engineering Required:     Yes     No

## 11 MAINTENANCE OF TRAFFIC (MOT)

### 11.1 General

The DBT shall be responsible for designing, providing, and maintaining safe and effective traffic control 24 hours a day for the duration of the Project. The DBT shall furnish, install, maintain and remove all traffic control devices. The DBT shall implement Maintenance of Traffic (MOT) in a manner that minimizes both construction duration and impact to the traveling public.

The DBT shall provide written notice to the Department fourteen (14) days in advance of modifications in MOT or traffic patterns, including modifications to the following:

1. MOT configuration
2. Access
3. Detours
4. Schedule
5. Duration

The DBT shall furnish temporary MOT devices compliant with the AASHTO Manual for Assessing Safety Hardware (MASH), as applicable.

All detour routes will be provided by the Department and shall be signed by the DBT. The designated local detour will be provided by the Department.

Final requirements to be determined during Phase 1 of the Contract.

### 11.2 MOT Requirements

The DBT shall design and implement the MOT in accordance with the requirements referenced in Table 11-1.

Table 11-1: MOT Requirements

Requirement	Detailed Requirement Information	
<b>ROUTE</b>	SR-105	US-23
<b>Minimum number of lanes open during construction</b>	0	1 lane
<b>Minimum lane width</b>	N/A	11'
<b>Maximum duration of lane closure</b>	TBD during Phase 1B	TBD during Phase 1B
<b>Restrictions on lane closures during special events (sports)</b>	None	None

events, fairs, concerts, etc.)		
Restriction related to hospitals, fire and police, schools, etc.	None	None

Final Requirements to be determined during Phase 1 of the Contract.

### 11.3 Work Zone Speed Reduction

The DBT shall evaluate if a work zone speed reduction is warranted based on the final MOT scheme. The evaluation requirements are listed in Section 600 of the Traffic Engineering Manual.

If a work zone speed reduction is warranted, the DBT shall design and implement signing in accordance with the requirements of the Traffic Engineering Manual.

### 11.4 Haul Routes

In addition to the requirements of C&MS 105.13, the Progress Schedule shall account for 30 Days for the Department to secure approval for haul routes.

### 11.5 Traffic Engineering Manual Notes

The DBT shall design and implement the MOT in accordance with the following TEM notes:

Final Requirements to be determined during Phase 1 of the Contract.

## 12 SURVEY

#### A. ODOT Survey Responsibilities

The Department survey crews have provided the following survey information, listed below:

1. Centerline control and benchmarks
2. Beginning and ending centerline points for the project
3. At least two benchmarks for the project (the datum used was that which the project was originally laid out by)
4. Critical points such as P.C., P.I., P.T., T.S., C.S.
5. Vertical clearances for the overhead structures, to serve as a check for the existing vertical clearances

#### B. DBT Survey Responsibilities

If the DBT requires additional survey, The DBT shall submit all survey data using ODOT’s standard field codes and ODOT’s standard mapping codes. Reduced point data, in comma



delimited ASCII text format, will be provided for all surveyed points. This data will include: point number, North (y) coordinate, East (x) coordinate, elevation and point ID.

The DBT shall not disturb existing monumentation. If the DBT disturbs the monumentation, then the DBT shall replace the monument, in-kind, using a Registered Surveyor, with current registration, recognized by the Ohio State Board of Registration for Professional Engineers and Surveyors. Costs associated with monument replacement caused by DBT disturbance shall be borne by the DBT. The DBT shall provide copies of all monumentation changes to the District Real Estate Administrator.

The DBT shall include all control points, provided by the Department, in the ASCII file supplied by the DBT to the Department. They should retain the original point numbers and coordinate values as assigned by the Department.

The DBT shall provide the following items prior to final acceptance of the Record-Drawing digital model:

1. Copies of all field notes (written or electronic) which shall include the following information:
  - a. Date
  - b. Crew members
  - c. Weather conditions, including temperature, barometric pressure, etc.
  - d. Instrument(s) used (Serial Number)
  - e. Raw observation field data
  - f. Other notes as needed
2. Copies of all Deeds, Plats, Maps and other written evidence used to establish points related to the project including summaries of all parole evidence acquired as a part of the survey operation.
3. Listing of all found monumentation (Horizontal and Vertical).
4. Listing of all monumentation set as part of the project (Horizontal and Vertical) including reference ties for recovery.
5. All monumentation shall be located utilizing NAD 83 (Horizontal Data), NAVD 88 (Vertical Data).
6. Short report indicating adjustment factors and methods, signed and certified by a Registered Surveyor (State of Ohio). The Registered Surveyor (State of Ohio) shall include in the report the datum used and all associated adjustments used.

## 13 PAVEMENT

Full Depth Pavement Replacement shall occur within the limits needed to tie each leg of the roundabout into the existing roadway. Pavement buildup shall be provided by the DBT utilizing the Pavement Design Manual. The splitter islands and truck aprons shall be a 8" non-reinforced concrete that is stamped and integrally stained.

Soil restoration data shall be provided by the DBT. The DBT will analyze the subgrade according to the Geotechnical Bulletin 1 (GB1): Plan subgrades. Collection of additional soils information if needed, should be performed by the DBT. Provide type, locations, and limits of any subgrade stabilization needed.

Final Requirements to be determined during Phase 1 of the Contract.

## 14 ROADWAY

Horizontal and vertical alignments are provided in the existing survey and as per the existing plans. Proposed horizontal and vertical alignments shall follow the Location and Design Manual, Vol. 1 utilizing the design speeds and volumes provided in Table 1-2.

The roundabout geometrics shall follow the Location and Design Manual, Vol. 1 with the exception that the design vehicle shall be a WB-67. Splitter island and truck apron curbing should be mountable to help accommodate larger vehicles and farm machinery. Consideration shall be taken into account for large vehicles and farm machinery during the design of the roundabout.

Final Requirements to be determined during Phase 1 of the Contract.

## 15 DRAINAGE

The DBT shall perform a detailed flood plain analysis for all highways that encroach on floodplains, bodies of water or streams. The analysis shall be in accordance with the Location & Design Manual Volume 2 and the Bridge Design Manual. The extent of the analysis shall be from a minimum of 500' downstream, to the greater of either one bridge opening/width upstream, or to the limits of the area inundated by the 100-year event.

The results of the detailed flood plain study, supporting hydraulic calculations, and recommendations shall be submitted to the District for review and comment prior to construction of the drainage structure. If the proposed crossing is in a special flood hazard area as defined by FEMA, the detailed flood plain analysis shall be submitted concurrently to the local flood plain coordinator.

Final Requirements to be determined during Phase 1 of the Contract.

## 16 LANDSCAPING

Landscaping Required:  Yes  No

The DBT shall permanently grade and seed all impacted areas.

Landscaping in the center of the roundabout shall be permanently graded and seeded per the Location & Design Manual Volume 1. The center landscape area should try to have a max slope of 6:1 and a min slope of 12:1.

Final Requirements to be determined during Phase 1 of the Contract.

## 17 ADDITIONAL DESCRIPTION OF REQUIRED WORK AND SPECIAL PROVISIONS

Location and design of this roundabout shall be to minimize the impacts to the NE property.

## 18 STRUCTURES

### 18.1 Noise Barrier

Noise Barrier Construction Required:  Yes  No

## 19 TRAFFIC CONTROL

### 19.1 Pavement Markings and Delineators

The DBT shall perform Work related to pavement markings and delineators in accordance with Section 7.1 and the following sections.

A. Pavement Marking Requirements and Locations

Item 644-paint

B. Raised Pavement Markers:  Yes  No.

Requirements and Locations: Along SR 105 and US 23

C. Delineators:  Yes  No.

All flexible delineators shall conform to Item 620 and shall be placed in accordance with current design standards. Confirmation that no conflicts exist between the proposed locations of delineators and any underground utilities shall be made prior to the installation of the delineators.

Locations and requirements: *Beginning of each splitter island*

D. Barrier Reflectors:  Yes  No.

All barrier reflectors shall conform to Item 626 and shall be placed on bridge parapets, concrete barrier walls, retaining walls and guardrail, in accordance with current design standards. Guardrail blockout reflectors shall be installed on the side of the blockout away from traffic.

E. Object Markers:  Yes  No.

Final Requirements to be determined during Phase 1 of the Contract.

### 19.2 Signing

The DBT shall perform Work related to signs in accordance with Section 7.1 and the following sections.

### 19.2.1 Flat Sheet Signs

A. Flat Sheet Sign work required:  Yes  No.

- ~~4.~~ Redesign and replace all existing flat sheet signs with new signs, except as indicated below. This includes all signs on the mainline and interchange ramps. This also includes all STOP signs on intersecting roads. Size the signs in accordance with the OMUTCD.

Removed flat sheet signs shall become the property of the Contractor. Except for the Flashing LED Stop Signs which will remain the property of ODOT.

Final Requirements to be determined during Phase 1 of the Contract.

### 19.2.2 Extrusheet Signs

1. Extrusheet Sign Work Required:  Yes  No.

### 19.2.3 Ground Mounted Post Supports

A. Replace:  Yes  No.

1. Redesign and replace all existing ground mounted post supports with new supports. New sign installations shall be on new supports. No reuse of existing ground mounted supports shall be allowed.
2. Removed ground mounted supports shall become the property of the Contractor.

Final Requirements to be determined during Phase 1 of the Contract.

### 19.2.4 Ground Mounted Beam Supports

A. Ground Mounted Beam required:  Yes  No.

1. Redesign and replace all existing ground mounted beam supports with new ones
2. Supports subject to multidirectional impacts at intersections shall use the alternate connection on sizes larger than S4 x 7.7.
3. Removed ground mounted beam supports shall become the property of the Contractor. Remove all existing foundations.

B. Overhead Supports:  Yes  No.

Final Requirements to be determined during Phase 1 of the Contract.

## 19.3 Lighting

The DBT shall perform Work related to lighting in accordance with Section 7.1 and the following sections.

Luminaires for conventional lighting provide a solid state (LED) luminaire with a B-U-G Up-Lighting rating of U2 or less. The Luminaire is intended for external on/off control and shall not include a photocell socket. Assure the Luminaire has a nominal color temperature of 3000K. Units shall have an IES Type II Distribution and be 120 Volts.

Supply one of the following luminaires:

American Electric “Autobahn Series with Photometric Distribution:  
ATBM P30 MVOLT120 R2 4B 3K, With Input Wattage of 118W

General Electric “Evolve” Series with Photometric Distribution:  
ERLH 0 15 B3 30 Gray LR, With Input Wattage of 136W

Cooper “VERDEON” Series with Photometric Distribution:  
VERD-CA2-130-730-U-T2-AP-10K, With Input Wattage of 131.8W

Or equal as approved by the engineer.  
Distribution will be made at the unit bid price for each C&MS.

The Engineer shall ensure that each power service electrical energy account is in the name of and that the billing address listed below is to the maintaining agency. This shall be done not only for each new power service established by this project but also for each existing power service, since there may be a reassignment of the responsibility for an existing service as a result of the work performed by this project.

Lighting shall be installed and functioning prior to opening roundabout to traffic. If the proposed lighting is not in place at time of opening to traffic install temporary lighting meeting the lighting requirements of the final lighting design.

*Final Requirements to be determined during Phase 1 of the Contract.*

## 19.4 Traffic Signals

- A. Signal Support work required:  Yes  No.
- B. Vehicle Signal Heads:  Yes  No
- C. Pull box:  Yes  No
- D. Conduit:  Yes  No
- E. Cable and Wire:  Yes  No

Signal(s) part of an Intelligent Transportation System (as defined by the Traffic Engineering Manual, Part 13):  Yes  No

## 19.5 Intelligent Transportation Systems (ITS)

A. ITS Work Required:  Yes  No

## 20 PROJECT SCHEDULE REQUIREMENTS

[RESERVED]

## 21 PLAN SUBMITTALS AND REVIEW REQUIREMENTS

### 21.1 Plan Components

The final BIM plan format, requirements, level of detail, submission methods, and any other details necessary for the proper transmission, usage, and incorporation of the design intent for transmittal to the contractor shall be determined during Phase 1 of the Contract.

The Project will utilize the digital BIM model for the design, review, and construction of the Project.

The DBT shall cooperate with the Department during the development of the BIM requirements, will revise the BIM requirements as necessary, and will provide information as requested by the Department.

### 21.2 Quality Control

The DBT is responsible for the professional quality, technical accuracy for all plan submittals required under this contract.

The DBT shall immediately notify the Department of any apparent discrepancy between the various design and construction manuals and the Contract Documents.

The Department shall have the discretion to dictate the level of Design review. The Department's acceptance of the design or failure to identify improper design does not, in any way, relieve the DBT of the responsibility for the quality, accuracy, or feasibility of the Design.

In the event the Department determines that any required submission is incomplete, contains inaccuracies which preclude a meaningful review, or does not adhere to the Governing Regulations listed in Section 7.1 (Governing Regulations) as applicable of this document, the Department will advise the DBT of the shortcomings and direct the DBT to revise and resubmit the model. No time extension will be granted because of such action. The Department will schedule a review meeting or issue review comments as appropriate.

### 21.3 Buildable Units

Buildable Units (BUs) are portions of the projects which can be designed, reviewed and built with only limited controls and assumptions coming from the design of other portions of the project. Often a Buildable Unit will be defined by a geographic area within the plan, but it may also be defined by types of work or construction stages which may require or permit similar, nearby work to be divided into separate Buildable Units. All Buildable Units shall

summarize the materials required to construct that portion of the project. The summary shall include the Construction and Material Specifications Item Number, and a description of the materials to be used.

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

#### **21.4 Comment Resolution Process**

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

#### **21.5 Document Management**

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

#### **21.6 Optional Pre-submission Meeting**

The DBT may request a Pre-submission Meeting to be held prior to, or concurrent with, the submission of a Buildable Unit. The intention of the Pre-submission meeting is an opportunity for the DBT to explain design intent to facilitate owner review. Formal assembly and submittal of drawings or other documents will not be required, but the DBT is encouraged to provide informal submittals to facilitate reviews.

#### **21.7 Optional Over-the-Shoulder Reviews**

The DBT or the Department may request “Over-The-Shoulder” (OTS) review of designs at any time in the design process. The OTS is an informal review of a partial design during development. This may include in-progress drawings, calculations, sketches, design concepts, proposed specifications, or any other document used or created during the design. They are to facilitate communication and the design process. These can be in the form of a phone call, meeting, correspondence, or any other means of information sharing between the DBT and the Department.

An Over-the-Shoulder review may be necessary to discuss direction on potential design changes. An OTS may be requested during any period in the design development. Appropriate third-party agencies, as well as the DBT and Department, may also participate in these meetings. The DBT or the Department may include the decision or direction given in an OTS within the applicable CRS submission.

The OTS reviews shall not replace the formal Interim and Final Review. Likewise, the Department may also request an OTS review during any stage of design to facilitate review or design development.

#### **21.8 Major Design Decision**

Separate submittals for concurrence with major design decisions are required. The submittals may be required during any phase of Design. Major design decisions involve significant utility relocation, unforeseen acquisition of ROW by the Department, traffic operation or geometric decisions that involve two or more viable solutions, designs not typical nor standards not ordinarily exercised by members of the engineering profession practicing under similar conditions at the same time and locality, and any other decision that impacts the public, operation of the facility or designs which require future long term excessive maintenance. The level of development of the submittal is dependent upon the level of detail necessary to accurately depict the major design decision.

When the DBT becomes aware of additional decisions during the design, they must advise the District Project Manager in writing.

### **21.9 Interim Design Review Submission**

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

If acceptable to all reviewers, electronic submissions are acceptable. Coordinate the anticipated media type.

### **21.10 FINAL DESIGN Review Submission**

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

### **21.11 Released for Construction Digital model**

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

### **21.12 [RESERVED]**

### **21.13 Plan Distribution Addresses**

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

### **21.14 Plan Revisions**

The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

### **21.15 As-Built Construction Record-Drawing Digital Plans and Model**



The DBT shall cooperate and coordinate with the Department during Phase 1 of the Contract to develop the process.

Prior to Final Acceptance of the Work, the DBT shall furnish the Department formal As-Built Construction Record-Drawing Model and plans. The DBT shall provide a general summary within the final As-Built Construction Record-Drawing plans.