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**BRENT SPENCE**

**BRIDGE CORRIDOR**



BRENT SPENCE BRIDGE CORRIDOR PROJECT

# **REQUEST FOR PROPOSALS (RFP) INSTRUCTIONS TO OFFERORS (ITO) AND SELECTION CRITERIA**

ODOT PID 116649 | KYTC PROJECT ITEM NO. 6-17  
ODOT CONSTRUCTION PROJECT 23-3000

APRIL 10, 2023

ADDENDUM 10



**TEAM**  
**KENTUCKY**<sup>®</sup>  
TRANSPORTATION  
CABINET

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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 Brent Spence Bridge Corridor Project (ODOT PID 116649, KYTC Project Item No. 6-17) (the "Project"). Pursuant to the Interstate Cooperative Agreement (ICA) entered into on February 17, 2023 by and between the State of Ohio and the Commonwealth of Kentucky, a Bi-State Management Team (BSMT) comprised of representatives from the Ohio Department of Transportation (hereinafter, the Department) and representatives from the Kentucky Transportation Cabinet (hereinafter, KYTC) has been given the authority to oversee the Project. The Department has been designated as the "Lead Agency" and the Project will be managed by the BSMT.

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 (inclusive of primary goals and contract objectives defined 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).

### 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 Contractor in two phases, with the first phase consisting of two sub-phases as follows:

- A. Preconstruction Phase (Phase 1)
  - 1. Proof-of-Concept Phase (Sub-Phase 1A); and
  - 2. Project Development Phase (Sub-Phase 1B)
- B. Final Engineering and Construction Phase (Phase 2)

The Department intends that the Sub-Phase 1A Proposal will be substantially complete and agreed prior to execution of the PDBC and that upon execution of the PDBC, the Contractor shall be entitled to compensation with respect to the time spent in preparation and negotiation in accordance with PDBC [Section 2.3.1](#) (Pre-Sub-Phase 1A Work).

Sub-Phase 1A shall commence upon the execution of the PDBC and the Department's issuance of Sub-Phase 1A Notice to Proceed (NTP) and shall continue until the sooner to occur of (i) the Sub-

Phase 1B Change Order is executed by the Department, or (ii) the Department exercises its right to terminate the PDBC. 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 the sooner occur of (i) the Phase 1 Work is complete or (ii) the Department exercises its right to terminate the PDBC. 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). If authorized in an executed Early Work Package, Early Work may begin before Sub-Phase 1B is completed, with Early Work and Sub-Phase 1B Work proceeding concurrently.

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 will retain two Independent Cost Estimators (ICE) for this Project, pursuant to the ICA. Each ICE will develop independent cost estimates for the Project at the same milestones as the Contractor. The purpose of the first ICE's involvement in the Project will be to validate the cost(s) and production proposals submitted by the Contractor at each pricing milestone. The function of the second ICE is to develop a state Engineer's estimate prior to final pricing agreement in accordance with ORC 5517.01.

## 1.2 Project Description

The Project will reconstruct approximately 5 miles of I-71/I-75 in Kentucky and 1 mile of I-75 in Ohio and will include construction of a new Companion Bridge over the Ohio River just to the west of the existing Brent Spence Bridge. The Project limits are from just south of the Dixie Highway Interchange in Kentucky north to Linn Street in Ohio with the interstate being widened by one additional lane in each direction throughout the corridor. The cost of the Project design and construction is currently estimated at \$3.1 billion.

The design of the new Companion Bridge type shall be proposed by the Offeror and approved by the Department. The bridge type to be selected per the Finding of No Significant Impact (FONSI) (EN-03) is either of the following:

- A. Arch bridge; or
- B. Cable-stayed bridge

The design of the Project is based on Concept I-W (see applicable Reference Information Documents) for crossing the Ohio River which allows either bridge type to be delivered. This concept contemplates that all interstate traffic for I-71 and I-75 will be accommodated via the new Companion Bridge, and all local connectivity will be accommodated via the existing Brent Spence Bridge.

A portion of the Work conducted in conjunction with the Project will include the rehabilitation and reconfiguration of the existing Brent Spence Bridge, reducing the number of lanes on each deck from

four lanes to three lanes and significantly increasing the inside and outside shoulder widths. Two “Collector-Distributor (CD) Road” systems will be constructed with the Project; one CD Road to connect I-71/I-75 traffic to and from the local street network between West 12th Street (southbound at 5th Street) in Covington, Kentucky and Ezzard Charles Drive in Cincinnati, Ohio, and one CD Road between south of Dixie Highway and north of Kyles Lane in both directions, allowing for upgraded interchanges.

Local connectivity in Covington will be improved by extending frontage roads to connect 5th Street and Pike Street going northbound and 4th Street and Pike Street going southbound.

The Project, including design of the new Companion Bridge, will include aesthetic features for which detailed specifications will be developed. The Department will lead the development of the aesthetic features with support of the Contractor.

The Completion Deadline for the Companion Bridge to be completed and open to traffic Milestone will be July 15, 2029. The Substantial Completion Deadline for the Project will be September 15, 2030.

## 1.3 Project Goals

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

### 1.3.1 Primary Goals

The primary goals identified as part of the Brent Spence Corridor NEPA decision are the following:

- A. Improve traffic flow and level of service;
- B. Improve safety;
- C. Correct geometric deficiencies; and
- D. Maintain connections to key regional and national transportation corridors.

### 1.3.2 Contract Objectives

To meet the primary goals included in [Section 1.3.1](#) (Primary Goals), the BSMT has established the following specific contract objectives to be incorporated in the executed PDBC:

- A. Maximize the Project scope within the programmed funding amounts through innovation, design optimization and effective risk mitigation;
- B. Build a project with a context sensitive design that fits within the community;
- C. Maximize the public investment in the Project by minimizing the footprint;
- D. Minimize the footprint of the interstate system to maximize potential developable space;
- E. Improve neighborhood connectivity across the interstate;
- F. Minimize traffic disruption during construction, with minimal detours or diversion of traffic to the local streets;
- G. Provide opportunities for Workforce Development and DBE utilization;
- H. Provide strong aesthetic value along the Project corridor;



- I. Achieve effective project delivery;
- J. Minimize physical intrusion and impact;
- K. Create best environmental outcomes;
- L. Design for sustained quality of life;
- M. Improve the local road aesthetics when crossing the interstate; and
- N. Open the traffic on the new Companion Bridge by July 15, 2029.

## 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>
Draft RFP Release	Friday, January 13, 2023
Final RFP Release	Friday, February 17, 2023
Last date for Offeror team registration ( <u>Form L</u> (Offeror Registration))	Monday, February 20, 2023, at 1:00 p.m. Eastern Time
Pre-Proposal One-on-One Meeting No. 1 (Regarding the RFP)	Thursday, February 23, 2023
Pre-Proposal One-on-One Meeting No. 2 (Regarding the RFP)	Thursday, March 9, 2023
Pre-Proposal One-on-One Meeting No. 3 (Regarding Bonding and Insurance)	Tuesday, March 14, 2023
Pre-Proposal One-on-One Meeting No. 4 (Regarding the RFP)	Monday, April 3, 2023 or Tuesday, April 4, 2023
Anticipated final Addenda	Monday, April 10, 2023
Proposal Due Date	Friday, April 14, 2023, at 10:00 a.m. Eastern Time
Interview	Tuesday, April 25, 2023
Apparent Best Value Selection Announcement	Monday, May 1, 2023
Anticipated Award Date	Wednesday, May 31, 2023

## 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>
Design-Build Contractor Notice to Proceed (NTP)	July 15, 2023
Sub-Phase 1A (Proof-of-Concept) Interim Completion Date	February 16, 2024
Sub-Phase 1B (Project Development) Proposal NTP	March 1, 2024
Sub-Phase 1B (Project Development) Interim Completion Date	March 18, 2025
Phase 2 (Final Engineering and Construction) Proposal NTP	April 1, 2025
Phase 2 Construction Begin Date	July 2025
Companion Bridge Open to Traffic Interim Completion Date	July 15, 2029
Substantial Completion Deadline	September 15, 2030
Completion of the Contract Deadline	November 1, 2030

## 1.6 Reference Information Documents

Reference Information Documents (“RIDs”) are available for further information pertaining to the Project at the following link: [Reference Information Documents - All Documents \(state.oh.us\)](#).

## 2. RFP PROCESS

Offerors are responsible for reviewing the RFP Documents and any Addenda issued by the Department prior to the Proposal Due Date. Offerors will be afforded an opportunity to submit written Requests for Clarification (RFC) concerning the RFP in accordance with the process specified below. In addition, Offerors will have an opportunity to attend three 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 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 233000):

<http://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 four Pre-Proposal One-on-One Meetings with the Department prior to the Proposal Due Date to discuss issues and clarifications regarding the RFP and/or insurance and bonding. 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. KYTC, the Federal Highway Administration (FHWA), other stakeholders, and consultants to the Department may also participate in the Pre-Proposal One-on-One Meetings.

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 Sources

As detailed in the ICA, 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, State of Ohio funds, and funds made available by the Commonwealth of Kentucky. Payments will be made by the Department in accordance with the negotiated PDBC and in accordance with the procedures set forth under the ICA.

### 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' and the Contractor's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including 49 CFR Part 26, as well as applicable requirements set forth in the PDBC.

The DBE goal for Phase 1 (Preconstruction Phase including Sub-Phase 1A and Sub-Phase 1B) is 9% of the Sub-Phase 1A and Sub-Phase 1B Contract Price.

The Department is targeting a DBE goal of at least 7% of the Contract Price for Phase 2. The DBE goal for Phase 2 will be established by the Department, after discussions between Contractor and Department, and incorporated as part of the Phase 2 Change Order. Prior to execution of any Early Work Package or the Phase 2 Change Order, the Contractor will be required to submit a detailed DBE Performance Plan to achieve the DBE participation goal. All Early Work Packages are included in the Phase 2 DBE goal and should be considered for DBE participation along with all other Phase 2 Work that is identified in each subsequent Change Order.

### 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 Contractor and the Department and finalized by the Department as part of the Phase 2 Change Order.

## 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, Offerors will be required to attend an interview with the Department. 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"):

Eric Kahlig  
Alternative Project Delivery Administrator  
Ohio Department of Transportation  
1980 W. Broad Street, Columbus, Ohio 43223  
E-mail: Eric.Kahlig@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 L (Offeror 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 L (Offeror Registration) will remain confidential until after an award is made. Offerors are required to register prior to the deadline established in the procurement schedule set forth in Section 1.4 (Procurement Schedule). 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 or Offeror team 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 L (Offeror Registration), 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. Each associated Component Firm must comply with all applicable laws and refrain from lobbying any Governmental Authority in connection with the Procurement Process. During the Procurement Process, no employee, member, agent, advisor, or consultant of any Offeror or a Component Firm may undertake any ex-parte communications, directly or indirectly, regarding this Procurement Process with any representative of the Department, KYTC, or FHWA, including their staff, advisors, contractors, or consultants, except for communications expressly permitted by this RFP.

After a Offeror's submission of its Form L (Offeror Registration), neither the Offeror nor any Component Firm thereof may communicate with another Offeror or Component Firm associated with another Offeror with regard to the Project, the Proposal, or any other Offeror's Proposal, except that an Offeror may communicate with an individual or Component Firm that is included in more than one Offeror organizations, so long as those Offerors have an established, documented protocol to ensure that such individual person or firm will not act as a conduit of information between the respective Offeror organizations.

Any verified allegation that an Offeror or Component Firm member has engaged in such prohibited communications or attempted to unduly influence the selection process may be cause for the Department to disqualify the Offeror or to disqualify the Component Firm 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.

Notwithstanding anything to the contrary contained herein, Offerors are advised that the information contained in Form B-1 (Identification of Offeror and Principal Participants) and Form E (Conflict of Interest Disclosure Statement) of each Proposal may be publicly disclosed by the Department at any

time, in the Department's sole discretion. Proposal materials will not be returned to the submitting party, except as determined by the Department in accordance with applicable laws.

Nothing contained in this RFP shall modify or change the obligations of the Department under 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**

"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:

- A. 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
- B. It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

##### **4.4.2.2 Identification**

In order for any information in the Proposal or shared during Pre-Proposal One-on-one Meetings to be treated as a "trade secret," the Offeror must abide by the following procedure:

- A. The Offeror shall independently determine, and be solely responsible for, whether any portion/entirety of any document, data, or record submitted qualifies as a trade secret under ORC Section 1333.61(D) preventing its disclosure;
- B. The Offeror shall (a) prominently mark each and every page of its document, data, or record with "Trade Secret" or "T.S." and an asterisk before and after each line of the submission that may contain "trade secret information" and (b) list the page numbers of every occurrence of the "trade secret" on the cover sheet submitted with the submission; and
- C. The Offeror shall accompany any label made in accordance with a concise statement supporting the label and determination, including applicable law supporting the claim.



### 4.4.2.3 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 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.

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, KYTC, FHWA, City of Cincinnati, City of Covington, Kenton County, Hamilton County, and their outside advisors. Observers will have access to the Proposals and may provide comments to the Proposal Evaluation Team. Outside observers (other than KYTC and FHWA officials) 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 D (Non-Collusion Affidavit).

# 5. OFFEROR TEAM ORGANIZATION

## 5.1 Registration of Businesses

It is required that the Offeror and their relevant agents are properly authorized and licensed under the laws of the State of Ohio to conduct business in this State of Ohio; are duly registered with the Kentucky Secretary of State to the extent required by Kentucky law; and will remain in good standing to



do business in the State of Ohio and Commonwealth of Kentucky for the duration of the Project. If an Offeror has not performed work in Ohio or Kentucky, it must also be in good standing to do business in its home jurisdiction.

## 5.2 ODOT and KYTC Prequalification

All Offerors and Component Firms 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 and the rules and regulations governing prequalification and by KYTC in accordance with Kentucky Administrative Regulations (KAR) 603 KAR 2:015, 600 KAR 6:040, and other relevant laws. 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 Component Firms responsible for professional and construction services on the Project are prequalified with the Department and KYTC, as applicable, in accordance with Form K (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), 201 KAR 18:142, 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:

- A. <http://www.dot.state.oh.us/Divisions/Engineering/Consultant/ConsultDocs/Specifications%20for%20Consulting%20Services%202016.pdf>.
- B. [Title 201 Chapter 18 Regulation 142 • Kentucky Administrative Regulations • Legislative Research Commission](#).

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 require its Component Firms to identify potential conflicts of interest or a real or perceived competitive advantage relative to this Procurement Process. Offerors are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the Project or Department's Progressive Design-Build program may present a conflict of interest or a competitive advantage. 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 or Component Firm for the Project. The Department will attempt to make all reasonable efforts to timely respond to a waiver request.

The following firms will not be allowed to participate as an Offeror or a Component Firm 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. HNTB Corporation
- B. HMB Professional Engineers, Inc.
- C. KBHR Access
- D. Razor Marketing Communications, LLC
- E. American Structurepoint, Inc.
- F. Geotechnology, LLC

- G. T2 Utility Engineers
- H. Stanton Constructability
- I. Armeni Consulting Services LLC

## 5.4 Debarment or Suspension

No firm may participate in any Offeror organization 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 or the Commonwealth of Kentucky, 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 organization as identified in its [Form L](#) (Offeror 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 L](#) (Offeror Registration) 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, individuals, Principal Participants, and 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 individual, Principal Participants, or 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 design-build 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 any individual Principal Participants, or 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

Principal Participants and 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 by a Major Participant through related corporate entities, such as an entity that directly or indirectly controls another entity, or two entities that are under common control. If any Major Participant

fails 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 all Principal Participants 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 11-by-17 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>	
Design-Build Organization and Key Personnel	14
Design-Build Team Capabilities and Experience	14
Project Understanding and Approach	19
Offeror Additional PDBC Information	As Needed
<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 (Eric Kahlig, Ph. 614-387-2406) 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 1 Mark-Up as the "Unit Price". The value of the "Unit Price" entry shall be greater than or equal to "\$10.000", but less than or equal to "\$18.000". 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). Offeror shall attach to the Proposal Letter the documents and information described in the section entitled "Additional Information To Be Provided With Proposal Letter" of [Form A](#) (Proposal Letter); provided, however, that Offeror may attach to the original [Form A](#) (Proposal Letter) an envelope including two certified copies of the required organizational documents in lieu of providing organizational documents with each of the copies of the Administrative Proposal.

### 6.7.2 Informational Forms (Form B) and Legal Information

The Administrative Proposal shall include a signed statement by the Offeror attesting that all Major Participants and who will be responsible for Design Work and Construction Work on the Project will be prequalified for categories identified in [Form K](#) (Prequalification) with the Department and KYTC by Project award.

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

The Administrative Proposal shall include a completed [Form B-2](#) (Information About Offeror Organization) providing information about the Offeror organization and its team as specified therein.



The Administrative Proposal shall include a completed Form B-3 (Information About Major Participants) providing information regarding each Major Participant (excluding Principal Participants).

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

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

The Administrative Proposal shall include Form C (Responsible Offeror Questionnaire), with respect to the Offeror, each Major Participant, and each Principal Participant. As noted on the form, it may be provided by Offeror on its own behalf and on behalf of each Major Participant and Principal Participant, or it may be provided by Offeror on its own behalf and the individual Major Participants and Principal Participants on their own behalf. The form executed by Offeror shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by Major Participants and Principal Participants shall be signed by an authorized representative of such Major Participant and Principal Participant and the Administrative Proposal shall include evidence of signature authorization for each such individual.

### **6.7.4 Non-Collusion Affidavit (Form D)**

The Administrative Proposal shall include Form D (Non-Collusion Affidavit), certifying that the Proposal is not the result of and has not been influenced by collusion.

### **6.7.5 Conflict of Interest Disclosure Statement (Form E)**

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

### **6.7.6 Debarment and Suspension Certification (Form F)**

The Administrative Proposal shall include Form F (Debarment and Suspension Certification), certifying that Principal Participants and Major Participants are not declared by Ohio, Kentucky, the federal government, or have not voluntarily declared themselves debarred, suspended, or ineligible from doing transactions with the States of Ohio and Kentucky, the federal government, or any of its agencies and making other certifications as described on Form F (Debarment and Suspension Certification).



### **6.7.7 DBE Goal Attainment or Good Faith Efforts Certification (Form G and Phase 1 DBE Performance Plan)**

The Administrative Proposal shall include Form G (DBE Goal Attainment or Good Faith Efforts Certification) confirming that Offeror will meet or exceed the DBE participation goal or will exercise good faith efforts to substantiate its attempts to meet the goal. The Administrative Proposal shall also include the Phase 1 DBE Performance Plan identifying current commitments and strategy of how the Offeror will meet or exceed the Phase 1 DBE goal.

The Phase 1 DBE Performance Plan shall include the following information:

1. The names and addresses of the certified DBE firm(s) committed at the time of the Proposal;
2. 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 Phase 1 DBE goal;
3. Whether the DBE firm(s) being used to meet the Phase 1 DBE goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity;
4. The percentage of work each DBE firm will be utilized for in order to meet the Phase 1 DBE goal;
5. Written documentation of the Offeror's commitment to use a DBE firm whose participation it submits to meet a contract goal;
6. 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; and
7. The Offeror's strategy to meet or exceed the Phase 1 DBE participation goal, including consideration of design opportunities and other activities post selection, beyond the commitments identified above by the Offeror at the time of Proposal.

### **6.7.8 Equal Employment Opportunity Certification (Form H)**

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

### **6.7.9 Buy America Certification (Form I)**

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

### **6.7.10 Certification Regarding Use of Contract Funds For Lobbying (Form J)**

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

### **6.7.11 Prequalification (Form K)**

The Administrative Proposal shall include Form K (Prequalification), listing the contractor/subcontractor intended to perform each work type and consultant/subconsultant 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 and Narrative**

##### **6.8.1.1.1 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 organization 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 Contractor 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.

##### **6.8.1.1.2 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.

##### **6.8.1.2 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**

<i>Key Personnel</i>	<i>Duties/Qualifications</i>
DBT Project Manager	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. The Project Manager shall have 15 years of design-build experience managing the design and construction of major highways, interstate-to-interstate interchanges or navigable river bridge structures, with preference for both. The Project Manager shall be assigned to the Project full time and meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.
DBT Design Manager	The DBT Design Manager is responsible for ensuring the overall Project design is completed and all design requirements are met. The Design Manager shall have at least 15 years of recent experience, experience with integrated project delivery preferred, managing the design of major projects that include complex maintenance of traffic design experience. The DBT Design Manager must be a licensed professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of Contract. The Design Manager shall be assigned to the Project full time and meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.

<b>Key Personnel</b>	<b>Duties/Qualifications</b>
<p>DBT Lead Structural Design Engineer</p>	<p>The DBT Lead Structural Design Engineer actively manages and serves as point of contract for all structural designs. Responsible for ensuring all structural components on the Project are completed and all design requirements are met. The DBT Lead Structural Design Engineer shall have at least 15 years of recent similar experience. They must be a licensed professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of contract. The DBT Lead Structural Design Engineer shall meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.</p>
<p>DBT Lead Highway Design Engineer</p>	<p>The DBT Lead Highway Design Engineer is responsible for ensuring all highway geometric, drainage and traffic components on the Project are completed and all design requirements are met. The DBT Lead Highway Design Engineer shall have at least 15 years of recent similar experience. They must be a registered professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of contract. The DBT Lead Highway Design Engineer shall meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.</p>
<p>DBT Lead Independent Companion Bridge Engineer</p>	<p>Responsible for the independent design check of the Companion Bridge. Must be employed by a qualified, independent professional firm selected and subcontracted to the DBT, independent of the original bridge design for the Project. Shall have at least 10 years of experience in the design and review of complex bridges for major highway projects of similar size and complexity. They must be a registered professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of contract. The DBT Lead Independent Companion Bridge Engineer shall meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.</p>
<p>DBT Independent Design Quality Firm (IDQF) Manager</p>	<p>The DBT Independent Design Quality Firm (IDQF) Manager is responsible for managing the Design Quality Assurance for the Project. Must be a member of the IDQF. Responsible for ensuring that the requirements of the Design Quality Management Plan are being met and to manage any other matters related to design quality compliance. The IDQF Manager shall not have any DBT Quality Control responsibilities. Shall have at least eight years of experience in quality management. They must be a registered professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of contract. The DBT Independent Design Quality Firm Manager shall meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.</p>

<b>Key Personnel</b>	<b>Duties/Qualifications</b>
<p>DBT Construction Manager</p>	<p>The DBT Construction Manager is responsible for managing the construction of the Project. Must be an employee of a Principal Participant. The DBT Construction Manager shall have at least 10 years of recent management experience, design-build experience preferred, in highway construction, interstate-to-interstate interchanges, and/or major river bridge structures with complex maintenance of traffic challenges. The DBT Construction Manager shall be assigned to the Project full time and meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.</p>
<p>DBT Lead Bridge Superintendent</p>	<p>DBT Lead Bridge Superintendent: Actively manages the construction activities of the bridge components and coordinates with the highway components. Will be managed by the DBT Construction Manager. Will be responsible for daily scheduling, supervising all bridge construction activities and tasks, ensuring the safety and compliance of the Project Site, production of submittals, schedule, budget, and achievement of QC requirements, including work performed by bridge Subcontractors. Shall have at least 15 years of demonstrated experience overseeing work on major bridge construction projects having similar type of work, and complexity, including projects having multiple operations ongoing simultaneously. Experience as a project superintendent should include at least one project having a construction value in excess of \$300,000,000. This position is required for the duration of all construction-related activities on the Project and shall meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.</p>
<p>DBT Lead Highway Superintendent</p>	<p>DBT Lead Highway Superintendent: Actively manages the construction activities of the highway components and coordinates with the bridge components. Will be managed by the DBT Construction Manager. Will be responsible for daily scheduling, supervising all highway construction activities and tasks, ensuring the safety and compliance of the Project Site, production of submittals, schedule, budget, and achievement of QC requirements within their teams, including Subcontractors working within their highway components. Shall have at least 15 years of demonstrated experience overseeing work on major highway construction projects having similar type of work, and complexity, including projects having multiple operations ongoing simultaneously. Experience as a project superintendent should include at least one project having a construction value in excess of \$300,000,000. This position is required for the duration of all construction-related activities on the Project and shall meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.</p>

<i>Key Personnel</i>	<i>Duties/Qualifications</i>
DBT Diversity and Inclusion Manager	The DBT Diversity and Inclusion Manager is responsible for all aspects of the DBE, OJT, and EEO for the project, including but not limited to overseeing DBE/OJT/EEO compliance goals for the Project, promotion and outreach for DBE contract opportunities and participation, promotion and outreach for OJT and workforce development opportunities, participation in and reporting to the Diversity and Inclusion Outreach Committee, administration of DBE contracts, prompt payment monitoring for all subcontractors, subconsultants, and suppliers, resolution of any payment issues, reporting of monthly DBE/OJT/EEO participation goals to the Department, monitoring Commercially Useful Function (CUF), and ensuring compliance with prevailing wage requirements. DBT Diversity and Inclusion Manager shall have at least 10 years of experience with a background and understanding of DBE, CUF, and EEO requirements. DBT Diversity and Inclusion Manager shall have experience on federally funded projects. DBT Diversity and Inclusion Manager shall be assigned to the Project full time and meet the co-location requirements in accordance with <u>Section 4</u> (Co-Location Facilities for Contractor and Department Forces) of the Technical Requirements.

**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 Major Participants. 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.

Describe any notable expertise or other special capabilities of Component Firms or personnel that are critical to your project approach. Firms shown on organization charts and/or represented in the technical experience attachments shall be specifically addressed as to their role on the Offeror’s team.

Number of pages shall not exceed two pages.

**6.8.2.2 Technical Experience Attachments**

The Technical Proposal shall include Technical Experience Attachments, which shall not exceed 12 pages total. Provide project information consisting of descriptions of projects completed by each Major Participant. Include work by Major Participants 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 one page per project (on distinct pages). Firms listed are subject to Section 5.5 (Changes in Offeror’s Organization).

- 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.
  6. Workforce Development and DBE utilization.
  7. Mitigation efforts utilized by the Offeror to overcome unexpected Project challenges which may translate to the proposed Project.
- 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 Owner's project number (if applicable);
  2. Name of the representative Major Participant and the firm's responsibility;
  3. 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;
  4. 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;
  5. Dates of design (if applicable) and construction (if applicable);
  6. General Description of the overall project;
  7. Detailed description of the work or services provided, and percentage of the overall project actually performed (as relative to costs); and
  8. Description of original scheduled completion deadlines and actual completion dates, as applicable to the Major Participant. 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. Offeror's approach to creating and implementing a project-specific Diversity, Inclusion, and Outreach Plan (DIOP), as defined in the Technical Requirements; and
- C. Offeror's approach to developing an Opinion of Probable Cost for the entire project during Sub-Phase 1A, for Early Work Packages, and for Phase 2 Work.

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

Describe Offeror's specific Sub-Phase 1A (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 support the Department in working with Stakeholders, such as regulatory agencies, and other third parties, such as railroads and utilities;
- C. Offeror's approach to scheduling;
- D. Offeror's approach to quality management;
- E. Offeror's approach to managing and delivering the RFP Scope;
- F. A staffing matrix of personnel that are proposed to complete Sub-Phase 1A Work including discipline area, personnel classification, and proposed level of effort for each classification; and
- G. Offeror's overall approach to innovation and any Offeror innovations and the potential impacts of the innovations on risk mitigation, time, safety, costs, and quality.

### **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 support the Department in working with Stakeholders, such as regulatory agencies, and other third parties, such as railroads and utilities;
- C. Offeror's approach to scheduling and quality management;
- D. 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;
- E. A description of Offeror's approach to competitively soliciting subcontractor quotes and how subcontracting packages will be developed and advertised to the subcontracting community, (ii) a description of Offeror's approach to obtaining reasonable proposals from qualified subcontractors, and (iii) Offeror's approach to openness and transparency in the subcontracting solicitation and selection process;
- F. 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
- G. Offeror's approach to development of Work Packages that would optimize Project delivery.

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

- A. Describe Offeror's specific Phase 2 (Final Engineering and Construction) approach, specifically including: A description of Offeror's plan for coordination and collaboration with the Department;



- B. Offeror's approach to support the Department in working with Stakeholders, such as regulatory agencies, and other third parties, such as railroads and utilities;
- C. Offeror's overall construction management approach, including project controls methods and approach to quality assurance and control;
- D. 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 (including early work packages) that would optimize project delivery; and
- E. Offeror's approach to risk management during the Construction Phase of the Project, identifying at least two risks for this Project (which may be different from, or the same as, the Project risks identified in the Preconstruction Phase) and proposing at least one mitigation strategy for each identified risk, to be performed during the Construction Phase, to eliminate or minimize the impact of the risk to the Project.

#### **6.8.4 Offeror Additional PDBC Information**

Pursuant to 23 CFR 636.513, the Department will consider additional information submitted by the Offeror in its Technical Proposal pertaining to the PDBC, including information or submissions regarding scope, schedule, pricing compensation structure and allocation of risk as contemplated and set forth in the PDBC. In the event Offeror elects to include additional information with its Technical Proposal, the Department will review and evaluate such additional PDBC information in accordance with [Section 7.3.4](#) (Offeror Additional PDBC Information (5 points)). Notwithstanding anything to the contrary contained in this ITO, the Department shall not be bound to consider any additional PDBC information beyond its initial evaluation of the Offeror's Technical Proposal.

### **6.9 Financial Proposal**

#### **6.9.1 Surety Letter**

The Financial Proposal shall include a single letter executed by Authorized Representatives of each 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 \$200 million, 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 each Early Work Package and 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, each Early Work Package and Phase 2 Work (the approximate total of all Phase 1 and

Phase 2 Work is currently estimated to be approximately \$3.1 billion) 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.

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 Early Work Packages and Phase 2 as set forth in Section 6.9.1(A)(2).
- F. 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 (Mark-Up)

Offeror shall provide a Phase 1 Mark-Up between 10% and 18% using Bid Express in accordance with Section 6.6.2 (Electronic Submittal of Competitive Bidding Element).

Phase 1 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.

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 scores with concurrence from the Executive Management Team based on the scoring guidelines within the ITO/RFP.

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).

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).

## 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.

### 7.2.1 Administrative Proposals

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

- A. The Administrative Proposal includes all forms described in [Section 6.7](#) (Administrative Proposal);
- B. The Offeror has provided evidence of its legal organization, or if the Offeror is unincorporated, the Offeror has provided evidence of the legal organization of the Principal Participants;
- C. No Principal Participant or Major Participant, nor any owner, officer, partner, director, or financial controller of such firms, nor any of their respective employees involved in the Project, has, in the past three years prior to the Proposal Due Date:
  1. Been convicted or included as the defendant in a criminal or civil judgment rendered against the firm or relevant individual by a court of competent jurisdiction in any matter;
  2. Been convicted or included as the defendant in a criminal or civil judgment involving fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty;
  3. Been indicted or otherwise criminally or civilly charged by a Governmental Authority with fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; or
  4. Participated as a prime contractor or equity partner in (i) a contract that was terminated for cause or default by the State of Ohio, State of Kentucky, or the federal government or (ii) contracts that were terminated for cause or default by two or more other Governmental Authorities.
- D. All Major Participants responsible for design and construction services on the Project are prequalified in accordance with [Section 5.2](#) (ODOT and KYTC Prequalification) and [Form K](#)

(Prequalification) prior to the Anticipated Award Date.

## 7.2.2 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 Major Participants included in the Proposal have not changed since the Offeror's registration with the Department, except with the Department's prior written approval.

## 7.2.3 Financial Proposals

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

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

Those Proposals that are not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and 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 (80 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 80 points:

- A. DBT Organization and Key Personnel (30 points)
- B. DBT Capabilities and Experience (22 points)
- C. Project Understanding and Approach (23 points maximum)
- D. Offeror Identified Pre-Award Clauses (5 points maximum)

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

### 7.3.1 Evaluation DBT Organization and Key Personnel (30 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 DBT Capabilities and Experience (22 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 Major Participants' project experience will be used as deemed appropriate by the Department for the evaluation of such firms' technical experience and capability. At its discretion, the Department may elect to use 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 (23 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 (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 effective approach to creating and implementing a project-specific Diversity, Inclusion, and Outreach Plan (DIOP), as defined in the PDBC Exhibit E (Technical Requirements); and
- C. An effective approach to developing reliable and consistent OPCs.

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

The evaluation criteria for the Project Approach (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;
- 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. An effective approach to identify innovation; and
- F. 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.

#### 7.3.4 Offeror Additional PDBC Information (5 points)

The evaluation criteria for the Offeror Identified Pre-Award Clauses will be evaluated based on the extent to which the additional PDBC Information is in furtherance of the Project Goals as stated in the PDBC.



## 7.4 Interviews (10 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:

Great American Tower  
301 East Fourth Street, Suite 3300  
Cincinnati, Ohio 45202

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 Offeror may submit an abstract for each innovative and feasible concept (up to five concepts) intended to be presented two Working Days prior to the interview. Each abstract shall be one (1) 11-by-17 inches. The Offeror shall submit to the Department using LiquidFiles. See [Section 6.6.1](#) (Electronic Submittal of Proposal).

The presentation and question and answer (Q&A) period will last approximately 120 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 (30 minutes)
- B. Agency Introduction (10 minutes)
- C. Offeror Introductions (65 minutes for items C through F)
- D. Capabilities and Experience
- E. Project Approach
- F. Innovative Concepts
- G. Q&A (40 minutes)
- H. Closing (5 minutes)

### 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 Contractor's role at each Phase of the Project;



- C. Recognition of key points and ideas, including the Progressive Contractor’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. Innovative and feasible concepts which have the potential to drive costs savings and/or improve the value-for-money and meet the Project Goals.

## 7.5 Technical Proposal and Interview Evaluation

Table 5 (Technical Proposal and Interview Evaluations) includes scoring information used for the evaluation of the Technical Proposal and Interview.

**Table 5: Technical Proposal and Interview Evaluation**

<i>Adjectival Rating</i>	<i>Description</i>	<i>Percent of Possible Points</i>
Excellent (E)	<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>
Very Good (VG)	<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>
Good (G)	<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 <b>meet</b> the Project Goals.</li> </ul> <p>Approach with no identified strength and no identified weaknesses will be within this range.</p>	<b>40-59%</b>
Fair (F)	<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>
Poor (P)	<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 (10 points)

### 7.6.1 Competitive Bidding Element (Phase 1 Mark-Up)

The Offeror who submits the lowest Phase 1 Mark-Up will receive 10 points. The formula for determining number of points for the competitive bidding element is as follows:

$$10 \text{ points} \times \frac{\text{Lowest Offeror Phase 1 Mark-Up}}{\text{Offeror's Phase 1 Mark-Up}}$$

## 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/Revisions

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.

The Department may, at any time after receipt of Proposals and prior to execution of the Contract, determine that it is appropriate to request changes to the Proposals (“Proposal Revisions”). Before requesting any such Proposal Revisions, the Department will engage in separate discussions (either in writing or in person through Pre-Proposal One-on-One Meetings) with each Offeror and in accordance with the procedures for proposal revisions described in 23 CFR Part 636.501 et seq. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. Any such Proposal Revisions will be required to be delivered to the Department by email to the Department’s Authorized Representative unless otherwise directed by the Department.

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

## **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. The Executive Management Team’s decision regarding award will be presented to the Director of ODOT and Secretary of KYTC for final approval.

## **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.

When the Department commences limited, good faith negotiations within the parameters set forth in Section 8.1.1, with an Offeror, such Offeror will be deemed to have failed to engage in good faith negotiations with the Department and if Offeror (x) fails agree to attend and actively participate in reasonably scheduled negotiation sessions and meetings with the Department or (y) insists upon terms or conditions for any documents to be negotiated or provided by the Offeror hereunder that are either inconsistent with form of PDBC and/or otherwise unacceptable to the Department. in an effort to agree upon and execute the PDBC, as such PDBC is modified pursuant to the limited good faith negotiations within the parameters set forth in Section 8.1.1.

## 8.2 Post-Selection Deliverables

As a condition precedent to execution of the Contract, the successful Offeror shall deliver the following to the Department within five Business Days after notification of award:

- A. Evidence of authority to transact business in the State of Ohio, and if applicable the Commonwealth of Kentucky, for all members of Offeror's team that will transact business in either State, dated no earlier than 30 days prior to the Proposal Due Date;
- B. If not previously submitted, a copy of the final organizational documents for the Contractor and, if the Contractor is a limited liability company, partnership, or joint venture, for each member or partner of the Contractor. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal. If the Contractor is a joint venture, attach a letter from each joint venturer stating that the joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations of the Contractor under the Proposal and under any contract arising therefrom; and
- C. Certificates of insurance accompanied by one or more committed letters from insurance brokers confirming that coverage will be placed in accordance with the project documents.

As a condition to execution of the Contract, the Offeror shall deliver drafts of the deliverables identified in Section 8.3 (Execution and Delivery of Contract) for pre-approval by the Department.

## 8.3 Execution and Delivery of Contract

### 8.3.1 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. Receipt by the Department of all of the documents required to be provided prior to execution of the PDBC under this Section 8.3; and
- C. Execution of the PDBC by the Offeror.

### 8.3.2 Required Documents

Offeror shall deliver the documents listed below to the Department concurrently with Offeror's execution of PDBC as a condition precedent to execution of the PDBC by the Department. On or before the date Offeror delivers the execution sets of the PDBC to Department, the Department will notify Offeror regarding the number of originals and copies required to be delivered.

- A. For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Offeror's Proposal.
- B. Evidence of approval of the final form, and of due authorization, execution, delivery, and performance, of the PDBC by Contractor and, if Contractor is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to the Department.
- C. Evidence that Contractor and its Major Participants hold all licenses required for performance of the work under the Contract.

The Surety or Sureties may reserve in their letter the right to approve any material adverse changes made to the PDBC or form thereof set forth in the RFP subsequent to the RFP submission, which approval by such Surety or Sureties shall not be unreasonably withheld, conditioned or delayed.

## 8.4 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; and

- 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. PROTESTS

This Section 9 sets forth the exclusive protest remedies available with respect to the RFP (a “Protest”). By the submission of a Proposal, the Offeror expressly recognizes the limitation on its rights to file a Protest to only those rights and provisions contained herein. The Offeror expressly waives all other rights, remedies, and agrees that this Section 9 sets forth all rights and remedies of the Offeror regarding Protests. This provision included in the RFP are provided in consideration of such waiver and agreement by the Offeror. If an Offeror disputes or does not follow the exclusive protest remedies set forth in the RFP, the Offeror must indemnify, defend, and hold harmless the Department, its directors, officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys’ fees and costs), fees, and damages incurred or suffered as a result of such Offeror action. The submission of a Proposal by an Offeror is deemed to include the Offeror’s irrevocable and unconditional agreement with respect to such indemnification obligation.

### 9.1 Written Protests Only

A Protest from an Offeror must be submitted to the Department in writing and contain all information described below in Section 9.2 (Protest Contents). The written Protest must be mailed to the following person (the “Protest Official”) at the following address:

Ohio Department of Transportation  
1980 W. Broad Street, Mail Stop 1500  
Columbus, OH 43223  
Attn: Paul Russell, Deputy Director/Chief Legal Counsel

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

The Protest Official may, in his discretion, discuss the written Protest with the respective Offeror prior to issuance of the Protest Official's written decision. The Offeror shall possess, and maintain throughout the Protest process, the burden of proof regarding the Protest by clear and convincing evidence. No hearing will be assembled on the Protest and the Protest Official will resolve the Protest in a written decision issued to the protesting Offeror. The Offeror may appeal the decision of the Protest Official by filing a written appeal as described in Section 9.4 (Rights of Appeal).

It is the Offeror’s sole responsibility to deliver the Protest to the Protest Official at the location noted and for obtaining a written receipt appropriate to the means of delivery at the time of delivery. The

Department bears no liability, and accepts no responsibility, for an Offeror not meeting the appropriate deadline(s) for any such Protest or appeal.

## 9.2 Protest Contents

A Protest must include the following:

- A. The name and address of the Offeror;
- B. The Project name and number;
- C. A detailed statement of the nature of the Protest; and
- D. All factual and legal documentation in sufficient detail to establish the merits of the Protest. The Offeror must demonstrate or establish a clear violation of a specific law or regulation, or impropriety within the Procurement Process.

Any Protest information and documentation provided under oath could result in a penalty of perjury, should the information be proven to be inaccurate.

## 9.3 Protest Process

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

The Offeror agrees that if an appeal of the Protest Official's decision is not submitted within seven days of the Protest Official's written decision, the decision of the Protest Official will be deemed to be final action and non-appealable. Any appeal within seven days will be handled as described in [Section 9.4](#) (Rights of Appeal).

The Protest Official will not be obligated to postpone the public announcement of award or execution of the PDBC in order to allow the respective Offeror an opportunity to file or correct a Protest or appeal, unless otherwise required by law.

## 9.4 Rights of Appeal

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

Ohio Department of Transportation  
1980 W. Broad Street  
Columbus, OH 43223  
Attn: Dave Slatzer, Chief Engineer



The Chief Engineer will provide a final decision on the Protest, either concurring with the decision of the Protest Official or amending the decision and will notify the respective Offeror in writing in a prompt manner of its decision.

The Department's decision after review of the appeal by the Chief Engineer will constitute final action by the Department. If the Offeror appeals the final action by the Department, to a court of competent jurisdiction, the Department may, in its sole discretion, proceed with the Procurement Process, unless otherwise directed or ordered by a judicial authority.

## 10. 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:
  1. A violation of the terms of the RFP on the part of a Major Participant;
  2. An issuance of a notice of debarment or suspension to a Major Participant;
  3. A submittal by the Offeror of more than one Proposal under the Offeror's own name or under a different name;
  4. 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
  5. 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: \_\_\_\_\_, 2023

Ohio Department of Transportation  
1980 W. Broad Street  
Columbus, Ohio 43223  
Attn: Eric Kahlig, Alternative Project Delivery Administrator

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 17, 2023, as amended, to develop, design, and potentially construct the Brent Spence Bridge Corridor Project (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]:*

(1) To keep this Proposal open for acceptance initially for 120 days after the Proposal Due Date, and if the undersigned is notified within such 120-day period that it is the next best value Offeror, for an additional 60 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of the Department, in the Department’s sole discretion; and

(2) If this Proposal is accepted, to provide the documents as and when required pursuant to the terms and conditions of the ITO; and specifically with respect to the Performance and Payment Bonds upon the terms and conditions precedent set forth in Section 8.3.2 (Required Documents) of the ITO.

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): \_\_\_\_\_

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 7.2.1C (Administrative Proposals) and hereby certifies that all Principal and Major Participants and their respective employees meet such requirements as of the date of 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.

Offeror’s business address:

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

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

State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

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

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

*[Insert the 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

**ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:****A. Describe in detail the legal structure of the Offeror and Principal Participants.**

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

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

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the 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 resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate and authorized officer of each general partner. If the Offeror is a limited liability company, such evidence shall be in the form of a limited liability company resolution and, if required by its operating agreement, a manager/managing member(s) resolution providing such authorization, certified by an appropriate and authorized officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Offeror is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate and



authorized officer of such joint venture member. If the Offeror is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.

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

## FORM B- 1: IDENTIFICATION OF OFFEROR AND PRINCIPAL PARTICIPANTS

<b>Name of Entity and Contact Information (address, representative, phone, e-mail)</b>	<b>Role in Organization</b>	<b>Ohio and Kentucky Contractor License and License Limit (if applicable)</b>	<b>Description of Work/Services To Be Performed By Entity (if applicable)</b>

The above information is true, correct, and accurate.

*[Insert Offeror's name]*

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

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

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

### FORM B- 2: INFORMATION ABOUT OFFEROR ORGANIZATION

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone

Email

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

<i>Name</i>	<i>No. of years in business</i>	<i>No. of years under present name</i>

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

Offeror:

\_\_\_\_\_

\_\_\_\_\_ :

\_\_\_\_\_ :

\_\_\_\_\_ :

\_\_\_\_\_ :

6.0 List all Ohio and Kentucky professional licenses held by the Offeror and any Principal Participants. Attach copies of all Ohio and Kentucky licenses. Attach a separate sheet if necessary.

<i>Firm</i>	<i>Name</i>	<i>Professional License (OH/KY)</i>

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

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

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

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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

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

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

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Name Printed)

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

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

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

\_\_\_\_\_  
Notary Public in and for said Country and State

[Seal]

My commission expires: \_\_\_\_\_

### FORM B- 3: INFORMATION ABOUT MAJOR PARTICIPANTS

[This form will be used to provide information about any Major Participants]

Offeror Name \_\_\_\_\_

<i>Entity Name / Contact</i>	<i>Address of Head Office</i>	<i>Telephone</i>	<i>Specialty / Assignment</i>

Add additional sheet(s) as necessary.

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

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

Executed: \_\_\_\_\_, 202\_\_.

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

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

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

\_\_\_\_\_  
(Offeror)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

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

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

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

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Name Printed)

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

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

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

\_\_\_\_\_  
Notary Public in and for said Country and State

[Seal]

My commission expires: \_\_\_\_\_



# FORM C: RESPONSIBLE OFFEROR QUESTIONNAIRE

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

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: \_\_\_\_\_

1. Questions

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

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

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

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

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

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

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

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

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

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

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

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

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

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable 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.

2. 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 \_\_\_\_\_, 2023.

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

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

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

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

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

### FORM D: NON-COLLUSION AFFIDAVIT

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:

- (a) did not, directly or indirectly, induce or solicit anyone else to submit a false or sham bid/proposal;
- (b) did not, directly or indirectly, collude, conspire, connive or agree with anyone else that said bidder/proposer or anyone else would submit a false or sham bid, or that anyone should refrain from bidding or withdraw bid/proposal;
- (c) 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;

(d) 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)

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

**WARNING:** Bids will not be considered unless the affidavit hereon is fully executed including the affidavit of the notary and the notarial seal.

## FORM E: CONFLICT OF INTEREST DISCLOSURE STATEMENT

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

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

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

1. **Disclosure Pursuant to Section 636.116(2)(v)**

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

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

2. **Explanation**

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

3. **Certification**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_, 2023  
Date



## FORM F: DEBARMENT AND SUSPENSION CERTIFICATION

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

Name of Firm: \_\_\_\_\_

Complete one copy of form to cover all Major Participants as identified on Form B-3 (Information About Major Participants).<sup>1</sup>

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

Offeror Certification:

I hereby certify that, to the best of my knowledge, the three above statements are valid, true, and represent a complete and accurate understanding of the condition of the firms represented and identified on Form B-3 (Information About Major Participants). as a Major Participant<sup>1</sup>. It is understood and agreed upon that any false acknowledgement, misrepresentation, or inaccuracy may be cause for disqualification of the Offeror from the Procurement Process whether discovered during the Procurement Process or after the Design-Build Team selection has been completed.

Offeror’s Authorized Representative:

\_\_\_\_\_  
(Printed Name)

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

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

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

<sup>1</sup> Note: Firm includes any Affiliate.

<sup>2</sup> Note: Prior to the Proposal Due Date listed in the Procurement Schedule.

## FORM G: DBE GOAL ATTAINMENT OR GOOD FAITH EFFORTS CERTIFICATION

The following goals for participation by DBEs are established for Preconstruction Phase (Sub-Phases 1A and 1B) of the Project:

- 1) 9% of the combined Preconstruction Phase (Sub-Phases 1A and 1B) Compensation.

The Department is targeting a DBE participation goal of:

- 1) 7% for Phase 2 Final Engineering and Construction.

The Department reserves the right to establish a DBE participation goal for each Early Work Package. All Early Work Packages are included in the Phase 2 DBE goal and should be considered for DBE participation along with all other Phase 2 Work that is identified in each subsequent Change Order.

By signing this Form G, the Offeror certifies that:

- 1) It will use good faith efforts to meet the aforementioned goals that requires the DBT 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; and
- 2) If awarded the Contract, the Contractor 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.

Failure to submit this Form G and the Phase 1 DBE Performance Plan may result in the Offeror's Proposal being considered non-responsive.

\_\_\_\_\_  
 [Name]

\_\_\_\_\_  
 [Title]

# FORM H: EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

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

*(Check one of the following boxes)*

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

*(Check one of the following boxes)*

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

**Signature:** \_\_\_\_\_

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

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

**If not Offeror, relationship to Offeror:** \_\_\_\_\_

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

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

## FORM I: BUY AMERICA CERTIFICATION

The Offeror 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 Offeror’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.

By the time of execution, the Offeror shall have completed and submitted 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 Offeror'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 Offeror 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 Offeror hereby certifies on behalf of itself and all proposed subcontractors (at all tiers) 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 \_\_\_\_\_

## FORM J: CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "**Disclosure Form to Report Lobbying**," in accordance with its instructions.

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

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

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

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

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

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

## FORM K: 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	
3	Gas, Oil, Water Well Abandonments		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		
20	Level 1 Bridge	X		
21	Level 2 Bridge	X		
22	Level 3 Bridge	X		
23	Reinforcing Steel		X	
24	Structural Steel Erection	X		
25	Stud Welding		X	
26	Structural Steel Painting		X	
27	Expansion & Contraction Joints, Joint sealers, Bearing Devices		X	
28	Caissons / Drilled Shafts	X		
29	Structure Repairs		X	
30	Hydrodemolition		X	
31	Structural Steel Repairs		X	
32	Heat Straightening		X	
33	Tieback Installation	X		
34	Earth Retaining Structures	X		

Contractor Prequalification (Ohio)				
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)
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	
44	Traffic Signals - Standard		X	
45	Pavement Markings		X	
46	Landscaping		X	
47	Mowing		X	
48	Trucking		X	
49	Herbicidal Spraying		X	
50	Railroad Track Construction		X	
51	Micro Tunneling		X	
52	Tunneling		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)
53	Piling	X		
54	Post-Tensioning Bridge Members	X		
55	Fiber Optic Cable Installation, Splicing, Termination and Testing – Traffic Signal System		X	
56	Fiber Optic Cable Installation, Splicing, Termination and Testing – Intelligent Transportation System		X	
57	Sealing of Concrete Surfaces with Epoxy or Non-Epoxy Sealers		X	

<i>Contractor Prequalification (Kentucky)</i>				
Work Item	Work Items Description	By Project Award	Prior to Work	Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)
A	GRADE AND DRAIN	X		
B	PORTLAND CEMENT CONCRETE PAVING		X	
C1	ASPHALT PAVING OPTION B		X	
C2	ASPHALT PAVING OPTION A		X	
E1	BRIDGES NOT MORE THAN 70 FT. CLEAR SPAN	X		
E2	BRIDGES NOT MORE THAN 100 FT. CLEAR SPAN	X		
E3	BRIDGES 100 FT. CLEAR SPAN AND OVER	X		
E4	DEMOLITION OF MAJOR BRIDGES	X		

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
E5	BRIDGES OVER NAVIGABLE STREAMS	X		
F	SIGNS		X	
G	LIGHTING		X	
G1	LIGHTING - AIRPORT			
H	LANDSCAPING		X	
I01	CLEARING AND GRUBBING		X	
I02	DITCHING AND SHOULDERING		X	
I03	BRIDGE APPROACHES		X	
I04	GUARD RAILS		X	
I05	FENCING		X	
I06	SEEDING AND SODDING		X	
I07	DENSE GRADED AGGREGATE BASE CONSTRUCTION	X		
I08	CEMENT CONCRETE BASE CONSTRUCTION	X		
I09	SOIL CEMENT BASE CONSTRUCTION		X	
I10	PLANT MIX BANK GRAVEL BASE CONSTRUCTION		X	
I11	CURB AND GUTTER		X	
I12	SIDEWALK		X	
I13	ENTRANCE PAVEMENT		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
I14	PAVED DITCH		X	
I15	CULVERTS		X	
I16	BRIDGE REPAIR		X	
I17	BRIDGE DECK REPAIR		X	
I18A	BRIDGE PAINTING - LEVEL A			
I18B	BRIDGE PAINTING - LEVEL B			
I18C	BRIDGE PAINTING - LEVEL C			
I19	STEEL ERECTION	X		
I20	TYING STEEL REINFORCEMENT	X		
I21	FURNISH AND DRIVE PILING	X		
I22	DREDGING		X	
I23	HYDRAULIC EMBANKMENT CONSTRUCTION		X	
I24	STORM DRAINAGE & STORM SEWER		X	
I25	SLURRY SEAL		X	
I26	BUILDINGS AND RELATED CONSTRUCTION			
I27	DEMOLITION		X	
I28	CONCRETE REPAIRS		X	
I29	RIGHT OF WAY MOWING		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
I30	TRAFFIC SIGNALS		X	
I31	PAVEMENT STRIPING		X	
I32	PAVEMENT MARKERS		X	
I33	UTILITIES		X	
I34	FIBER OPTIC CABLE INSTALLATION		X	
I35	PERMANENT ANCHORED TIEDBACK WALLS		X	
I36	TREE TRIMMING & BRUSH REMOVAL		X	
I37	TRAFFIC CONTROL		X	
I38	BITUMINOUS MILLING & TEXTURING		X	
I39	GROUTING FOR GROUND IMPROVEMENTS			
I40	DRILL AND PLACE RAIL			
I41	BARRIER WALLS		X	
I42	HYDRODEMOLITION OF BRIDGE DECKS		X	
I43	BREAKING AND SEATING		X	
I44	INTEGRATED TRAFFIC MANAGEMENT SYSTEMS		X	
I45	DRILLING OF HORIZONTAL DRAINS		X	
I46	WATERPROOFING		X	
I47	EPOXY COATING		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
148	DRILLED CAISSON FOUNDATIONS		X	
149	TUNNELS			
150	REMOVAL AND PLACEMENT OF PROJECT MATERIAL		X	
151	CONCRETE SAWING		X	
152	DIAMOND GRINDING		X	
153	TELECOMMUNICATION CONSTRUCTION		X	
154	ROOFING			
155	CONCRETE GRINDING		X	
156	SALT STORAGE SHEDS			
157	EDGE DRAINS		X	
158	VERTICAL DRILLING		X	
159	COVERED TIMBER BRIDGES			
160	HYDRAULIC JACKING		X	
161	SPECIAL ENGINEERED FILLS		X	
162	PAINTING OF BUILDINGS			
163	UNDERGROUND TANK REMOVAL			
164	ASBESTOS REMOVAL			
165	SHORING		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
I66	ROCK BLASTING		X	
I67	GUNITE/SHOTCRETE		X	
I68	TRENCHING		X	
I69	STEEL PIPE		X	
I70	TUNNEL LINER			
I71	STRUCTURAL PLATE PIPE			
I72	BIN-TYPE RETAINING WALLS			
I73	UNDERDRAINS		X	
I74	SWEEPING			
I75	CATCH BASIN CLEANING		X	
I76	JET RODDING			
I77	POWER WASHING			
I78	SURFACE PLANING AND TEXTURING			
I79	GRINDING AND JOINT SEALING		X	
I80	CAISSONS		X	
I81	SLURRY DIAPHRAM WALLS			
I82	SHEETING PILING AND SHORING		X	
I83	MAJOR BRIDGE FOUNDATIONS		X	



<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
I84	WICK DRAINS		X	
I85	PAVEMENT GRINDING AND GROOVING		X	
I86	SAWING & SEALING OF CRACKS & JOINTS		X	
I87	CRACK INJECTION		X	
I88	ROCK BOLTING		X	
I89	PNEUMATIC BLANKET		X	
I90	GUNITE POOLS			
I91	EPOXY INJECTION & REPAIRS			
I92	AUTOMATIC SPRINKLER SYSTEMS INSTALLATION			
I93	RAILROAD TRACK CONSTRUCTION & REPAIR			
I94	CONCRETE JOINT REPAIR		X	
I95	WALLCOVERING		X	
I96	DRILLED SHAFTS		X	
I97	VIBRO COMPACTION		X	
I98	STONE COLUMNS		X	
I99	DEEP DYNAMIC COMPACTION		X	
J01	COMPACTION GROUTING		X	
J02	SLURRY WALLS		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
J03	CHEMICAL GROUTING		X	
J04	CONSOLIDATION GROUTING		X	
J05	LIME INJECTION		X	
J06	MINI PILES		X	
J07	DAMS AND RESERVOIRS			
J08	SLAB JACKING		X	
J09	HYDRO DEMOLITION		X	
J10	SHOTCRETE		X	
J11	STRAIGHTENING STRUCTURAL STEEL		X	
J12	CORE DRILLING		X	
J13	REHAB OF STORM DRAINAGE AND STORM SEWER		X	
J14	CHIP AND SEAL		X	
J15	POLYURETHANE CONCRETE LIFTING			
J16	RETAINING WALLS	X		
J17	AUGER CAST PILING			
J18	HEATING AND AIR CONDITIONING INSTALLATIO			
J19	INSTALL ROADWAY SENSORS AND COUNTERS		X	
J20	JET GROUTING		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
J21	PRESSURE GROUTING		X	
J22	UNDERSEALING & FILLING VOIDS		X	
J23	WELLS			
J24	GROUND FREEZING			
J25	RETRO-REFLECTIVITY ANALYSIS		X	
J26	PIPELINE CONSTRUCTION		X	
J27	INTERIOR - MILLWORK			
J28	EXPANSION JOINTS		X	
J29	JOINT SEALING		X	
J30	CONCRETE HEADWALLS		X	
J31	GRINDING AND MILLING		X	
J32	IRRIGATION INSTALLATION			
J33	GROUND IN RUMBLE STRIPS		X	
J34	FLOORCOVERING			
J35	WINDOW TREATMENT & AWNINGS			
J36	SEALCOATING		X	
J39	DRILLED AND UNDERREAMED PIERS		X	
J40	LIME & CEMENT ROAD BED SOIL STABILIZATION		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
J41	WETLAND MITIGATION TREE PLANTING		X	
J42	WELDING		X	
J43	GLASS INSTALLATION AND GLAZING			
J44	MECHANICAL			
J45	INSTALLING OVERHEAD DOORS			
J46	PNEUMATIC BACKSTOWING		X	
J47	MACHINE PREP. OF EXISTING SLAB		X	
J48	CRASH CUSHIONS		X	
J49	DECORATIVE PAVERS		X	
J50	MUDJACKING			
J51	VIDEO PIPE INSPECTION & CLEANING		X	
J52	RAILROAD SIDING CONSTRUCTION & REPAIR			
J53	COLD MILLING			
J54	UNDERWATER CONSTRUCTION		X	
J55	ROAD PLANING AND SURFACE REMOVAL		X	
J56	STAY IN PLACE BRIDGE FORMS		X	
J57	CRACK SEALING		X	
J59	FERTILIZATION		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
J60	EMBANKMENT IN PLACE		X	
J61	MICROSURFACING			
J62	MASONRY COATING		X	
J63	ROADWAY WEATHER MONITORING EQUIPMENT INS		X	
J64	ASPHALT PLANING AND SCARIFICATION		X	
J65	BORING & TUNNELING		X	
J66	HERBICIDE SPRAYING AND BRUSH CONTROL			
J67	LAW ENFORCEMENT OFFICER		X	
J68	ROCKFALL CONTAINMENT		X	
J69	SOIL STABILIZATION		X	
J70	PRECAST PAVEMENTS		X	
J71	GEOTECHNICAL DRILLING		X	
J72	STONE VENEER		X	
J73	PRECAST PANEL WALL ERECTION		X	
J74	JOINT ADHESIVE		X	
J75	POLYMER BRIDGE OVERLAY		X	
J76	SOIL NAILING		X	
J77	GABION BASKETS		X	

<b>Contractor Prequalification (Kentucky)</b>				
<b>Work Item</b>	<b>Work Items Description</b>	<b>By Project Award</b>	<b>Prior to Work</b>	<b>Contractor/Sub-Contractor to Perform the Work (Status of Prequalification – Approved/Submitted/To be submitted)</b>
J78	MASONRY		X	
J79	LANDSCAPE MULCH		X	
J80	PAVEMENT STRIPING REMOVAL		X	
J81	CONCRETE PATCHING		X	
J82	CARBON FIBER BRIDGE WRAP		X	
J83	STREAM RESTORATION MITIGATION			
J84	LANDSCAPE MAINTENANCE		X	
J85	LANDSCAPE SITE PREPARATION		X	
J86	ASPHALT REPAIRS		X	
J87	VIDEO & LASER PIPELINE INSPECTION		X	
J88	HIGH FRICTION SURFACE TREATMENT		X	
J89	MARINE DRILLED SHAFTS	X		
J90	ELECTRICAL		X	
J91	AIRFIELD STRIPING			
J92	ROCK TUNNEL REHABILITATION			

<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>
<b>Roadway Design – General</b>			
Bicycle Facilities and Enhancement Design Roadway	X		
Non-Complex Roadway Design			
Complex Roadway Design	X		
Interchange Operations / Modification / Justification Study (IOS/IMS/IJS)	X		
Safety Study			
<b>Bridge Design – General</b>			
Level 1.1 Bridge Design	X		
Level 1.2 Bridge Design	X		
Level 2 Bridge Design	X		
<b>Bridge Inspection – General</b>			
Level 1 Bridge Inspection			
Level 2 Bridge Inspection	X		
Underwater Dive Bridge Inspection			
<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>
<b>Traffic Signal Design – General</b>			
Basic Traffic Signal Design			
Traffic Signal System Design	X		
ITS Design and Operations	X		
Limited Lighting Design			
Complex Lighting Design	X		
<b>Right of Way Plan Development – General</b>			
Limited Right of Way Plan Development			
Complex Right of Way Plan Development	X		
Subsurface Utility Location Services			
<b>Environmental – General</b>			
Environmental Document Preparation - EA/EIS			
Environmental Document Preparation - CE			
Environmental Document Preparation - Section 4(f)			
Ecological Surveys (NOTE: For Mussel Relocation)	X		
Stream and Wetland Mitigation	X		
Waterway Permits	X		
Qualitative Air Quality Analyses			



<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>
Quantitative Air Quality Analyses			
Noise Analyses and Abatement Design			
Archaeological Investigations			
History/Architectural Investigations			
Regulated Materials Review	X		
Public Involvement – C1 and C2 Level CE			
Public Involvement – D1 and higher Level CE			
Public Involvement – EA/EIS			
<b>Financial and Cost Accounting System Requirements</b>			

<b>Professional Services Prequalification (Kentucky)</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>
<b>Roadway Design</b>			
Rural Roadway Design			
Urban Roadway Design	X		
Surveying	X		
Photogrammetry & Related Services			
Advanced Traffic Engineering Design & Modeling	X		

<b>Professional Services Prequalification (Kentucky)</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>
Advanced Drainage & Design	X		
Value Engineering			
E-Plan Room			
<b>Utility Design</b>			
Communication			
Electrical Level 1			
Electrical Level 2			
Gas Level 1	X		
Gas Level 2	X		
Water & Sewer Level 1	X		
Water & Sewer Level 2	X		
Petroleum			
Utility Preconstruction Coordination	X		
Utility Construction Inspection			
Bridge Inspection – General			
<b>Structure Design</b>			
Spans Under 500 Feet	X		
Spans Greater Than 500 Feet	X		

<b>Professional Services Prequalification (Kentucky)</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>
<b>Geotechnical Services</b>			
Geotechnical Drilling	X		
Geotechnical Engineering	X		
Geotechnical Laboratory Testing	X		
<b>Traffic Operations</b>			
Traffic Engineering	X		
Electrical Engineering Traffic Signals	X		
Electrical Engineering Roadway Lighting	X		
<b>Transportation Planning</b>			
Transportation Planning Engineering			
Advanced Transportation Planning Engineering			
Road Centerline Data Collection			
Traffic Data Collection			
Traffic Forecasting			
Travel Demand & Simulation Modeling			
Pedestrian & Bicycle Facility Planning & Design	X		
Conceptual Transportation Planning			

<b>Professional Services Prequalification (Kentucky)</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>
<b>Right of Way Services</b>			
Acquisition Relocation Appraisal			
Appraisal Review			
<b>Maintenance/Bridge Maintenance Services</b>			
In-depth Structure Inspection			
Underwater Structure Inspection Tunnel Inspection			
Landscaping Arboriculture			
<b>Environmental Aquatic &amp; Terrestrial Ecosystems Analysis</b>			
Fisheries Freshwater Macroinvertebrates Water Quality Botany	X		
Terrestrial Zoology Wetlands			
<b>Environmental Archaeology &amp; Other Services</b>			
Prehistoric Archaeology	X		
Historic Archaeology	X		
Highway Noise Analysis	X		
Air Quality Analysis			
Stream & Wetland Mitigation	X		
Socio-Economic Analysis			
Cultural-Historic Analysis	X		

<b>Professional Services Prequalification (Kentucky)</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>
Environmental Document Writing & Coordination			
<b>Environmental &amp; UST Services</b>			
UST & Hazmat Preliminary Site Assessment (Phase I)			
UST Closure Assessment	X		
UST Site Investigation (Phase II)	X		
UST Corrective Action	X		
Hazmat Site Investigation (Phase II)	X		
Hazmat Corrective Action	X		
<b>Intelligent Transportation Systems</b>			
Architecture Development			
System Design, Deployment & Integration	X		
System Maintenance, Management & Operations			
Technology / System Evaluation			
<b>Transportation Delivery Systems</b>			
Transit Technical Studies			
Transit Management T			
Transit Marketing / Advertising			

<b>Professional Services Prequalification (Kentucky)</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>
<b>Construction Engineering Services</b>			
Construction Project Supervision			
Bridge Painting Project Inspection			
Bridge Painting Project Management			
Structural Steel Fabrication Inspection			
Construction Scheduling / Claims Analysis			

### FORM L: OFFEROR REGISTRATION

INSTRUCTIONS:

1. Submit one PDF copy of this Form L on behalf of the Offeror team in accordance with Section 4.2 (Authorized Representatives and Offeror Registration) by email to the Department’s Authorized Representative.
2. All Principal Participants and Major Participants in the Proposal must be listed on this Form L and their respective roles identified. Attach additional pages if more space is required.
3. An authorized representative of the Offeror must sign this Form L.
4. This Form L 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 L 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: \_\_\_\_\_



BRENT SPENCE BRIDGE CORRIDOR PROJECT

# REQUEST FOR PROPOSALS (RFP) PROGRESSIVE DESIGN-BUILD CONTRACT

ODOT PID 116649 | KYTC PROJECT ITEM NO. 6-17  
ODOT CONSTRUCTION PROJECT 23-3000

APRIL 10, 2023

ADDENDUM 10



TEAM  
**KENTUCKY**<sup>®</sup>  
TRANSPORTATION  
CABINET



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**LIST OF EXHIBITS**

Exhibit	Title
A	Acronyms and Definitions
B	Contract Particulars
C	Proposal Commitments
D	Key Personnel and Principal Participants
E	Technical Requirements
F	Noncompliance Points System
G	Opinion of Probable Cost (OPC) and Pricing Process
H	Force Account Provisions
I	Delay Costs
J	Unit Pricing Provisions

Exhibit	Title
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	Facilitated Partnering
S	Lane Value Contract
T	Critical Path Method Progress Schedule
U	Not Used
V	Surface Smoothness Requirements
W	Price Fluctuation Clauses
X	Digital Data for Material Ticketing
Y	Interstate Cooperative Agreement (ICA)
Z	Risk Register
AA	Worksite Traffic Supervisor (WTS) Disincentive

**PROGRESSIVE DESIGN-BUILD CONTRACT****Brent Spence Bridge Corridor Project**

This Progressive Design-Build Contract (hereinafter the "PDBC") for the Brent Spence Bridge Corridor 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" and together with the Department, hereinafter referred to as the "Parties").

**WITNESSTH:**

**WHEREAS**, on \_\_\_\_\_, 202\_, the Department and the Commonwealth of Kentucky, Transportation Cabinet, acting through its Secretary (hereinafter, the "Cabinet"), executed an Interstate Cooperative Agreement Regarding the Brent Spence Bridge Corridor Project (the "ICA") pertaining to the development, design, installation, construction and equipping of (a) a companion bridge to the Existing Brent Spence Bridge, (b) certain improvements to the Existing Brent Spence Bridge, and (c) corresponding interchange improvements to the I-71/I-75 corridor in Ohio and Kentucky, all as more specifically described in the ICA and under attached Exhibit E (Technical Requirements) (collectively, the "Project").

**WHEREAS**, pursuant to the ICA, the Department was designated as the Lead Agency (as defined in the ICA) and charged with procuring a contractor to undertake the Project.

**WHEREAS**, in furtherance of its duties under the ICA and 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 \_\_\_\_\_, 2023.

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

**WHEREAS**, in conjunction with the Procurement Administration Committee formed under the ICA, 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 and (b) Sub-Phase 1B and (ii) a 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 replace, in whole, all sections of the ODOT 2023 Construction Material Specifications 100 General Provisions (ODOT C&MS 100 Series Specifications) and the Kentucky Standard Specifications Division 100 (KYTC SS Division 100). 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 in Ohio shall conform to ODOT Standards and Specifications, and Kentucky work starting at the northern approach of the Companion Bridge shall conform with KYTC Standards and Specifications. More specifically, the forward abutment backwall, substructure unit, and expansion joint of the Companion Bridge just to the north side of the Ohio River in Cincinnati, Ohio shall conform to the KYTC Standards and Specifications. The approach slab and all other work north of the expansion joint shall conform to ODOT Standards and Specifications. Any ground improvements on the north side of the Ohio River such as paving, curb, sidewalk, drainage, etc. shall be per ODOT Standards and Specifications.

### 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. The laws of the Commonwealth of Kentucky and the KYTC Standards and Specifications shall only apply to those portions of the Work expressly identified in the Technical Requirements and subsequently approved Work Package Proposals as requiring the application of the KYTC 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 (including the Base Design and Conceptual Design as incorporated into the Technical Requirements and to the extent not superseded by the applicable Project Scope;
- C. With respect to Work in Ohio and the administration of the PDBC, the ODOT Standards and Specifications;
- D. With respect to the Work in Kentucky, the KYTC Standards and Specifications;
- E. Proposal Commitments in Exhibit C (Proposal Commitments) and Special Provisions;
- F. Supplemental Specifications;
- G. Standard Construction Drawings applicable to the corresponding Work; and

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 or Early Work Package Change Order (as applicable);
- B. The applicable Phase Change Order or any Early Work Package Change Order (as applicable);
- C. Supplemental Agreements;
- D. This PDBC and Exhibits (excluding Exhibit E (Technical Requirements)); 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 Cabinet (or either's 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 or Cabinet 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:

1. 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. The BSMT prepared an Environmental Assessment (EA) (EN-01, EN-02) for the Project, and thereafter, the Finding of No Significant Impact (FONSI) (EN-03) dated August 9, 2012 was issued by the FHWA. FHWA has subsequently requested and approved reevaluations of the EA, including that certain reevaluation dated February 11, 2015 (EN-04) and that certain reevaluation dated March 15, 2018 (EN-05). At the request of the FHWA, the Department in conjunction with the BSMT is currently conducting a supplemental EA to (i) assess and document any revised Project impacts, (ii) incorporate any policy updates or project changes, and (iii) memorialize coordination that has occurred since the 2012 EA/FONSI (the "Updated EA").
  - b. Based upon the foregoing, following the execution and delivery of this PDBC: (i) the BSMT will deliver the Updated EA, and the FHWA will issue an updated NEPA decision regarding the NEPA commitments pertaining to the Project, which may include the decision by FHWA to prepare an Environmental Impact Study ("EIS"), (the "Updated NEPA Commitments Decision"), and (ii) the Updated NEPA Commitments Decision may alter, expand, or contract the scope of the NEPA commitments in effect as of the Effective Date. If the Contractor proposes any alteration to the Project Scope that deviates or impacts the NEPA determination, it shall be the Contractor's sole responsibility to (x) conduct the necessary field work, (y) complete any necessary coordination to obtain environmental clearances, including updates to any environmental document(s), and (z) abide by review corresponding timelines.
  - c. Notwithstanding anything to the contrary contained herein, during the performance of the Phase 1 Work and from time to time thereafter, the Contractor covenants and agrees to evaluate the Project Scope in light of the Updated NEPA Commitments Decision to ensure that the Project Scope is in compliance with the Updated NEPA Commitments Decision together with any associated commitments or NEPA related documents. In the event the Contractor elects to proceed with any Scope of Work that deviates from the Updated NEPA Commitments Decision, the Contractor acknowledges and agrees that such deviations may be subject to additional review timelines or interagency coordination that will prolong the completion of the Work under the Project Schedule and thus represent a risk that will be borne solely by the Contractor.
  - d. 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.
- e. 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 and Cabinet 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 and Cabinet 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 sooner to occur of (i) a Change Order authorizing an Early Work Package, or (ii) 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 the Work with respect to any Early Work Package or the 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 a subsequent Change Order (whether a subsequent Change Order pertaining to an Early Work Package or 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, the KYTC Standards and Specifications, and FHWA and AASHTO standards, practices, policies, guidelines and specifications. The Contractor shall develop electronic Plans in accordance with the Design standards applicable to the Jurisdictional Design & Maintenance Authority (JDMA).

Contractor represents and warrants that it is experienced in large scale and complex public infrastructure projects, including, but not limited to, the design and construction of similar federal interstate systems including federal highway bridges over significant waterways, and rehabilitation and reconfiguration of existing interstate highways and bridges in comparable urban areas and under comparable project conditions, throughout the United States. 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 large scale and complex public infrastructure projects of similar scope, function, size, quality, and detail including, but not limited to, the design and construction of similar federal interstate highway systems, including federal highway bridges over significant waterways, and rehabilitation and reconfiguration of existing interstate highway bridges and federal interstate highway systems, in comparable urban areas throughout the United States. (the "Standard of Care").

## 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 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 covenants and agrees to attend all of the meetings set forth herein and in Section 2.2 (Project Meetings) of the Technical Requirements, including but not limited to (1) the Sub-Phase 1A Scope meeting, (2) the pre-design meeting, (3) cost and schedule meetings, (4) design progress meetings, and (5) project coordination and logistics meetings, each as described and defined under the 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, including those meetings identified in Exhibit R (Facilitated Partnering). The Contractor acknowledges and agrees that such meetings will include the applicable Contractor's Representatives, including the Contractor's Project Manager, the Department and, based upon the content of the corresponding meeting, other active participants invited by the Department, including but not limited to, the City of Cincinnati, Ohio, the City of Covington, Kentucky, the City of Fort Wright, Kentucky and the City of Fort Mitchell, Kentucky.

### 2.3 Phase 1: Preconstruction

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

Following the Effective Date and prior to the issuance of the Sub-Phase 1A NTP, to the extent the proposal regarding the incorporation of the Sub-Phase 1A Work and Sub-Phase 1A Project Scope (the "Sub-Phase 1A Proposal"), or any portion thereof, has not been finalized and incorporated by reference herein, the Department and the Contractor shall conduct regular meetings to finalize the Sub-Phase 1A Proposal, and any outstanding portion thereof. 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) the Maximum Sub-Phase 1A Prime Compensation developed in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

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, 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 Estimate 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: 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 Phase 1 Baseline Schedule. From time to time during the Contractor's performance of the Sub-Phase 1A Work, the Contractor and the Department shall meet to review the Sub-Phase 1A Project Scope and corresponding cost expenditures with reference to the Maximum Sub-Phase 1A Prime Compensation. 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) the proposed Maximum Sub-Phase 1B Prime Compensation developed in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

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. From time to time during the Contractor's performance of the Sub-Phase 1B Work, the Contractor and the Department shall meet to review the Sub-Phase 1B Project Scope and corresponding cost expenditures with reference to the Maximum Sub-Phase 1B Prime Compensation. 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 Early Work Package Proposal

The Department may request by written notice that the Contractor submit an Early Work Package Proposal to the Department for the performance of a part of the Phase 2 Work concurrent with the performance of the Phase 1 Work, in which case the Contractor shall submit that Early Work Package Proposal within 30 days of the Department's request (or such other period agreed by the Parties).

During the performance of the Sub-Phase 1B Work, the Contractor may elect to submit an Early Work Package Proposal or the Department may elect to request an Early Work Package Proposal from the Contractor. In each case, any Early Work Package Proposal shall include the performance of a portion of the Phase 2 Work concurrent with the performance of the Phase 1B Work.

Any Early Work Package Proposal shall be subject to the Department's approval in its sole and absolute discretion.

Upon submittal to the Department by the Contractor, an Early Work Package Proposal will constitute an offer that is binding on the Contractor for the validity period stated in that Early Work Package Proposal.

Except as otherwise expressly provided herein, each Early Work Package Proposal submitted to the Department under this Section 2.3.3.1 shall comply with the requirements that are established during Sub-Phase 1A for the Form of an Early Work Package Proposal.

Each Early Work Package Proposal that is agreed to by the Department in accordance with this Section 2.3.3.1 shall be deemed a sub-set and a part of the build-up of the Phase 2 Proposal, and any Phase 2 Change Order agreed and executed shall be deemed to incorporate any Early Work Package Change Order.

If an Early Work Package Proposal is not accepted by the Department in accordance with this Section 2.3.3.1, the scope of the Early Work Package shall be included within the Phase 2 Proposal submitted by the Contractor under Section 2.3.3.2 (Phase 2 Proposal).

If the scope of an Early Work Package is removed from the Phase 2 Work, the Department may, in its sole discretion, proceed with any other action as the Department deems appropriate for delivery of that Early Work Package, including soliciting from, negotiating with, or awarding a contract to any other Person for any part of that Early Work Package.

### 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 60 Days of the Department's Notice, 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 1A 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 initial cost and resource loaded schedule upon which the Contract Price for the Phase 2 Proposal is based;
- D. Subject to Section 8 (Subcontracting Requirements), an updated list of the Major Subcontractors proposed to perform the Phase 2 Work in compliance with the Subcontractor Bidding and Selection Plan;
- E. 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);
- F. A report that summarizes the agreed assumptions upon which the Phase 2 Proposal is based;
- G. The Phase 2 Project Scope developed in accordance with Section 3.3 (Phase 2 Project Scope);
- H. The Parties' respective obligations for obtaining any required Governmental Approvals or new Governmental Approvals;
- I. DBE Forms required in accordance with Section 9 (Labor Requirements);
- J. 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;

- K. Completed certifications for the Phase 2 Proposal completed in the form agreed by the parties during Sub-Phase 1A;
- L. The Home Office Overhead Payment (HOOP) for Phase 2 as set forth in Exhibit I (Delay Costs, Part (f) Home Office Overhead);
- M. A list of the Design Documents, including all addenda thereto, used in preparation of the GMP / Lump Sum, including a list of the clarifications and assumptions made to supplement the information contained in the Design Documents;
- N. ROW acquisition responsibilities and schedule;
- O. The studies, plans, and reports generated as part of Sub-Phase 1B, including any site investigation reports, the Utility Map, ROW Plans, Regulated Materials Report, Project Management Plan, Quality Management System Plan, Safety Plan, and DBE Performance Plan;
- P. Description of agreed Noncompliance Points consistent with the Table F-1 (Noncompliance Events Table) included in Exhibit F (Noncompliance Points System);
- Q. Description of the agreed disincentives for Lane Closure Charges consistent with the Lane Value Tables included in Exhibit S (Lane Value Contract);
- R. 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;
- S. Such other supporting documentation as may be reasonably requested by the Department; and
- T. 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, the Cabinet, the ICE, 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 within 60 days of delivery of the Phase 2 Proposal, 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 and 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 Department and Contractor may agree to a Change Order that obligates the Contractor to perform and complete any part of the Phase 2 Work as an Early Work Package prior to expiration of the term of Phase 1B, or such longer period as may be agreed upon between the Parties;
- B. 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);
- C. 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 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.
- D. Upon completion and the Department's written acceptance of the Design Work and any remaining obligations under the Phase 1B Work, this PDBC will expire in accordance with Section 1.5 (Term);
- E. Title to the 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);

- F. 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
- G. 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. If authorized in an executed Early Work Package, Early Work may begin before Phase 1B is completed, with Early Work and Phase 1B proceeding concurrently.

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 each Early Work Package and for the Phase 2 Work shall be computed as the sum of the following and any other components agreed by the Department and the Contractor:

- A. In the case of an Early Work Package, 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) and;
- B. In the case of the Phase 2 Change Order, the Contract Price reflected in any previously executed Early Work Packages, as well as the Contractor's reasonable, good faith estimate of the cost of the Work for the balance of the Design and

Construction Work and any Allowance Items in a format developed pursuant to the protocols in Exhibit G.

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).

The Department and the Contractor may agree in any Early Work Package Change Order or in the Phase 2 Change Order that the Work referenced therein shall be converted from the Guaranteed Maximum Price (GMP) set forth in the initial GMP Price Proposal to a Lump Sum in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

### **2.5.1.2 Cost and Resource Loaded Schedule**

Each Early Work Package Proposal and the Phase 2 Proposal shall include a cost and resource loaded schedule consistent with the requirements of Exhibit T (Critical Path Method Progress Schedule) allocating the applicable GMP / Lump Sum among the various portions of the Phase 2 Work authorized therein, or, in the event of a GMP, upon mutual agreement of the Parties, a Schedule of Values or similar method of allocating the applicable GMP. The cost and resource loaded schedule or Schedule of Values shall be in the format developed pursuant to the protocols in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). The Contractor shall revise and re-submit the cost and resource loaded schedule or Schedule of Values to be consistent with the Release for Construction (RFC) Plans.

## **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, the development of the Baseline Schedule, and the DBT PMP;
- 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 preparing any Early Work Package Proposal 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 any Change Order pertaining to an Early Work Package and thereafter 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 and all Change Orders for Early Work Packages 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.

If a Risk Register Event occurs while performing Construction Work, and the Risk Register Event utilizes a Provisional Sum a portion of which is allocated to the Department, and such portion of the Provisional Sum provided for in the Risk Register is exhausted, then, if identified in the Risk Register, the Contractor may submit a written Notice of Potential Change Order in accordance with Section 12.4 (Change Orders).

#### **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



disburse 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.

## 2.6.2 Risk Management Meetings

- A. The Contractor shall participate in and attend risk management meetings with the Department on a monthly basis together with a kick-off risk management meeting within 45 Days of the Sub-Phase 1A 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 and KYTC Construction Leads, ODOT and KYTC Design Leads, the State Cost Estimator and the Independent Cost Estimator;
  3. Include the Contractor's Project Manager, the Construction Manager, the 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 submit to the Department for its review, a Risk Management Plan (RMP) of the points discussed and agreed at the risk management meeting and any consequential impact on the Project and shall update and re-submit the Risk Management Plan to incorporate any corrections notified to it by the Department.

## 2.7 Cost Submittals

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

In collaboration with the Department, the Contractor shall develop an Opinion of Probable Cost (OPC) for the Sub-Phase 1B Work and the Phase 2 Work consistent with the Base Design (as

amended during Sub-Phase 1A) and developed in accordance with Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

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

The Contractor shall develop the Design Documents to a level of detail required in the Sub-Phase 1B Project Scope and sufficient to support each Early Work Proposal or Phase 2 Proposal and update the Base Design accordingly.

The Contractor shall submit the Phase 2 Proposal for the remaining Phase 2 Work not already authorized as an Early Work Package 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 completed 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 Notice to Proceed for Early Work**

The Contractor shall not commence performance of that part of the Phase 2 Work included in any Early Work Package until the Commencement Date stated in an Early Work Package NTP. The Department will issue an Early Work Package NTP no later than 45 Days after the following conditions have been satisfied:

- A. The Early Work Package has been authorized under a Change Order;
- B. The Department has received the Contractor's Performance Bonds and Payment Bonds and required insurance certificates for that Early Works Package in accordance with the Early Work Change Order; and
- C. The Contractor has obtained any and all Governmental Approvals (other than any the Department-Provided Approvals) required for the performance of that Early Work Package.
- D. There has been a final NEPA decision as described in Section 1.6 (b) (Federal Requirements) regarding the Project.

#### **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 PMP and Quality Management System Plan; and
- F. The Department has approved the Project Baseline Schedule.
- 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. In the event an Early Work Package has been executed in accordance with the terms hereof, the Department shall be under no obligation to the Contractor to proceed with any additional Work Package or other component of the Project, including the Phase 2 Work.

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 any Early Work Package Proposal or execute an Early Work Package Change Order; and
- D. 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 and Early Work Package Proposal, 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 Contractor Participation in SEP-14 Workplan Reporting

As a result of this Project being funded in part by federal funds, the Department has submitted and the FHWA has approved a SEP-14 workplan, as authorized under 23 U.S.C. 502(b)(2), for any hiring or contracting preferences, including nontraditional contracting methods that are not in full compliance with FHWA's contracting policies but provide an open, competitive procurement. The approved SEP-14 workplan is GN-06 of the RIDs. Furthermore, this SEP-14 workplan creates certain obligations on the Department, including but not limited to the gathering and tracking of data and the creation and distribution of certain reports to the FHWA. By entering into this PDBC, the Contractor hereby covenants and warrants to participate in and aid the Department in satisfying those certain obligations created by the SEP-14 workplan in

any manner reasonably required by the Department, including but not limited to meeting with the Department and providing input.

### 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. Project Management Plan (DBT PMP) as further described in Technical Requirements Section 2.1;
- B. The Design Quality Management System Plan as further described in Technical Requirements Section 3;
- C. Setting up the Project Management Office (PMO) as further described in Technical Requirements Section 4;
- D. DBE Performance Plan, DBE Outreach Plan and associated plans as described in Technical Requirements Section 5;
- E. Public information and communications support as further described in Technical Requirements Section 6;
- F. Environmental documents and Submittals as further described in Technical Requirements Section 7;
- G. Survey verification and subsurface utility memorandum as further described in Technical Requirements Section 8;
- H. Utilities coordination as further described in Technical Requirements Section 9;
- I. Railroad coordination as further described in Technical Requirements Section 10;
- J. Right of Way Plans as further described in Technical Requirements Section 11;
- K. Subsurface Geotechnical Exploration Reports as further described in Technical Requirements Section 12;
- L. Building Demolition and Removal Plan as further described in Technical Requirements Section 13;
- M. Development of engineering reports and development of the Base Design for roadway, drainage, structures, drainage, sanitary and combined sewers, structures, aesthetics, enhancements and traffic control as further described in Technical Requirements Section 14 to Section 20;
- N. Conceptual MOT Plan and Summary Report together with requirements for the Traffic Management Plan (TMP) and Incident Management Plan (IMP) as further described in Technical Requirements Section 2;
- O. Development of Governmental Approvals strategy and schedule to submit and obtain all Governmental Approvals in accordance with the Baseline Schedule;
- P. Preliminary engineering development including iterative exploration of value-adding options and constructability analysis to investigate alternatives;
- Q. Development of the Sub-Phase 1B Project Scope;
- R. Development of the Project Schedule for all Phases to the stage and level of detail described in Exhibit T (Critical Path Method Progress Schedule);

- S. Updating and further development of the Project Risk Register and pricing of risks as further described in Section 2.6 (Risk Identification, Pricing and Assignment);
- T. Development of a preliminary Construction Management Plan;
- U. Development of a preliminary Subcontractor Bidding and Selection Plan;
- V. Validation of the Base Design to establish Proof-of-Concept;
- W. Update the Base Design as necessary to determine the Opinion of Probable Cost (OPC);
- X. Development of the Cost Model and Estimating Methodology Report for development of each initial GMP Price Proposal and any conversion to a Lump Sum as further described in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process);
- Y. Development of the OPC for the updated Base Design as further described in Exhibit G; and
- Z. Development of the Sub-Phase 1B Proposal including the Maximum Sub-Phase 1B Prime Compensation.

### 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. DBT PMP for Phase 2;
- B. Quality Management System Plan for Phase 2;
- C. DBE Performance Plan and outreach for Phase 2 including the setting of a DBE participation target for the Design and Construction Work;
- D. Development of Railroad Agreements and Utility Agreements;
- E. Further development of the Phase 2 Project Scope including evaluation of Project Standards and Specifications;
- F. Further 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 development of applications for Governmental Approvals and initial submittals for applicable Governmental Approvals in accordance with the Baseline Schedule;
- J. Further design and engineering development of the selected alternative including updated constructability analysis to the appropriate level of detail for GMP / Lump Sum proposal development for Early Work Packages and Phase 2 Change Order;
- K. Preparation of procurement packages and selection of Subcontractors in accordance with Subcontractor Bidding and Selection Plan;
- L. 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;



- M. Further investigation and analyses such as structural, hydraulic, drainage, geotechnical as necessary and appropriate to develop the Design Documents, the Baseline Schedule, and the DBT PMP;
- N. Generate the cost and resource loaded schedule necessary to establish GMP or Lump Sum(s) for Early Work Packages and Phase 2 Change Order;
- O. Coordinate with Independent Cost Estimator (ICE) and the State Cost Estimator (SCE) to develop each GMP Price Proposal pursuant to Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process);
- P. Identify Early Work and submit Early Work Package Proposal(s);
- Q. Submit Phase 2 Proposal; and
- R. Required Payment Bond and Performance Bond for Early Work Packages and 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 1A 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 1.2 (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.

### 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://www.dot.state.oh.us/Divisions/ConstructionMgt/design-build/bsb-project-procurement/ReferenceFiles/Forms/AllItems.aspx>

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, prior to the kick-off Risk Management Meeting, as described in Section 2.6.2 (Risk Management Meetings), in accordance with prudent and generally accepted engineering and construction practices, 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.

At the kick-off Risk Management Meeting, described in Section 2.6.2, the Contractor and Department shall address (1) the Contractor's review and analysis of the RIDs and (2) based on Contractor's review and analysis of the RID's, the Contractor's determination and assessment of the additional testing necessary and appropriate to perform the Work.

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 Base Design**

The Department is entitled to add or amend the Base Design at any time during Sub-Phase 1A and any impact upon the Phase 1 Work will be administered through the process described in Section 12 (Contract Changes).

The Contractor shall validate the Base Design during Sub-Phase 1A to establish Proof-of-Concept and shall identify, for the Department's review and comment, any suggested amendments to the Base Design. Upon the Department's approval of any Contractor-identified amendments to the Base Design, the Contractor shall update the Base Design prior to the start of Sub-Phase 1B such that the Base Design depicts the layout of the Project and all the requirements necessary to develop the Opinion of Probable Cost (OPC).

The contractor shall update the Base Design during Sub-Phase 1B such that the Base Design depicts the layout of the Project used to develop the Phase 2 Change Order.

### **3.7 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.

### **3.8 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 complete the Sub-Phase 1A Work in accordance with the scheduled Completion Deadline for the Sub-Phase 1A Work established in the Project Schedule.

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

### **3.9 Governmental Approvals**

The Parties will collaborate and fulfill their respective responsibilities during Phase 1 to obtain necessary Governmental Approvals as defined in the Permitting Plan. 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 in accordance with the Sub-Phase 1A Proposal 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 design approaches, anticipated submissions, and status of design submissions being reviewed by the Department. The Contractor's senior 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 1.2 (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. Develop Kentucky MOT plans in accordance with MUTCD, except when the KYTC Standard Drawings or Standard Specifications are more restrictive, the KYTC Standard Drawing and Specifications shall govern.
- 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 (for Ohio pursuant to ODOT Survey Manual; for Kentucky pursuant to KYTC Highway Design Manual and Standard Specifications) 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. The certification must state that the proposed structure will have an equal to or greater hydraulic capacity and that a deletion or reduction of existing auxiliary openings and overflow areas is not planned.

- 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 Technical Requirements, including the ODOT Construction and Materials Specifications or KYTC Standard Specification for Road and Bridge Construction, as appropriate, 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) and provide per the following KYTC Standard Specification Section 601.03.11 (Falsework). Contractor's written approval shall be provided with the Submittal to the Department.
- L. Provide concurrence on acceptability of Corrective Work Plan (CWP) as described in ODOT C&MS Section 501.05.C (Corrective Work) or KYTC Standard Specification corrective work procedure plans. Written concurrence shall be provided with the submittal to the Department.

#### 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 or KYTC, as appropriate to the JDM 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 or KYTC as appropriate. All Professional Services must comply with Section 4733.16 of the Ohio Revised Code for Work within Ohio's jurisdiction or Kentucky Revised Statute 322.060 for work within Kentucky's jurisdiction.

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 Standard 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 (including any errors and omissions in the Base 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 2.1.3 (Document Control) 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 IDQF Review of Submittals**

As further described in Section 2.3 (Design Submittals) of Exhibit E (Technical Requirements), the Contractor shall schedule a Submittal meeting with the IDQF to present each design Submittal to the Department and invite other agencies as needed. The Contractor covenants and agrees to cause the IDQF to: (i) complete a formal review of the Submittals and all Design Documents, to verify that all contractual and scope requirements are achieved, and (ii) verify that there are no conflicts between Buildable Units in such Submittals being reviewed and any previously approved Design Documents. Upon IDQF written verification that a design Submittal is in compliance with the foregoing requirements, the Contractor shall submit Design Documents to applicable agencies requiring review and upload electronic copies to the Department's Electronic Content Management System (ECMS).

#### **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 be submitted as part of the DBT PMP for the Sub-Phase 1A Work and 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 its initial submittal and each subsequent submittal of its Design Quality Management Plan, so as to include all Design Documents;
  3. Together with submittal of any Early Work Package Proposal;
  4. Together with submittal of its Phase 2 Proposal; and
  5. During the performance of the Phase 2 Work to establish all Submittals associated with Final Design, the Construction Work and the As-Built Drawings.
- 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 15 Working Days of the Department's receipt beginning on the first Working Day following the Submittal Date.
- C. During Sub-Phase 1A, whenever there are more than eight (8) concurrent Submittals within an individual discipline under review by the Department, additional Working Days, to a maximum of five (5), may be added to the prescribed review period for each additional increment of eight (8) concurrent Submittals within that discipline. The permitted number of concurrent submittals per discipline will be increased to 15 for Sub-Phase 1B design activities. During Phase 2, concurrent submissions may be

increased to 18 per discipline. 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. For example, during Sub-Phase 1A, if there are between nine (9) and twelve (12) Submittals in concurrent review within the "roadway" discipline, then an additional five Business Days may be added to the prescribed review period for each Submittal within that discipline; if there are between 11 and 15 Submittals in concurrent review, then an additional 10 Working Days may be added to the prescribed review period for each Submittal within that discipline, and so forth. For the purpose of this Part C, one Submittal may not contain more than 200 sheets excluding technical reports, calculations and cross sections sheets unless approved by the Department.

- 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 keep at least one set of Plans at the Project Site at all times.

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 and KRS 322.340.

## 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, including Construction Work conducted pursuant to any Early Work Package.

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 and major Material suppliers not included in the Phase 2 Change Order or Early Work Package, 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. The Contractor's senior personnel team shall participate in all Progress Meetings. The agendas for the Progress Meetings shall include Partnering in accordance with the department facilitated partnering process as described in Exhibit R (Facilitated Partnering).

### 5.3 DBT Project Management Plan

The Contractor shall develop a DBT Project Management Plan (DBT PMP) in accordance with Section 2.1 (DBT Project Management Plan) of Exhibit E (Technical Requirements), for management, administration, design, Quality Management System Plan, geotechnical investigations, construction, testing, environmental monitoring and compliance.

After adoption of the DBT PMP, the Contractor covenants and agrees to implement the DBT PMP to accomplish the quality functions and objectives set forth in the Technical Requirements as may be amended in the Project Scope.

### 5.4 Cooperation Between Contractors

Intentionally omitted.

### 5.5 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.

### 5.6 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 KYTC, 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.

## 5.7 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.

## 5.8 Furnishing Right-of-Way

The Department will provide, or with respect to Kentucky cause the Cabinet to provide, the Contractor with legal access rights to the Project ROW during the performance of the Phase 1 Work in compliance with Section 11 (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, 29 CFR 1926, KRS 322.470 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 Department (or the Cabinet with respect to property in Kentucky) before use.

The Sub-Phase 1A 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 11 (Right of Way) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

The Department, with respect to Project ROW located in Ohio, and the Cabinet, with respect to Project ROW in Kentucky, are responsible for securing all necessary Project ROW in advance of Construction Work. Provisions governing access dates to each parcel are set forth in Section 11 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.

## **5.9 Unauthorized and Nonconforming Work**

### **5.9.1 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.

### **5.9.2 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.

## **5.10 Construction Requirements**

### **5.10.1 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.

### **5.10.2 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.

### **5.10.3 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 and KYTC SS 105.10 for Work undertaken in Kentucky.

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.

### **5.10.4 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 or the Commonwealth of Kentucky, as applicable, 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.

### **5.10.5 Restoration of Surfaces Opened by Permit**

The Jurisdictional Design and Maintenance Authority (JDMA) may grant to the municipality in which the Work is performed a reservation of rights to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time.

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the JDMA. The Contractor shall allow parties bearing such permits, and only those parties, to make openings in the highway. When ordered by the Department, the Contractor shall make in an acceptable manner all necessary repairs due to such openings. The necessary repairs will be paid for as Extra Work, or as provided in the Contract Documents, and will be subject to the same conditions as the original Work performed.

### **5.10.6 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.

### **5.10.7 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.

### 5.10.8 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.

### 5.10.9 Use of Explosives

Use of explosives is prohibited for this Project.

### 5.10.10 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 and KRS Chapter 183 in Kentucky.

## 5.11 Damage to the Work and Maintenance During Construction

### 5.11.1 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 JDMA and applicable Government Entities. The Contractor's incident management responsibilities during the construction Period shall be in accordance with the Incident Management Plan (IMP) to be developed by the Contractor as further described in Section 2 (Project Management) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

The Contractor shall not be required to assume any maintenance responsibilities until NTP for Construction Work pursuant to an Early Work Package Change Order or 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 not be required to assume maintenance responsibility for the Existing Brent Spence Bridge until the start of physical work



on the Existing Brent Spence Bridge and only until Substantial Completion of the physical work on the Existing Brent Spence Bridge or Completion of the Contract whichever is the earlier.

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.

### **5.11.2 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.

### **5.11.3 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.

### **5.11.4 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.

#### **5.11.5 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.

### 5.11.6 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 5519.05 and KRS 433.770. 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 and 2927.11, KYTC's Right of Way Guidance Manual (Section ROW-1202), and the Advisory Council on Historic Preservation's (ACHP) Policy Statement Regarding Treatment of Human Remains and Grave Goods.
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 CFR 59.1: 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.

### **5.11.7 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 9.3.9 (Continuity of Utility Service) 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.

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

### **5.12.1 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.

### **5.12.2 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 or KYTC-owned property is limited.

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

### 5.12.3 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 as part of the TMP to the Department for approval that details the anticipated truck movements and provides acceptable protection, warning, and guidance to motorists, pedestrians, and the workers.

### 5.12.4 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.

### 5.12.5 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).

## 5.13 Environmental Requirements

### 5.13.1 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 7.2 (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), and the KYTC Storm Water Quality Management Plan. 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 and the KYTC Storm Water Quality Management Plan. 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, the KYTC Storm Water Quality Management Plan, KYTC SS Section 213, 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, KRS Chapter 77, KRS Chapter 224, 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/eguides.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), and in Kentucky, the Contractor shall act in accordance with Regulation (KAR) Title 401.

### **5.13.2 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) the KYTC Storm Water Quality Management Plan, Kentucky Regulation (KAR) Title 401, KYTC SS 213 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 and Cabinet 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. In Kentucky, the Contractor shall comply with 401 KAR 63:005, KRS 149, and any Local Ordinances.

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 or the Cabinet. Further, the contract or permission statement must expressly state that the Department and Cabinet is not a party to the contract or permission statement and that the Contractor and property owner will hold the Department and Cabinet 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. In Kentucky, the Contractor shall follow Section 204, 209, 211 and 212 of KYTC SS. 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 and Cabinet property for borrow and waste is detailed in Section 5.13.3 (Rights in and Use of Materials Found in the Work), Section 5.12 (Contractor's Use of the Project ROW or Other Department-Owned Property) and KYTC SS.

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

### 5.13.3 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.

### 5.13.4 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.

### 5.13.5 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. In Kentucky, the Contractor shall follow the KYTC Storm Water Quality Management Plan, KYTC SS, USC Section 21301 KAR Title 401, KRS 149, and any Local Ordinances 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), where in Ohio, or KYTC SS 204, where in Kentucky, 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).

### 5.13.6 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. preparing and implementing a Spill Prevention Control and Countermeasures (SPCC) Plan per 40 CFR Part 112 that provides specific guidance for managing, handling, and disposing of oil spills that meet certain threshold requirements;
- E. preparing and implementing a Regulated Materials Management Plan (RMMP) that meets the requirements set forth in Exhibit E (Technical Requirements).
- F. using reasonable efforts, including design modification and/or construction techniques, to avoid excavation or dewatering in areas of the Site containing known Regulated Materials;
- G. 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;
- H. 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;
- I. 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 (or the Cabinet, if applicable) with copies of all records relating to such removal remediation and disposal;

- J. paying all associated costs and obtaining all necessary permits for a legal disposal site beyond the Site; and
- K. 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.

### 5.13.7 Unknown Regulated Materials

#### 5.13.7.1 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.

#### 5.13.7.2 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 (or the Cabinet'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.

#### 5.13.7.3 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 (and, if applicable, the Cabinet) 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.

#### 5.13.7.4 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.

#### 5.13.7.5 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, the Cabinet 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 or the Cabinet) 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").

### 5.14 Completion Deadlines and Acceptance

#### 5.14.1 Substantial Completion of the Work

##### 5.14.1.1 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 from the DBT Design Manager, 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 from the DBT Construction Manager, 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.

Successful completion of the testing and commissioning of the ITS in both Ohio and Kentucky.

#### **5.14.1.2 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 30 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).

### **5.14.1.3 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.

### **5.14.1.4 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.

## **5.14.2 Final Completion of the Work**

### **5.14.2.1 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 from the DBT Design Manager, 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 from the DBT Construction Manager, 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 of time, or both, could become Contractor Defaults.



All guarantees, warranties and Bonds, as required by the Contract Documents, are in full force and effect.

### 5.14.2.2 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.

#### 5.14.2.2.1 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.

Failure to submit these acceptably completed documents will result in an administrative fee of \$1000 per Day for every day that any of the required documents remain delinquent, starting 30 Days after receipt of written Notice from the Department of a document deficiency. Assessment of this administrative fee does not eliminate any other remedies available to the Department for non-compliance with the requirements of this Section 5.

### 5.14.3 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 Drawings.

### 5.14.4 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), KYTC SS Section 212 and C&MS 661 (Planting Trees, Shrubs, Perennials and Vines), KYTC

SS 724 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.

#### **5.14.5 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) and KYTC Materials Field Sampling and Testing Manual.
- 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) and KYTC SS 107.

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 Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner'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 Owner, as evidenced by documentation satisfactory in form and substance to the Owner, including, without limitation, recorded financing statements, UCC filings and UCC searches.
- B. The Contractor shall submit to the Owner 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 Owner 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 Owner, (2) specifically marked for use on the Project, and (3) segregated from other materials at the storage facility.

The Contractor shall reimburse the Owner 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) and KYTC SS 107.

## 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) and List of Approved Materials (LAM) 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 or KYTC's LAM.

## 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 AND RAILROADS

### 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 9 (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. Prior to any excavation activities within Kentucky, the Contractor shall comply with the requirements for Excavators in the Underground Facility Damage Prevention Act of 1994 which is contained in KRS 367.4901 through 367.4917.

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 Railroads

The Contractor shall design the Project to keep the scope and extent of railroad conflicts, interactions, and railroad flagmen needs to a reasonable minimum consistent with the Project Goals. The Contractor shall proceed with the Construction Work to minimize the scope and extent of railroad conflicts, interaction, and railroad flagmen needs in accordance with the Project design. The Contractor shall follow applicable submittal and construction requirements as outlined Section 10 (Railroads) of Exhibit E (Technical Requirements).



The Contractor shall cooperate fully with each impacted railroad company within the Project Limits and shall make every effort to avoid delays and conflicts to either the Project or the railroad company. The Project Schedule shall include all reasonable effort required to resolve railroad conflicts. In addition, the Project Schedule shall include flagmen notifications activities for each construction phase, Buildable Unit submittal reviews, and contractual timeframes for review and comments. In the event that the Contract Documents show different durations for railroad review, the longest railroad review period within the Contract Documents shall prevail.

The design of the Project shall be performed to maximize distance from railroad loading influence so to minimize impacts to permanent railroad infrastructure. The Contractor shall ensure that permanent improvements (i.e. abutments, piers, etc.) are not placed within railroad right-of-way.

The Contractor shall coordinate all needed railroad design reviews and shall coordinate with the applicable railroad(s) to determine plan package submissions required for railroad review including defining limits of railroad regions of concern. In addition, plan package review submissions shall be developed in the agreed defined limits of railroad regions of concern as applicable to the impacted railroad. Design packages shall be submitted at interim, final, and construction unless otherwise agreed with the applicable railroad(s). Submittals shall include all Work within the applicable railroad region of concern (as agreed with the railroad and Contractor) and shall not be segmented partial design pieces of an entity but shall be the overall design phased submission of the entity. Buildable Unit Submittals for railroad review shall not be defined by types of Work, but shall be determined by the limits of railroad regions of concern. Construction submittals for track protection, construction erection procedures, and other construction related submittals which require railroad approval and review shall be submitted with the construction design submittal to the railroad. These submittals shall be concurrent to the Department.

The Contractor shall coordinate responses to railroad review comments ensuring adequate and reasonable responses to all railroad review comments and shall coordinate, with the Department's assistance, all identified railroad flagmen needed for construction operations.

If the Contractor is directed by a railroad company to perform work not specifically required by the Contract Documents or a Railroad Agreement, the Department will not compensate the Contractor for this work unless the Department approves the request in writing before the work begins. The Department will not compensate the Contractor if the railroad's direction is reasonably and ordinarily expected while considering similar conditions at the same time and locality.

The Contract Documents will indicate various railroad review time frames for technical submittals, which the Contractor shall validate with the railroad(s) as part of the Phase 2 Proposal. Upon approval by the Department of the adjusted railroad's technical submittal review time, the Contractor shall cooperate with the Department to ensure the revised technical submittal review times are adopted in the railroad's updated schedule. The Contractor shall ensure that the Project Schedule includes all needed railroad interaction timings. The Phase 2 Change Order will include dates when the Department expects the railroad to complete railroad infrastructure relocation or adjustment, if applicable. The Contractor shall provide adequate notification consistent with the notification protocols in the applicable railroad's manual throughout the Construction Period to railroads who are required to adjust their infrastructure to prevent conflict with the Contractor's schedule of operations. The Contractor shall reasonably adjust its operations if its planned construction efforts conflict with railroad infrastructure

adjustment or relocations. The Contractor shall provide sufficient detail with respect to each railroad's infrastructure relocations and show the time frame or date when the railroads are scheduled to complete their railroad infrastructure relocations or adjustments in the Design Documents. The Contractor shall provide a complete listing and details of railroad infrastructure relocations or adjustments required to deliver the Work within the Phase 2 Proposal and any omissions therefrom shall not be grounds for a Claim.

The Contractor shall consider all past railroad interactions when determining phasing, response times, and past railroad responses when preparing the Phase 2 Proposal, and shall anticipate and incorporate sufficient Float in the Project Schedule to accommodate railroad actions which may include re-submittals of plan review packages.

If any railroad fails to relocate or adjust infrastructure as provided for in the Contract Documents, or fails to meet reasonable and defined submittal review timeframes, and the Contractor sustains losses or delays that could not have been avoided by the judicious design efforts, 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 every reasonable effort to design and construct the Work to reasonably avoid the railroad impact.

## 7.4 Railroad Agreements

The Department has entered into, or is in the process of entering into, Railroad Agreements with each of the affected railroads which will be included in the Phase 2 Change Order. Technical coordination shall be handled by the Contractor with notification to the Department.

## 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 30 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 of the Contractor or Principal Participant or Major Participant without the prior written approval of the Department.

### 8.4 Selection of Subcontractors

Prior to awarding any Major 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, provided that the selected Subcontractor's bid does not exceed by more than 10 percent the independent estimate for that subcontract package prepared by the ICE. In the event that the selected Subcontractor's bid exceeds the independent estimate for that subcontract package by more than 10 percent, 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 the independent estimate for that subcontract package by more than 10 percent, and the Work cannot be reconciled to within 10 percent of the independent estimate for that subcontract package, 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 or 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.

As provided in KRS Chapter 338 in the Kentucky Occupational Safety and Health Act and in subsequent regulations and standards promulgated by the Kentucky Occupational Safety and Health Standards Board, do not require any personnel employed in performance of the Contract, including employees of Subcontractors, to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to the employee's health and safety for Work with the Commonwealth of Kentucky.

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, KYTC 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, KYTC 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, KYTC 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 Phase 1 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. Letter of reprimand;
- B. Contract termination; and/or
- C. Other remedies available by law including administrative suspension (consultant 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.

In order for the Contractor to "Designate" an individual as a Contractor's Representative for the purpose of this Section 10.1.2 (Contractor's Representative), the following process shall occur. First, the Contractor shall submit, in writing, a request to the Department seeking to appoint or change any Contractor's Representative. Any request submitted by the Contractor shall contain a representation by the Contractor that the individual proposed will, subject only to acceptance by the Department, have full authority to represent and act for the Contractor and be delivered together with supporting documentation of the individual's qualifications and capacity to perform the role. Second, once in receipt of the Contractor's request, the Department shall have the right to accept or reject the designated individual(s) for any reason or no reason at all. If the Department is satisfied with the designation, it shall issue, in writing, an acceptance of the Contractor's designated individual(s).

The Contractor's Representative may be the same individual or a different individual to the individual designated as the Contractor's 'Project Manager' under the Key Personnel provided that if the Contractor's Representative is a different individual to the individual designated as

'Project Manager', the Contractor's Representative shall be an individual with authority over the Contractor's designated 'Project Manager'.

## 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.

The Contractor shall provide the Department with office and cell phone numbers and email addresses for the Key Personnel. The Department shall have the ability to contact any Key Personnel 24 hours per day, 7 days per week. All Key Personnel shall be immediately accessible during the duration of their tenure as applicable to the phase of the Project and shall be reasonably accessible throughout the Term to answer questions as needed.

### 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

Except for Professional Services for geotechnical field exploration activities, which shall be paid in accordance with Appendix I to Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process), the Contractor's compensation for Professional Services undertaken in the performance of the Phase 1 Work shall be computed as the actual paid direct labor rates for the personnel performing the Phase 1 Work multiplied by the number of hours worked by such personnel multiplied by the Phase 1 Multiplier Rate.

The Phase 1 Multiplier Rate includes overtime payments, indirect costs (overhead), travel, subsistence, non-salary direct costs and facilities capital cost of money.

Other actual and documented costs for the Phase 1 Work will be compensated at actual cost.

The Phase 1 Mark-Up will be applied to the Contractor's compensation for the Phase 1 Work.

The Contractor's compensation for the Phase 1 Work is subject to the limitations and exclusions set forth in the remainder of this Section 11.1 (Cost Principles and Limitations for Phase 1).

The Phase 1 Multiplier Rate is subject to the limitations and exclusions set forth in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process).

### 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 Estimates and Payments

During the Contractor's performance of the Phase 1 Work, the Contractor shall submit bi-monthly invoices for payment on 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 Requirements for FAR Participants

This Section 11.5 is applicable to those Component Firms (the "FAR Participants") that establish and maintain acceptable, fully articulated Financial and Cost Accounting Systems that track, classify, and allocate costs in accordance with the requirements of Part 31 of the Federal Acquisition Regulation (FAR Part 31) and applicable Cost Accounting Standards (the "FAR Participants").

To qualify as a FAR Participant, the Component Firm must submit an indirect cost rate schedule (ICRS) compliant with FAR Part 31, applicable Cost Accounting Standards, and related Federal regulations. The ICRS must be approved by either ODOT's Office of External Audits or KYTC's External Audit Branch. As evidence of approval, the Component Firm shall provide the project team an ICRS approval certificate or letter from ODOT or KYTC, as applicable.

FAR Participants shall maintain labor-time records in a manner that will permit, at any time during the performance of the Phase 1 Work or at the conclusion of the Phase 1 Work, a direct comparison of estimated labor listed in any Price Proposal that is accepted by the Department and incorporated into a Sub-Phase 1A Change Order or Sub-Phase 1B Change Order to actual labor expended. In accordance with FAR Part 31 the FAR Participant bears the burden of proof to establish the allowability, allocability, and reasonableness of any costs. This applies to all costs, including costs directly assigned to and the Work and indirect costs recovered through the application of an overhead rate and/or facilities capital cost of money (FCCM) rate.

The Department may conduct interim and final audits and/or financial reviews to determine the actual, allowable costs incurred during Phase 1. In all cases, the Department will apply the cost principles and procedures set forth in FAR Part 31, as amended from time to time, and any other special criteria established in the PDBC. This includes additional Department policies

and/or interpretations of Federal laws and regulations, including the AASHTO Uniform Audit & Accounting Guide, the State of Ohio Travel Regulations (Ohio Administrative Code Rule 126-1-02), and/or the KYTC Professional Services Policies and Regulations as applicable.

In compliance with 23 U.S.C. 112(b)(2)(B), all FAR Participants that perform any Professional Services shall submit indirect cost schedules compliant with FAR Part 31 and related Cost Accounting Standards. ODOT does not require CPA-audited indirect cost schedules; however, if a CPA has performed such an audit, it shall be included in the submittal package.

## **11.6 Compensation for Early Work Packages and 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 relevant Early Work Package or 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), or KYTC SS 607.03 as appropriate. 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. In Kentucky reports shall be per KYTC SS 607.03.13.
- 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 Estimate that is deficient in Material approval.

The Department will not pay an Estimate until the Contractor certifies to the Department that the Work for which payment is being made was performed in accordance with the Contract Documents. Certification shall be made on forms provided by the Department.

The Department will not pay the adjusted Final Estimate 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 Lane Closure Deductions

Per Exhibit S (Lane Value Contract), the Contractor shall be assessed disincentives as designated in the Lane Value Contract table for each unit of time each described critical lane/ramp is restricted from full use by the traveling public within the restricted time period. The Contractor shall be assessed a disincentive as designated in the Unauthorized Lane Use table for each unit of time each critical lane/ramp is closed by the Contractor's action while not otherwise permitted by the Contract.

The values of disincentives will be finalized and agreed between the Parties during Phase 1 and the completed Lane Value Contract tables and processes for assessing disincentives will be included as part of the Phase 2 Change Order.

### 11.10.3 Noncompliance Deductions

Certain of the Contractor's failures to perform and breaches of its contractual obligations under the Contract Documents constitute Noncompliance Events (NCEs) as set forth under Exhibit F (Noncompliance Points System) that may result in the assessment of Noncompliance Points. The Contractor will be assessed Noncompliance Charges with respect to accumulated Noncompliance Points.



#### 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. The Department intends for the Parties to consider establishing equitable incentive and disincentive provisions taking into consideration further development during Phase 1 of the Base Design, the Risk Register, the MOT Plan and the Project Schedule.

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 of any Change Order pertaining to an Early Work Package or during the negotiations 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); provided however, upon mutual written agreement, such initial Price Proposal may be converted to a Lump Sum Contract Price. The agreed upon compensation structure pertaining to any Early Work Package or the Phase 2 Change Order will be memorialized in the corresponding Change Order.

#### 11.11.1 Initial Price Proposals

The Contractor will initially establish a Guaranteed Maximum Price (GMP) for any Early Work Package or 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.

In the event the Department and the Contractor agree to convert any GMP Price Proposal into a Lump Sum Price Proposal, the payment of such Lump Sum Contract Price shall be administered in accordance with Section 11.12.4 (Lump Sum Price Proposal—Estimates and Payments). Under the Lump Sum compensation method, the payment by the Department of a Lump Sum item shall be deemed to include complete payment for the Work described in that item.

#### 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 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 CPM - cost loaded schedule or Schedule of Values and (iii) invoiced in payment applications for the duration of the 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).

During the development of the initial GMP Price Proposal to be incorporated into the Phase 2 Change Order, all amounts held in the corresponding Contractor's Risk Contingency under any Early Work Package shall be carried forward and added to the amounts attributable to any additional Contractor Risks that are allocated to the Contractor under the Phase 2 Change Order such that the aggregate amount of the Contractor's Risk Contingency shall be equal to the sum of the remaining Contractor's Risk Contingency under each Early Work Package and the Contractor's Risk Contingency established with respect to the balance of the Phase 2 Work.; provided however, to the extent any Contractor Risk is closed on the Risk Register during the performance of the Work, then amounts attributable to such closed Contractor Risk shall be deemed GMP Savings upon Completion of the Contract.

Upon Completion of the Contract if there is a remaining balance in the Contractor's Risk Contingency (inclusive of any amounts carried forward from any Early Work Package or any remaining amounts allocated under the CPM – cost loaded schedule or Schedule of Values at the conclusion of a Risk Register Event), then, subject to the terms and conditions of the Phase 2 Change Order, including the agreed upon Contractor's Fee, with up to 50% of such amount being disbursed to the Contractor and the balance being retained by the Department. Any disbursement of Contractor's Risk Contingency savings shall be calculated and paid as part of the Final Payment. The Contractor shall not be entitled to any portion of the Contractor's Risk Contingency savings 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 to be retained and administered by the Department, which may be included within the GMP Price Proposal. In the event the Department elects to establish a Department's Risk Contingency and upon Completion of the Contract there is a remaining balance in the Department's Risk Contingency (inclusive of any amounts carried forward from any Early Work Package), then upon the Department's confirmation that such remaining balance is attributable to the Contractor's assumption and management of the Department's Risk and subject to the terms and conditions of the Phase 2 Change Order, including the agreed upon Contractor's Fee, up to 20% of such remaining amount may be disbursed to the Contractor with the balance being retained by the Department. Any disbursement of Department's Risk Contingency savings shall be calculated and paid as part of the Final Payment.

The Department may also elect to establish a separate Department Risk Contingency which will not be incorporated within a GMP Price Proposal.

Notwithstanding anything to the contrary contained herein, to the extent any Risk Register Event is closed on the Risk Register during the performance of the Work and without the occurrence of any triggering event, then the GMP shall be reduced in an amount equal to the values allocated to such closed Risk Register Event.



### **11.11.3 GMP Price Proposal—Contractor’s Fee**

In accordance with any approved GMP Price Proposal, the Contractor shall be paid the Contractor’s Fee negotiated in conjunction with the corresponding Change Order based upon the factors set forth under 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 an increase in the Contractor’s Fee in an amount equal to the product of the Contractor’s Fee percentage multiplied by the cost of the Work 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 subject to the terms and conditions of the Phase 2 Change Order, including the agreed upon Contractor’s Fee, the GMP Savings shall be allocated between the Contractor and the Department at a rate of up to 25% to the Contractor and the balance being retained by the Department. Any GMP Savings shall be calculated and paid as part of the Final Payment.

## **11.12 Administration of Estimates 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 a CPM Schedule. 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. Each of the Contractor’s requests for progress payments may incorporate a request for the payment of a portion of the Contractor’s Fee based upon the amount of the approved Period Costs for the corresponding Processing Date.

### **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 CPM or 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 pendency of such Risk Register Event. Contractor Risk Contingency Items which do not have defined triggering events are to be included in the cost loaded CPM schedule or 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.

#### **11.12.4 Lump Sum Price Proposal—Estimates and Payments**

With respect to any approved Lump Sum Price Proposal, the Contractor shall submit bi-monthly invoices for payment for the corresponding Work. The Contractor shall estimate the current percentage completion of each cost and resource loaded schedule activity as depicted in the approved Project Schedule. The Contractor shall justify the estimated current percentage completed by providing the estimated level of Work completed compared to the total work for each activity in the Project Schedule. DBE specific work items shall be separately itemized and shall correspond to the DBE work item breakdown in the Project Schedule.

The Department will review each proposed current percentage completion and revise the percentage, if necessary, based on the Department's judgment of the percent completed or Work performed, the applicability of any approved incentives, and reductions attributable to any disincentives. The Department may make DBE specific work item payments if, in the Department's judgment, 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 percentage of completion accepted by the Department, multiplied by the portion of the Contract Price attributable to the invoiced Item of Work as depicted in the approved Project Schedule, will define the gross amount of the payment due to the Contractor for that item of Work. Each payment is approximate, and all partial Estimates and payments are subject to correction after payment by the Department.

## 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: 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 authorizing Early Work Packages, the Change Order shall be executed in accordance with Section 2.3.3.1 (Early Work Package Proposal).
5. 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).
6. 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.

For Contract adjustments that reduce the scope of Work during Phase 1, the Contract Price shall be reduced in an amount equal to the difference between the cost of the original Work (including Phase 1 Markup) and the cost of the revised Work (including Phase 1 Markup). For

Contract adjustments that reduce the scope of Work during Phase 2 or the performance of any Early Work Package, the Contract Price shall be reduced in an amount equal to the difference between the cost of the original Work and the cost of the revised Work and the Contractor's Fee shall be applied to the cost of the revised work; provided however, to the extent the Phase 2 Contract Price (or any Early Work Package Contract Price) incorporates a Lump Sum conversion, then the Work Package Mark-Up shall be applied in accordance with the process pertaining to Phase 1 as described above.

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 NPCO 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 additionally 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, or Early Work Packages, 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, or Early Work Packages, 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/or Early Work Package Change Order(s) 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 and/or Early Work Package 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. Independent Cost Estimator (ICE) and State Cost Estimator (SCE) and 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 1 Mark-Up, Contractor's Fee, or Work Package Mark-Up, as applicable, 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 T (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).

Lane closures within the Project which are 30 days or less that are shown as part of an accepted MOT Plan in the Contract Documents, and which are impacted by weather will be extended for the actual Workdays lost each month. Lane closures within the Project, 31 Days or longer that are shown as part of an accepted MOT Plan in the Contract Documents, which are impacted by weather will be extended per Exhibit T.

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 State of Kentucky and its representatives, 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 culpable act, error, omission, negligence, breach or misconduct of any Contractor-Related Entity in or associated with performance of the 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, Project Management Plan 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 Required Insurance

Without limiting Contractor's indemnification of the Department and the Indemnified Parties, and prior to commencement of Work, Contractor shall obtain, at its own expense, and continuously maintain in full force and effect, the insurance coverages specified in this Section 17. Coverage shall be maintained through Notice of Final Completion pursuant to Section 5.14.2.2 (Notice of Final Completion), or such longer or shorter time as may be specifically provided in this Section 17. The Contractor may use any combination of corporate insurance policies, project-specific policies, or a contractor controlled insurance program ("CCIP") provided that the selected policies comply with all of the requirements in this Section 17, except as otherwise provided by this Section 17.

All insurance required hereunder shall be procured from insurance companies with an A.M. Best and Company rating level of A-: VI or better and authorized or approved to do business in the State of Ohio, or as otherwise approved by the Department. All limits of insurance set forth below are in U.S. dollars. Each policy of insurance of the type and amounts described below shall in a form satisfactory to the Department.

Unless otherwise required, the Contractor agrees to immediately notify the Department in writing if the Contractor or any of its Subcontractors fails or refuses to renew its any insurances required under this Contract. The Contractor shall notify the Department if the Contractor's or its Subcontractors' policies are canceled, lapse, are terminated or modified so that any insurance does not meet the requirements set forth in this Section 17.

### 17.2 Property Insurance (Course of Construction)

Upon commencement of Construction Work and with approval of the Department, the Contractor shall obtain and maintain a policy of builder's risk insurance for the Project as specified below. The policy may be a Contractor corporate master program policy or a stand-alone policy as long as all of the requirements of this Section 17 are met. The insureds shall be the Contractor, all Subcontractors (excluding those solely responsible for Design Work) of any tier, the Department, and the Indemnified Parties. Coverage extended to the Department and the Indemnified Parties shall NOT be limited by use of the phrase "as their interests may appear".

#### 17.2.1 Minimum Scope

The Contractor shall provide a builder's risk insurance policy on an "all risk" basis. Such coverage may be provided under a Contractor's master builder's risk program or may be provided under a project-specific policy, whichever provides the broadest coverage. Such insurance shall be on a replacement cost basis using a completed value form reasonably acceptable to the Department to ensure adequacy of terms and sublimits.

The policy shall cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and Equipment that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and

temporary works and materials, and including goods intended for incorporation into the works located at the Project ROW, in storage or in the course of transit to the Project ROW and all Contractor improvements that are within the Project ROW. The policy shall not cover tools or Equipment used by any contractor to perform their work. Such tools and Equipment are the sole responsibility of the contractor who owns or uses such tools.

The builder's risk policy must include coverage for:

- (1) Any ensuing loss from faulty workmanship, Nonconforming Work, error, omission or deficiency in design or specifications;
- (2) Machinery accidents and operational testing, if applicable;
- (3) Removal of debris, with a sub-limit of 25% of the loss or a sublimit of no less than \$25,000,000, and insuring the buildings, structures, machinery, Equipment, Materials, facilities, fixtures and all other properties constituting a part of the Project;
- (4) Transit, including ocean marine coverage (unless insured by the Supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key Equipment item;
- (5) Sub-limits sufficient to insure the full replacement value of any property or Equipment stored either on or off the Site;
- (6) Collapse;
- (7) Terrorism;
- (8) Plans, blueprints and specifications;
- (9) Demolition and increased cost of construction as required by law or ordinance with a sub-limit of no less than \$20,000,000; and
- (10) Soft costs expense (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof). The soft cost expense sublimit may be included with the sublimit for delay.

There shall be no coinsurance penalty provision in any such policy. Deductibles or self-insured retentions shall be no greater than 5 percent of the total value insured at the time of loss subject to a minimum deductible no greater than \$250,000. All deductibles or self-insured retentions shall be the responsibility of Contractor.

The policy shall provide a "severability of interests provision," or "multiple insured's clause" or similar wording that the policy shall apply to each insured as if a separate policy had been issued to each insured except as to limits.

### **17.2.2 Damage to Property Coverage**

Coverage shall be for "all risks" of direct physical loss or damage to property of every kind and description intended to become a permanent part of, or consumed in, the fabrication, assembly, installation, erection or alteration of the Project. In addition the builders' risk policy shall include coverage provisions or endorsements that provide for the following: Earthquake, flood, windstorm; pollutant clean-up; expediting expenses; and debris removal. Finally, the Contractor acknowledges and agrees that the Contractor shall be liable for all claims the Contractor should



have reasonably obtained coverage under a builder's risk policy, for a Project such as this, but did not obtain coverage. The policy shall provide coverage per occurrence up to the full replacement cost or a loss limit based on a Probable Maximum Loss (PML) study of the covered property loss, provided, however, that the policy may include appropriate sublimits for earthquake, earth movement, tsunami and flood but in no event less than \$50,000,000 aggregate each for earthquake and flood. If a PML option is used, then the study supporting the PML must be provided to the Department, and the PML may only be used as an alternative if it is approved, in writing, by the Department. At its option, the Department may provide a PML obtained at the Department expense. If the Department accepts the PML so obtained, the Department may require the Contractor to obtain coverage with a loss limit less than full replacement cost. Any additional insurance premium shall be paid for by the Department through a Change Order. Any reduction in insurance premium shall be credited to the Department through a deductive Change Order.

### **17.3 Workers Compensation and Employer's Liability Insurance**

During all phases of the Project, the Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a policy or policies of insurance providing workers' compensation statutory benefits and employer's liability in conformance with the laws of the State of Ohio. Employer's liability limits shall be no less than \$1,000,000 each accident, each employee, and policy limit, if scheduled under the excess or umbrella liability policies to reach a total of \$100,000,000. The workers' compensation policies shall provide the following:

- A. A waiver of subrogation in favor of the Department and the Indemnified Parties;
- B. A provision extending coverage to all States' operations;
- C. A voluntary compensation endorsement;
- D. An alternative employer endorsement;
- E. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act, as appropriate, by adding a Longshore and Harbor Workers' Compensation Act coverage endorsement (WC 00 01 06 A) to a standard workers compensation policy or by purchasing stand-alone coverage from a federally authorized insurer;
- F. Coverage for liability under Title 46 of the United States Code § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and
- G. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

### **17.4 Commercial General Liability Insurance**

The Contractor shall obtain and maintain a policy or policies of commercial general liability insurance for bodily injury, death, property damage, personal injury and advertising injury, damage to existing property and resulting economic losses, Project ROW, and Project Site, or shall obtain a separate project-specific general aggregate limit under the Contractor's corporate program of insurance. Coverage shall be written on an occurrence form that shall provide



coverage at least as broad as the coverage provided by Insurance Services Office (ISO) form CG 00 01.

The policy or policies shall be endorsed to remove exclusions pertaining to railroads. There shall be no “contractors limitation” endorsements as that term is defined as of the date of this Contract in the Glossary of Insurance and Risk Management Terms published by the International Risk Management Institute (<http://www.irmi.com/online/insurance-glossary/default.aspx>), that have not been reviewed and approved by the Department or its representatives. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract.

The commercial general liability insurance coverage shall have limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. Completed operations coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute either through continuous maintenance of completed operations coverage in the Contractor’s corporate insurance program, including an endorsement providing completed operations coverage for additional insureds, or by purchase of extended completed operations coverage for a project-specific policy. If project-specific coverage through statutory exposure is not commercially available, completed operations coverage shall extend for at least ten years from Completion of the Contract. If a project-specific policy is provided, Contractor shall be the named insured and each of the Indemnified Parties shall also be an insured as to any loss or liability arising out of or in any way related to the Project, Project ROW, or Project Site. If Contractor’s corporate program is used with a project-specific general aggregate limit, each of the Indemnified Parties shall be an insured under that policy.

Additionally, Contractor shall obtain Explosion, Collapse, and Underground (XCU) coverage at the same limits as the commercial general liability insurance policy.

## 17.5 Automobile Liability Insurance

The Contractor shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain a business auto liability policy or policies. Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance, or use of all vehicles connected with performance of the Work, including loading and unloading. Contractor auto liability policies shall cover “any auto” (symbol 1) or shall be specifically endorsed to include liability coverage on an excess basis for vehicles owned or operated by Subcontractors. Policies shall include as an insured anyone liable for the conduct of an insured as defined in the policy, or shall add as insureds, the Indemnified Parties. For any contractor of any tier, including any Contractor, who will be involved in any way with the transportation of Hazardous Materials using its own vehicles, pollution liability coverage at least as broad as that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided and the automobile liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) with a sublimit of no less than \$2,000,000.

Contractor’s automobile liability coverage shall have a combined single limit per policy period of not less than \$200,000,000 and may be scheduled under the excess or umbrella liability policies

to achieve the desired limit. Excess or umbrella policies shall cover “any auto” (symbol 1) or shall be specifically endorsed to include liability coverage on an excess basis for vehicles owned or operated by Subcontractors.

The Contractor shall require and confirm that no automobile liability policy issued to a Subcontractor shall contain a self-insured retention exceeding \$50,000 per accident unless approved by the Department. Deductibles, as opposed to self-insured retentions, are not included in this restriction.

## 17.6 Umbrella or Excess Liability Insurance

The Contractor shall obtain and maintain an umbrella or excess liability insurance policy with annual limits of not less than \$200,000,000 exclusive to the Project, that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth in Section 17.4 (Commercial General Liability Insurance), including commercial general liability and employer’s liability in excess of the amounts set forth above. The Contractor may use its corporate insurance program or a combination of corporate insurance and stand-alone policies to meet this requirement provided that the general aggregate limits available for this Project are not subject to erosion by losses on other projects not related to this Project.

Such policy or policies shall include the following terms and conditions:

- A. Policies shall contain a drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted or for occurrences covered by an umbrella policy but not covered in the underlying insurance;
- B. Policies shall provide coverage at least as broad as found in the underlying primary policies; and
- C. There shall be no “contractors limitation” endorsements as described in Section 17.4, that have not been reviewed and approved by the Indemnified Parties or their representatives.

The Department and the Indemnified Parties shall be included as insureds on the excess policy including coverage extension to all insureds for completed operations.

## 17.7 Pollution Liability Insurance

The Contractor shall obtain and maintain contractor’s pollution liability (CPL) insurance with a total limit of liability of no less than \$50,000,000 per loss and \$50,000,000 in the aggregate per policy period dedicated to this Project. The Contractor may use a corporate CPL program, provided that coverage extends for a minimum 10-year period as described in the next paragraph.

The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire Construction Period. The CPL shall provide for a minimum 10-year coverage period, including the Construction Period and an extended reporting period. If an occurrence-based form is not available, coverage may be provided under a claims-made form provided that the 10 year-coverage and claim reporting period is provided either through an extended reporting period or

through continuous maintenance of coverage with no advancement of a retroactive date that is no later than commencement of the Work.

The CPL policy shall include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other contamination to the extent required by environmental laws caused by pollution conditions resulting from covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by construction operations. The policy shall have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway.

Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials.

The Department and each of the Indemnified Parties shall also be insureds. The policy shall not contain any provision or exclusion (including any so-called “insured versus insured” exclusion or “cross-liability” exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

## 17.8 Professional Liability Insurance

During Sub-Phase 1A, the Contractor shall obtain and maintain or cause others, as appropriate, to obtain and maintain professional liability insurance, including Contractor’s professional liability and liability for Design Work and Professional Services covering Design Work and Professional Services performed in connection with the PDBC, with limits not less than \$5,000,000 per claim and in the aggregate. At the conclusion of Sub-Phase 1B, no earlier than 30 Days prior to proposed agreement on GMP, and for all other phases of the Project, the Contractor shall obtain and maintain or cause others, as appropriate, to obtain and maintain a project specific professional liability insurance, including Contractor’s professional liability and liability for Design Work and Professional Services covering Professional Services performed in connection with the PDBC, with limits not less than \$50,000,000 per claim and in the aggregate. The cost of such project specific professional liability insurance policy will be included in the Contract Price subject to the terms and conditions set forth in Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). The project specific professional liability insurance policy will be written retroactively such that the nature and scope of the coverage shall not be time or phase limited and will fully cover all Design Work and Professional Services performed since the date of the Sub-Phase 1A NTP.

No self-insured retention for the Contractor or Designer shall exceed \$1,000,000 without prior written approval from the Department, in its good faith discretion. Coverage shall apply specifically to professional activities performed under the Contract Documents. The policy(ies) shall have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which the RFP was issued.

The Contractor agrees to maintain this required coverage for a period of no less than five years after Substantial Completion or to purchase an extended reporting period for no less than five years after Substantial Completion. The Contractor shall require the Designer to agree to maintain this coverage for a period of no less than five years after Substantial Completion or to purchase an extended reporting period for no less than five years after Substantial Completion.

## 17.9 Railroad Protective Liability Insurance

The Project will remove and replace the existing I.R. 71/I.R. 75 grade separations with new grade separation structures. Furthermore, the Department is not contemplating or anticipating the elimination of existing railroad grade crossings as a result of the proposed and anticipated Work. Therefore, Laws governing the elimination of grade separations, including but not limited to Chapter 5523 of the Revised Code of the State of Ohio, do not apply to the Work contemplated and anticipated for this Project.

As a result of the foregoing, and as required under applicable Ohio Law, the Department requires the Contractor to obtain, before any Work is being performed within 50 feet of any railroad, and maintain in effect until such Work is completed and accepted, a policy of railroad protective liability insurance from an insurance company authorized to do business in the State of Ohio, to protect any railroads affected against loss or damage to property and injury to or death of persons, and against all claims, demands, expenses, suits or judgments arising because of, or resulting from the operations of the Contractor, its Subcontractor(s) at all tiers, agents or employees. Such policy of insurance is to provide for a single limit in the amount of \$5,000,000.00 per occurrence and subject to that limit, an aggregate in the amount of \$10,000,000.00 for each annual period for all damages arising out of bodily injuries to or death of one or more persons and out of injury to or destruction of property including such property in the care, custody and control of the railroad.

Further, such insurance policies required under this Section 17.9 shall exclude coverage for liability imposed upon any railroad arising from the railroad's sole negligence or the sole negligence of its employees, agents, or assigns in connection with the railroad's direct operations, including but not limited to, direct railroad operation and any construction performed by the railroad on the job.

## 17.10 Aircraft Liability Insurance

Contractor shall provide, or cause to be provided, aircraft liability insurance, with a limit of not less than \$25,000,000 per accident or higher limits as may be required by the Department, in all cases where any aircraft is used on the Project that is owned, leased, hired, or chartered by any Contractor-Related Entity, protecting against claims for damages resulting from such use. For any aircraft intended for use in performance of the Work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project Site or on any property owned by the Department, shall be subject to review and written acceptance by the Department prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft. The Department and the Indemnified Parties shall be added as insureds under any such policy.

## 17.11 Comprehensive Marine Liability Insurance

The Contractor shall provide, or cause to be provided, liability insurance covering the ownership, use, maintenance, loading or unloading of watercraft related to the performance of Contractor's Work or any other operations contemplated under this Contract. Additionally, this insurance must include the following coverage: (i) protection and indemnity; (ii) pollution liability; and (iii) Jones Act. Policies shall provide a limit of not less than \$25,000,000 per occurrence or higher limits as may be required by the Department, in all cases where any watercraft is used on the Project that is owned, leased, hired, or chartered by any Contractor-Related Entity. Such coverage may be arranged in any combination of primary and excess policies, all of which shall include the Department and the Indemnified Parties as insureds and shall explicitly waive subrogation against the Department and the Indemnified Parties.

## 17.12 General Requirements, Conditions, and Agreements Pertaining to Insurance

### 17.12.1 Premiums, Deductibles and Self-Insured Retentions

The Contractor shall be responsible for payment of premiums for all insurance required under this Section 17. The Department and the Indemnified Parties have no obligation to pay any premium. The Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Contractor is responsible hereunder, the Contractor shall be solely responsible for all deductibles or self-insured retentions. Any self-insured retentions maintained by the Contractor over \$1,000,000 must be declared and approved by the Department. At the option of the Department, the insurer shall either reduce or eliminate such self-insured retentions with respect to the Department, and the other Indemnified Parties; or the Department in its good faith discretion, may require posting of collateral by Contractor guaranteeing payment of losses and related investigations, claims administration and defense expenses.

### 17.12.2 Evidence of Insurance

Concurrently with Contractor's execution hereof or on such later date on which coverage is required to be provided hereunder the Contractor shall furnish the Department with certificate(s) of insurance for insurance policies and coverage required to be acquired and provided by Contractor under this Section 17. Such certificate(s) shall comply with the following requirements:

- (i) State the identity of all carriers, the identity of the named insureds, the type of coverage, the description of policy limits, the deductibles, the other essential policy terms, and a statement of non-cancellation;
- (ii) Be on ACORD Form 25, for each insurance carrier involved;
- (iii) Be signed by an authorized representative of the insurance carrier or producer;
- (iv) Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the PDBC;
- (v) Specify the additional insureds and named insureds as required herein;

- (vi) Refer to this PDBC by number on the face of the certificate; and
- (vii) Expressly reference the inclusion of all required endorsements.

The certificate(s) provided must be adequate to allow the Department to determine if all insurance requirements have been met. Certificate(s) for newly issued policies shall be delivered to the Department within 10 Days Contractor acquiring such coverage. The Department shall have no duty to pay or perform under this PDBC until such evidence of insurance, in compliance with all requirements of this Section 17 has been provided.

In addition, the Contractor acknowledges and agrees that the Contractor shall provide certified copies of all declarations pages or of the insurance policies themselves, upon request by the Department, within 20 Days of such request.

### **17.12.3 Enforcement of Contract Provisions (non estoppel)**

The Contractor acknowledges and agrees that any actual or alleged failure on the part of the Department to inform Contractor of non-compliance with any requirement imposes no additional obligations on the Department nor does it waive any rights hereunder.

### **17.12.4 Renewal Policies**

The Contractor shall promptly deliver to the Department evidence of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such evidence shall be delivered to the Department not less than 15 days prior to the expiration date of any policy, or such shorter period as approved in advance by the Department.

### **17.12.5 Policy Endorsements and Waivers**

All insurance policies required hereunder shall contain or be endorsed to comply with the following provisions:

- A. For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this PDBC that is maintained by an Indemnified Party, their directors, officers, employees, agents, and consultants shall be excess of such insurance and shall not contribute with it.
- B. Liability insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. If Contractor's liability policies do not contain the standard Insurance Services Office separation of insureds provision, or a substantially similar clause, such policies shall be endorsed to provide cross-liability coverage.
- C. Policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days prior written notice has been given to the Department by Contractor or its insurance broker or insurer except for nonpayment of Policy Premium which shall be 10 days.



- D. All endorsements adding insureds to required commercial general liability policies shall provide additional insureds with coverage for “completed operations,” or a separate endorsement providing such coverage must be added to the policy.
- E. Each policy shall provide coverage on an “occurrence” basis and not a “claims made” basis (with the exception of professional liability) and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time except as specified for pollution liability policies.

### **17.12.6 Waivers by the Parties**

The Department and Contractor waive all rights against each other, against each of their agents and employees and their respective members, directors, officers, employees, agents and consultants for any claims to the extent covered by insurance obtained pursuant to this [Section 17](#), except such rights as they may have to the proceeds of such insurance. Contractor shall require all Subcontractors to provide similar waivers in writing. Workers’ compensation/employers liability policies shall include by endorsement or otherwise, a waiver of any right of subrogation against the Department and the Indemnified Parties.

### **17.12.7 Changes in Insurance Requirements**

The Department shall notify Contractor in writing of any changes in the requirements applicable to insurance to be provided by Contractor. Except as set forth otherwise in this Contract, any additional cost from such change shall be paid by the Department and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

### **17.12.8 No Recourse**

There shall be no recourse against the Department or the Indemnified Parties for payment of premiums or other amounts with respect to the insurance to be provided by Contractor hereunder.

### **17.12.9 Non-Limitation of Insurance Requirements**

The insurance coverage provided and limits required hereunder are minimum requirements and are not intended to limit the Contractor’s indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this [Section 17](#) are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. With the exception of any insurance required by a railroad, liability coverage will not be limited to the specific location designated as the Project Site except that if the Contractor arranges project-specific general liability, excess liability, or workers’ compensation coverage, limitations of coverage to the project site will be permitted subject to the Department approval and use of the broadest available site-specific endorsements. No liability policy shall contain any provision or definition that would serve to eliminate so-called “third-party-over action” claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or Subcontractor.

### **17.12.10 Commercial Unavailability of Required Coverages**

If, through no fault of the Contractor, any of the coverages required in this Section 17 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, the Department will consider in good faith alternative insurance packages and programs proposed by the Contractor, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. The Contractor must demonstrate to the Department's satisfaction that it has used diligent efforts in the global insurance markets to place the required insurance coverages, and shall advise the Department of the specific results of those efforts. The Contractor shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. The Department shall be entitled to a reduction in the Contract Price if the Department, in its sole discretion, agrees to accept alternative policies providing less than equivalent coverage.

### **17.12.11 Notice and Prosecution of Claims**

The Department shall have the right, but not the obligation, to submit the Department's claims and tenders of defense and indemnity under applicable insurance policies. Unless otherwise directed by the Department in writing with respect to the Department's insurance claims, the Contractor shall be responsible for reporting and processing all potential claims by the Department or Contractor or tenders for defense and indemnity under the appropriate insurance policies. The Contractor agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by the Contractor or the Department and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. The Contractor shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Governmental Rules in order to collect thereon, including pursuing necessary litigation and enforcement of judgments.

The Contractor shall immediately notify the Department, and thereafter keep the Department fully informed, of any incident, potential claim, claim or other matter of which the Contractor becomes aware that involves or could conceivably involve an Indemnified Party as a defendant. Contractor will cooperate with the Department, and shall require its liability insurers to agree in writing to work with the Department to assure compliance with all regarding timely response to claims.

The Department agrees to promptly notify the Contractor of the Department's incidents, potential claims against the Department, and matters of which the Department is actually aware which may give rise to a Department insurance claim or to a right of defense and indemnification under the Contract. Delivery of any such notice will constitute a tender of the Department's defense of the claim to the Contractor and the insurer under any applicable Insurance Policies, subject to the Department's rights to control its own defense to the extent provided in the PDBC or by applicable Governmental Rules. The Department shall cooperate with the Contractor as necessary for the Contractor to fulfill its duties hereunder, including providing the Contractor a copy of all written materials the Department receives asserting a claim against the Department that is subject to defense by an insurer under an Insurance Policy or by the Contractor under the Contract.



If, in any instance, the Contractor has breached its obligations respecting insurance coverage set forth in the Contract Documents or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining damages resulting from the breach or inability to enforce or collect, on or determining reductions in compensation due from the Department to the Contractor, the Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had the Contractor performed such obligations or not committed such failure. Nothing in this Section 17.12.11 or elsewhere in this Section 17 shall be construed to treat Contractor as electing to self-insure where the Contractor is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the insurance policy is written meets the rating qualifications set forth in this Section 17.

In the event that an insurer providing any of the insurance policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the State Department of Insurance, the Contractor shall exercise best efforts to promptly, and at its sole cost and expense, secure alternative coverage in compliance with the insurance requirements contained in this Section 17 so as to avoid any lapse in insurance coverage.

#### **17.12.12 Commencement of Work**

The Contractor shall not commence Work under this PDBC until it has obtained the insurance required under this Section 17, has furnished original evidence of insurance for the required coverage as required under this Section 17, and such insurance has been approved by the Department, nor shall Contractor allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by the Contractor.

#### **17.12.13 Contractor's Failure to Comply**

If the Contractor or any Subcontractor fails to provide and maintain insurance as required herein, then the Department shall have the right but not the obligation, to purchase such insurance or to suspend the Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by the Department (plus an administrative charge equal to 10% of the cost) shall, at the Department's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand, plus interest thereon from the date of payment by the Department to the reimbursement date, at the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules. Nothing herein shall preclude the Department from exercising its rights and remedies under this Section 17.12.13 as a result of the failure of Contractor or any Subcontractor to satisfy the obligations of this Section 17.

If on account of the Contractor's failure to comply with the provisions of this Section 17, the Department is adjudged to be responsible for all or any portion of a judgment, loss or settlement (through admission or stipulation by Contractor or court decision) that would have been covered by insurance but for non-compliance with this Section 17, then any loss or damage it shall sustain by reason thereof shall be borne by Contractor, and the Contractor shall immediately

pay the same to the Department, upon receipt of written demand therefor and evidence of such loss or damage.

#### **17.12.14 Subcontractor Insurance Requirements**

The Contractor shall cause each Subcontractor to provide insurance that complies with requirements for Contractor-provided insurance set forth in this Section 17 in circumstances where the Subcontractor acts or omissions are not covered by Contractor-provided insurance, including automobile liability. Except as otherwise specified in this Section 17, the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. The Contractor shall cause each such Subcontractor to include the Department and the Indemnified Parties as additional insureds under such Subcontractor's general liability and excess liability insurance policies. If requested by the Department, the Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. The Department shall have the right to contact the Subcontractors directly in order to verify the required coverage.

#### **17.12.15 Disclaimer**

The Contractor and each Subcontractor shall have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage that they deem advisable, whether or not specified herein.

The Department makes no representation or warranty that the coverage, limits of liability or other terms specified for the insurance policies to be carried pursuant to this Section 17 are adequate to protect the Contractor against its undertakings under the Contract Documents or its liability to any third party or preclude the Department from taking any actions as are available to it under the PDBC or otherwise at law. The Department shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against the Contractor arising out of or by reason of failure of the Contractor to provide and keep in force the insurance policies required by and on the terms of this Section 17, but the Department shall instead be entitled to recover the full amount of damages available.

#### **17.13 Owner Controlled Insurance Program**

Notwithstanding the foregoing, the Department may elect to insure the Project and/or the Work (or applicable portions thereof) under a comprehensive Owner Controlled Insurance Program ("OCIP"). In the event, the Department elects to proceed with the procurement of an OCIP the Department shall modify accordingly the nature and extent of the Contractor's or any Subcontractor's or Subconsultant's obligation to secure the insurance policies and provide evidence of such policies as required by Section 17 (Insurance Requirements). In the event the Department elects to secure an OCIP to insure the Project and/or the Work (or applicable portions thereof), the Department shall notify the Contractor either (i) prior to the issuance of the Phase 1A NTP with respect to any OCIP secured to cover the Phase 1 Work and/or all or a portion of any Early Work Package and the Phase 2 Work, or (ii) during the development of the Contractor's Price Proposal with respect to any OCIP secured to cover any Early Work Package and/or all of the Phase 2 Work.

## 18 PARTNERING AND DISPUTE RESOLUTION

### 18.1 Partnering

The Department intends to encourage the use of an extensive partnering program among the Department, the Cabinet, 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 2.2 (Project Meetings), provided however such provisions under the Technical Requirements shall be supplemented by the partnering provisions set forth in Exhibit R (Facilitated Partnering).

### 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.

During the pendency of any Dispute or Claim, the Contractor covenants and agrees to refrain from contacting DDRC members, DRB members, or Department personnel assigned to consideration of the Dispute or Claim in accordance with the Step 1, Step 2, Step 3, Step 4, or advisory recommendation of DRB procedures. Further provided, that until a Dispute or Claim has been fully considered at the previous Step, the Contractor covenants and agrees to refrain from contacting any DDRC member, DRB member, or Department personnel that will consider the corresponding Dispute or Claim at the subsequent Step.

The timeframes for filing a Dispute or Claim with the DDRC, DRB, or Department will be strictly construed and the Contractor's failure to file a Dispute or Claim within the corresponding time periods shall result in the waiver of the Dispute or Claim and the dismissal of the Dispute or Claim without further consideration by the corresponding body. The timeframes for the Department to respond to a Dispute or Claim filed with the DDRC, DRB, or Department 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: Dispute resolution through DRB
  - D. STEP 4: Alternative Dispute Resolution (ADR)
- OPTIONAL PROCEDURE:** Advisory recommendation of DRB

### 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 (14) Days of receipt of the Step 1 decision (or advisory recommendation, if applicable), the Contractor must submit a written request for a Step 2 meeting to the District Construction Administrator (DCA) or the corresponding Dispute will be waived. Upon timely

receipt of written notice that any Dispute shall be escalated, the DCA will assign the Dispute a number.

### **18.3.2 District Dispute Resolution Committee (DDRC) Composition**

The DDRC shall be comprised of a four (4) member committee consisting of (i) the District Deputy Director, (ii) the District Capital Programs Administrator, (iii) the District Construction Engineer, and (iv) a designee of the Secretary of the Cabinet or their respective designees, which designees shall not be Department 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 DCA, 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. 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.
- G. 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) with the Department's written consent, pursue an advisory recommendation of the DRB.

### 18.3.5 Extension of DDRC Timelines

The DDRC shall undertake best efforts to strictly comply with the 14 Day timelines for conducting the DDRC meeting and issuing a written decision as set forth in Section 18.3.4 (DDRC Meeting). In the event the DDRC anticipates that it will be unable to adhere to either timeline set forth in Section 18.3.4, the DDRC shall submit a written request to the Contractor for an extension of the corresponding timeline, which request shall not be unreasonably withheld, conditioned or delayed, provided that the duration of such request, together with the duration of any prior requests shall not exceed a cumulative extension of more than 45 Days beyond the corresponding timeline(s). In the event the cumulative duration of the DDRC's extension requests exceeds 45 Days, the Contractor may elect, with the Department's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to bypass the DDRC proceedings and escalate the underlying Dispute to the Dispute Review Board without further action on the part of the DDRC.

## 18.4 Dispute Review Board (DRB)

### 18.4.1 Purpose

The purpose of the Dispute Resolution Board (DRB) is to provide special expertise to assist in and facilitate the timely and equitable resolution of Disputes and Claims. The goal is to avoid delays to the Work, minimize the expense of settlement, avoid litigation, and promote project partnering. The DRB will render non-binding recommendations on Disputes and Claims brought before it as well as advisory recommendations.

### 18.4.2 Dispute Review Board (DRB) Membership

The DRB will consist of three (3) members. One member is selected by the Department and approved by the Contractor and one member is selected by the Contractor and approved by the Department; provided however, each Party shall have one (1) opportunity to object to the other Party's DRB member selection without cause; provided further, that after such Party's objection without cause has been exhausted, any further objections must be reasonably based upon the proposed member's inability to satisfy one or more of the requirements set forth under Section 18.4.3 (Requirements of DRB Members). Once selected, these first two members will mutually select and agree on the third member from a list supplied by the Contractor and Department who will complement the construction and contract administration experience of the first two members and act as the Chair for all DRB activities. All three members must meet the "Requirements of DRB Members" set forth under Section 18.4.3.

### 18.4.3 Requirements of DRB Members

Members of the DRB shall each have at least fifteen (15) years of experience with the type of Work to be performed in conjunction with the Project, construction contract administration principles, and dispute resolution training.

Members of the DRB must not show or be perceived to be showing partiality or bias to either the Contractor or the Department. A DRB member shall not have any conflict of interest which could affect their ability to act in a disinterested and unbiased manner.

A person proposed as a member of the DRB shall submit a resume covering such member's applicable education and experience to the party appointing him/her. The resume shall include a list of all DRBs on which the candidate currently serves and any projects on which the candidate serves as a dispute resolution advisor along with meeting frequencies. A disclosure statement shall be submitted and include, but not limited to, any of the following categories of relationships or prior involvement in this project:

- A. A direct or indirect ownership or financial interest in the Contractor, Sub-Consultant, Sub-Contractor or any supplier on the Project or any business of another DRB member.
- B. Current employment by the Department, the Cabinet, the Contractor, a Sub-Consultant, a Subcontractor or supplier on the Project.
- C. Within the one (1) year period immediately prior to award of this PDBC, employment by the Department, the Cabinet, or the Contractor, any Sub-Consultant, Sub-Contractor, or any supplier on the Project or any business of another DRB member.
- D. A close personal relationship with any senior employee of any Component Firm.
- E. A prior involvement in a project of a nature which might be construed as compromising such member's ability to act impartially in carrying out the duties of the DRB.
- F. A contract as a consultant to the Department, the Cabinet, the Contractor, or any Sub-Consultant or Sub-Contractor or supplier on the Project.

Category "A" and "B" relationships listed above shall disqualify a person from serving on the DRB for this Project. The other categories listed above will be considered by the Department and the Contractor to determine whether to accept a person as a member of the DRB. If a prospective DRB member discloses a relationship or prior involvement in this Project listed in other than category "A" and "B" and is considered to be highly qualified and desirable as a DRB member, the Department and the Contractor may, by mutual agreement, approve that person to serve as a member on the DRB.

If a DRB candidate submits a disclosure statement which fails to provide accurate and complete disclosure of a relationship described in A through F above, the Department may disqualify that candidate from serving on a DRB on future Department projects.

Notwithstanding anything to the contrary contained herein, service as a member on other project DRBs shall not be construed as employment and therefore will not preclude a person from membership on the DRB for this Project.

#### **18.4.4 DRB Establishment**

Every attempt shall be made by the Department and the Contractor to complete the selection of DRB members and execute the DRB Three-Party Agreement prior to the date of the preconstruction conference. At a minimum, the following timeframes for establishment of the DRB must be followed.

Within twenty-one (21) Days of the signing of this PDBC, the Department and Contractor shall each obtain a written commitment from their proposed member to serve as a DRB member along with the resume and disclosure statement. These commitments shall include a clause that requires the first two members to immediately pursue selection of the DRB Chair. Within this same timeframe, the Department and Contractor must also give the other Party notice of the



person they have selected to serve as a DRB member. This notice shall be accompanied by the resume and disclosure statement.

Within fourteen (14) Days of receiving the notice of selection of a DRB member, the Department and the Contractor shall notify the other Party in writing as to whether the person selected is acceptable in accordance with Section 18.4.3 (Requirements of DRB Members). Except for any selection that is being objected to without cause, such notification shall provide a specific reason for such non-acceptance based upon Section 18.4.3. Failure to give this notice within the required fourteen (14) Day timeframe shall be construed to be acceptance of the proposed member by the non-responding Party.

If a person selected is not acceptable to the other Party, the Party who selected that person shall within seven (7) Days select another person and provide to the other Party a notification accompanied by the resume and disclosure statement submitted by that person. Within seven (7) Days written notification shall be given as to whether the person selected is acceptable in accordance with Section 18.4.3, and if not acceptable such notification shall provide a specific reason for such non-acceptance based on Section 18.4.3. Failure to give this notice within the required timeframe shall be construed to be acceptance of that member by the non-responding Party.

Once the Department and the Contractor have agreed upon the first two members of the DRB the Department and the Contractor shall immediately notify those members of their approval. Within seven (7) Days of this notification, the Department and Contractor will each provide the first two members with a list of not less than two (2) potential members from which the DRB Chair will be selected. Within seven (7) Days of receipt of the list of potential members, the first two members shall select the DRB Chair ensuring that the DRB Chair meets all the Requirements of DRB Members set forth under Section 18.4.3 (Requirements of DRB Members) above and give written notice to both the Department and Contractor accompanied by that person's resume and disclosure statement. In the event of an impasse in selection of the DRB Chair, that member shall be selected by mutual agreement of the Department and Contractor.

If any DRB member is removed in accordance with the provisions of Section 18.4.5, then such member shall be replaced in accordance with the process set forth herein and the non-appointing Party shall be entitled to one (1) objection without cause to any proposed replacement member.

Immediately after agreement is reached on all members of the DRB, the Department, Contractor, and the members of the DRB shall execute the DRB Three Party Agreement. The terms and conditions of the DRB Three-Party Agreement will not modify the requirements, terms, or conditions of this PDBC.

### **18.4.5 Termination of DRB Members**

If during the Term of this PDBC, a DRB member's status changes with respect to category "A" or "B" categories set forth in Section 18.4.3 (Requirements of DRB Members), he or she shall immediately disclose this in writing to both the Department and the Contractor. Upon receiving such notification, the Department or the Contractor may, within seven (7) Days, give notice that this DRB member is no longer acceptable and such member shall be replaced in accordance with the procedures set forth in Section 18.4.4 above. In no event, shall a DRB member participate in a hearing of a dispute or claim involving a firm by which they are employed.

In addition to the circumstances described above, service of a member of the DRB may be terminated at any time with not less than thirty (30) Days' notice under the following circumstances:

- A. The Department may terminate the service of the Department appointed member.
- B. The Contractor may terminate the service of the Contractor appointed member.
- C. The DRB Chair's service may be terminated only by agreement of the other two members.
- D. Resignation of the member.
- E. Either the Department or the Contractor may issue a written request to the DRB and the other Party to terminate a member's service upon a finding that such member has engaged in conduct that includes any or all of the following: (a) a criminal act or act involving moral turpitude; (b) any act that brings the DRB member into public disrepute, contempt, or scandal, or which otherwise shocks or offends the community or any group or class thereof; and/or (c) any act which reflects unfavorably upon the Department or the Contractor; within seven (7) Days of any such written request, the other members of the DRB, the Department and the Contractor shall by majority vote determine whether to remove such DRB member.

Any DRB member is removed in accordance under A-E above shall be replaced in accordance with the procedures set forth in Section 18.4.4 above.

#### **18.4.6 Dispute Review Board (DRB) Member Replacement**

In the event that a vacancy on the DRB occurs, replacement members will be appointed in the same manner as the replaced member was appointed. The selection of a replacement DRB member shall be completed within thirty (30) Days of the creation of the vacancy. The Department, the Contractor, and the DRB shall execute an amendment to the DRB Three Party Agreement to reflect the change of a DRB member.

#### **18.4.7 DRB Operation and Duties**

The DRB, with input from the Department and the Contractor, will establish its DRB operating procedures.

The Department and Contractor shall mutually agree upon the appropriateness of holding in-person update status meetings or Dispute Hearing or holding such meetings virtually.

The members of the DRB will keep current on the progress of the Project by: 1) quarterly visits to the Project, 2) keeping current files, 3) meetings with other DRB members, and 4) joint meetings with Department and Contractor personnel on a quarterly basis. The frequency of Project visits and meetings and content of members' files shall be as agreed upon among the Department, the Contractor, and members of the DRB, and the frequency of which such visits to the Project Site and meetings may be increased or decreased as deemed necessary and appropriate by the Department, the Contractor, and the DRB members.

The DRB Chair shall be responsible for arranging and conducting meetings, hearings, Project visits, and drafting DRB recommendations on Claims presented to the DRB.

The DRB will not maintain an official transcript of its hearings or deliberations. The DRB members shall perform their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of this PDBC.

The DRB will exist for the Term of this PDBC only and will not review Disputes or Claims on any other project unless as otherwise agreed upon by the Department and the Contractor. If, after Contract Completion, there are unresolved Disputes and Claims remaining, the DRB Three Party Agreement shall remain active and in full force and effect until the Project is otherwise administratively closed by the Department following final payment so that the DRB may continue in operation until all unresolved Disputes and Claims are resolved or voluntarily dismissed.

### **18.4.8 Advisory Recommendation Procedure**

To permit the DRB to act in an advisory capacity to assist the Department and the Contractor in resolving selected Disputes, the advisory recommendation procedure may be used to provide the Parties with a preliminary assessment of the merits of each Party's position in the Dispute based upon the information presented pursuant to this advisory recommendation process. The process shall be conducted in an expedient manner, shall be primarily oral, and will not prejudice a future formal DRB hearing of the underlying Dispute.

Any advisory recommendation procedure is not to be substituted for the good faith negotiation efforts. Rather, the Party's should utilize this procedure when negotiations have reached a temporary impasse whether after the Step 1, Step 2, or Step 3 procedures set forth herein.

#### **18.4.8.1 Identification of Disputes**

A Dispute may be identified as a candidate for an advisory recommendation by the Department, the Contractor, the DRB, or any combination thereof.

#### **18.4.8.2 Written Concurrence of Both Department and Contractor**

Both the Department and the Contractor must agree in writing that any Dispute is appropriate for the advisory recommendation procedure; if the Department and the Contractor fail to agree that any Dispute warrants an advisory recommendation within the time period corresponding to the next Step, the Dispute must proceed through the Dispute Resolution Procedures as set forth in this Section 18 (Partnering and Dispute Resolution).

#### **18.4.8.3 Pre-meeting Submittals to the DRB**

Prior to the consideration of any Dispute in conjunction with this the DRB shall decide the nature of the submissions that it wishes the Parties to make, on a case-by-case basis. The DRB will require submission of brief position papers of one to two pages to all Parties. Include copies of relevant specification sections, plans, notes, drawings, and other pertinent PDBC and /or Project related documentation. The submission will be made at least fifteen (15) Days prior to the next quarterly meeting unless the Parties agree to alter the time frames.

#### **18.4.8.4 Scheduling of Advisory Recommendation Meetings**

In most cases, the Dispute will be scheduled for presentation to the DRB at the DRB's next regularly scheduled meeting. If the Parties agree and the schedules permit, a Dispute may be heard during the period between the regularly scheduled meetings, in which case, a meeting will be scheduled at a time and location convenient to the parties and the DRB.

#### 18.4.8.5 Conduct of Meetings

The Contractor will make its presentation first, followed by the Department. Each Party will be allowed sufficient time to make a thorough oral presentation, make rebuttals, provide the DRB with relevant documentation and respond to the DRB's queries and requests. After receiving all relevant information, the DRB members will, at their discretion, privately caucus to discuss their assessment of the Dispute. Either that same day or the next, the DRB will orally share and discuss with the parties its assessment and recommendations with respect to the Dispute. The advisory recommendation shall not be binding on either party or on the DRB and does not require either party to accept or reject it. The recommendation does not prejudice the opportunity for a DRB hearing if the Dispute is not resolved. If the Dispute is presented to the DRB formally at a later date, pursuant to this [Section 18](#), the DRB will focus anew upon the facts of the Dispute as presented at that time, without reference to the advisory recommendation meeting.

#### 18.4.8.6 Resolution of Advisory Recommendation Process

The advisory recommendation of the DRB will be used by the Parties at any time after Step 1 or Step 2 of the Dispute Resolution Procedures. If the Parties remain unable to resolve the Dispute following this advisory recommendation procedure, the Dispute shall proceed to the next level of the Dispute Resolution Procedures within the corresponding timeframe.

#### 18.4.9 Procedures for Consideration of Disputes

Within fourteen (14) Days of receipt of the Step 2 decision, the Contractor must submit a written notice of intent to appeal to the DRB to the Claims Coordinator or the Contractor's Claims shall be waived. This notice shall state the Contractor's request for a DRB hearing. The Contractor must also submit copies of this notice to the DCA, the Claims Coordinator, and the Deputy Director of the Division of Construction Management.

A Dispute becomes a Claim when the Department representatives receive the aforementioned written notice. The DRB will not consider a Claim until the DDRC has properly reviewed a Dispute and issued a decision in accordance with [Section 18.3](#) (District Dispute Resolution Committee).

The DRB's Operating Procedures for Dispute Resolution established by the DRB will set forth the Step 3 (Appeal to DRB) process in detail. At a minimum, the DRB operating procedures will establish both the requirements and timeframes for documentation submissions by both the Contractor and Department, documentation exchange between the Contractor and Department, and the hearing procedures.

The Contractor shall submit its Claims Documentation in accordance with the DRB's operating procedures. In addition to the Dispute Documentation submitted at Step 2, the Claims Documentation shall be enhanced to include the following:

1. An overview of the Project.
2. A narrative of the disputed Work or Project circumstance at issue with sufficient description and information to enable understanding by a third party who has no knowledge of the Dispute or familiarity with the project.
3. The dates of the disputed Work and the date of Early Notice.

4. Discuss the efforts taken to partner the Dispute.
5. References to the applicable provisions of the plans, specifications, proposal, or other contract documents. Copies of the cited provisions shall be included in the Claim document.
6. Response to each argument set forth by the Contractor.
7. Any counterclaims, accompanied by supporting documentation, the Department wishes to assert.
8. Copies of relevant correspondence and other pertinent documents.

The DRB may also require additional information be included in the Department's Claims Documentation. The DRB may also require additional information be included in the Contractor's Claims Documentation.

Upon submission of the Claims Documentation, the Contractor shall certify the Claim in writing and under oath. The date the Claims Coordinator receives the certified Claims Documentation is the date of the Department's Receipt of the Certified Claim for the purpose of the calculation of interest.

In the event of multiple interrelated Claims as determined by the DRB, the DRB may propose that such separate Claims be considered in a single hearing and upon written concurrence of the Department and the Contractor, the DRB shall hear such interrelated Claims together. All interrelated Claims must have completed Steps 1 and 2 prior to being heard by the DRB. Provided the Department and the Contractor have concurred in writing to the joinder of the interrelated Claims, the DRB shall hold this hearing within thirty (30) days of the Claims Coordinator's receipt of the certified Claims Documentation for all such interrelated Claims. In the absence of Department and Contractor concurrence concerning the DRB's proposal, the DRB shall proceed to consider all Claims in separate hearings.

The DRB will hear the entire Claim. The DRB will hear oral presentations from the Department and the Contractor. The DRB may, on its own initiative, request information of the Contractor or the Department in addition to that submitted for the hearing. If either party fails to reasonably comply with such request, the DRB may render its recommendation without such information.

Upon completion of the hearing and consideration of any additional information submitted upon request, the DRB will render its written recommendation within fourteen (14) Days of the hearing.

The recommendation of the DRB shall be by majority vote. The recommendation shall be a well-reasoned decision which, at a minimum, shall include:

1. The claim number; the project number; county, route, and section number; Contractor name; subcontractor or supplier's name, if involved in the Dispute; and the commonly referenced name of the Dispute on the cover sheet or the first page of the decision.
2. Sufficient description of the project and the claim to enable understanding by a third party who has no knowledge of the claim or familiarity with the project.
3. The value of the claim as determined by the Contractor, if applicable.
4. The value of the claim as determined by the Department, if applicable.
5. Finding of fact and a conclusion that provides clear direction to the parties.

The DRB Chair must submit copies of the recommendation to the Contractor, the Deputy Director of the Division of Construction Management, and the DCA.

Within three (3) days of receipt of the recommendation, either party may request a meeting of the DRB to hear the DRB's explanation of the recommendation. Within seven (7) days of this request, the DRB Chair shall conduct this meeting with both the Department and the Contractor.

Within twenty-one (21) Days of receipt of the DRB's recommendation, the Contractor must indicate its intentions in writing to the Department and the Chair with respect to the recommendation. The Director or designee will determine the Department's intentions with respect to the recommendation in writing to the Contractor and the Chair within twenty-one (21) Days of receipt of the recommendation.

Either the Department or the Contractor may appeal a recommendation to the DRB for reconsideration by filing notice of such appeal to the other Party and the Chair within twenty-one (21) Days of receipt of the recommendation. However, reconsideration will only be allowed when there is new evidence to present.

The recommendation of the DRB is the final step of the Department's Dispute Resolution Process and may not be appealed within the Department. The DRB is not bound by any offers of settlement or findings of entitlement made during Steps 1 and 2 of the Dispute Resolution Process.

The Department will pay interest in accordance with Section 126.30(E) of the Ohio Revised Code on any amount found due on a Claim which is not paid within 30 Days of the Department's receipt of the Contractor's certified Claims Documentation pursuant to this Section 18.4.9.

The recommendation of the DRB may be submitted for consideration in a subsequent proceeding, whether litigation or Alternative Dispute Resolution as specified in Section 18.5.

## **18.5 Alternative Dispute Resolution (ADR)**

Subsequent to any DRB recommendation, upon the written consent of the other Party, either Party may elect to proceed with the alternative dispute resolution process outlined herein, which election must be made within fourteen (14) Days of the date of the corresponding DRB recommendation. Upon such election, the Parties will proceed to mediation conducted in accordance with the methods that are practiced by the Department permitted under State law.

1. Within twenty (20) Days of the Parties' mutual agreement to proceed with the alternative dispute resolution process, the Dispute Resolution Coordinator will coordinate a written agreement between the Parties setting forth the terms of the mediation, and the selection of a neutral third-party, technical expert to conduct the mediation proceedings. The fees of the neutral third-party mediator will be shared equally between the Department and the Contractor. The neutral third-party mediator will retain complete control and oversight over the Claim upon the execution of the mediation agreement.
2. Prior to any ADR proceedings, an Authorized Contractor Representative shall re-certify the Contractor's Claim in a written form consistent with that required under Section 18.4.9 (Procedure for Consideration of Disputes) above in conjunction with the DRB proceedings.



3. The neutral third-party mediator shall conduct all ADR proceedings in accordance with the mediation agreement, after which the result of the ADR proceedings shall represent the final ADR procedure available under this PDBC.

## 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. Any component of the disincentives relating to lane closures provided in Exhibit S (Lane Value Contract) that may be consequential in nature.
3. 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 or the Commonwealth, and in particular the Department, Cabinet and any of their respective employees, officers, directors, commissioners and officeholders, agents, representatives, consultants, attorneys, successors, and permitted assigns.

## 18.12 Disputed Payment

If upon completion of Step 3 of the Dispute Resolution Procedures, the recommendation of the DRB is made in favor of the Contractor, and the Parties have either (i) mutually agreed to proceed with the alternative dispute resolution procedures within the required 14-day timeframe or (ii) preceded to litigation, then during the pendency of the alternative dispute resolution procedures and/or subsequent litigation, subject to the criteria set forth under Sections A-C below, the Department agrees to pay the Contractor an amount equal to fifty percent (50%) of the Direct Costs of the disputed Work documented and tracked in accordance with the force account procedures set forth in attached Exhibit H (Force Account Provisions). Payments made by the Department under this Section will be made in accordance with the following criteria:

- A. The Department will not be obligated to make any payment of Disputed amounts until the documented Direct Costs pertaining to the Work that is the subject of the Dispute are equal to or greater than \$5,000,000, and the Department's obligation under this Section shall cease once the actual documented Direct Costs paid by the Department under this provision with respect to all Disputes are equal to \$300,000,000 in the aggregate.
- B. This provision shall only entitle the Contractor to the payment of Direct Costs attributable to individual Disputes, and the Contractor shall not be permitted to combine Disputes for purposes of this provision; provided however, if the DRB and the Parties agree that multiple Disputes are interrelated in accordance with Section 18 of this PDBC, then, subject to the maximum payment limitations under Section 18.12, A above, such Disputes may be combined for purposes of this provision.
- C. In the event an underlying Dispute is resolved in the Department's favor, then the Contractor will be obligated to promptly reimburse the Department for the amount, if any, in excess of what Contractor was determined to be entitled to receive under the terms of the final settlement, plus interest accruing from the date upon which the initial amounts were paid by the Department to the Contractor through the date on which the underlying Dispute achieved final resolution.

The Contractor acknowledges and agrees that any payment made by the Department under this Section 18.12 shall not constitute a waiver on the part of the Department of (i) its right to be reimbursed should any Dispute be resolved in its favor, or (ii) its right to assert subsequent defenses or raise newly discovered claims against the Contractor based upon additional facts discovered during the pendency of the underlying Dispute. The Department acknowledges and agrees that the Contractor's receipt of partial payments shall not constitute a waiver on the part of the Contractor of (i) its right to receive full payment for the Work pertaining to the underlying Dispute, or (ii) its right to assert subsequent defenses or raise newly discovered claims against the Department based upon additional facts discovered during the pendency of the underlying Dispute.

## 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; or

### 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 (either with or without the use of the Contractor 's Materials, Equipment, tools and instruments) 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 Quality Management System 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 20 (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, as determined by the costs allocated to such Work in the cost and resource loaded Project Schedule. 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, as determined by the costs allocated to such Work in the cost and resource loaded Project Schedule. 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 any Early Work Package Change Order or 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 applicable Early Work Package Change Order or component 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 Project Warranty Term

The warranty term for the Work shall extend two (2) years from the Department's issuance of Notice of Substantial Completion, in accordance with [Section 5.14.2.3](#) (Notice of Substantial Completion), for such Work. If, after receipt of the foregoing notice, Nonconforming Work is repaired, replaced, or otherwise corrected, the applicable warranty term shall be extended to two (2) years after completion and acceptance of such repair, replacement, or correction of such Nonconforming Work.

## 22.3 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.

## 22.4 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 22.4 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 22.3 (Obligations of Contractor) shall cover any repairs and replacements to any part of the Work or other property caused by the defective Work.

#### **22.4.1 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.

#### **22.4.2 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.

### **22.4.3 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.

### **22.4.4 No Limitation of Obligations Unless Stated in Otherwise in Contract Documents**

Nothing contained in this Section 22.4 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 22.4 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 each Early Work 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 applicable Early Work Package Contract Price (so that the Bond amounts shall be maintained during Phase 1 secures the full amount of the Phase 1 Contract Price as it may be increased by all Early Works Packages, if any, executed by Change Orders).
3. 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).
4. 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 and Commonwealth of Kentucky, depending where the Work is to occur, 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, Kentucky, 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
  5. ODOT Construction Safety Health Manual.
- 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.

[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, the Cabinet, the State of Ohio, or the Commonwealth of Kentucky, 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 or the Commonwealth of Kentucky, including the Department and Cabinet. 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 KSA 45A.485, or that it has taken the appropriate remedial steps required under ORC 9.24, or KSA 45A.485 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 Drawings 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

Prior to the Contract Date, the Contractor, the Department and the Escrow Agent will have executed and delivered the Escrow Agreement to implement the provisions of this Section 25.7, and the Contractor will submit to the Escrow Agent, subject to and according to the schedule provided in the Escrow Agreement, one copy of all documentary information generated with respect to the expected costs of the Work (which uses the estimating methodology actually used by the Contractor to develop the Contract Price (the “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. The Contractor acknowledges that the purpose of the Escrow Agreement and 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.

### 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: 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 will identify all costs. If detailed costs are not available to the Contractor, estimated unit costs are acceptable without a detailed cost estimate, provided, that 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. The Contractor will submit the Escrow Documents in sealed containers to the Department, which containers have been clearly marked on the outside with the Contractor’s name, reference to the Project, and the words “Brent Spence Bridge Corridor Project Escrow Documents”.
- B. On or reasonably after the scheduled Escrow Documents Submission Date, representatives of the Department, assisted by members of the Contractor’s staff who are knowledgeable in how the Escrow Documents were prepared, will have examined, organized and inventoried the Escrow Documents. This examination is to ensure that the Escrow Documents are legible and complete. It does not include review of, and does not constitute approval of proposed construction methods, estimating assumptions, or interpretations of any Work Package Pricing Proposal, including this PDBC. Such examination will not alter any condition or term of any Construction Documents.

Timely submission of complete Escrow Documents as of the corresponding Escrow Documents Submission Date is an essential element of the Contractor’s responsibility and a prerequisite to the execution and delivery of this PDBC by the Department.

**25.7.5 Updating of the Escrow Documents**

As necessary, any update to the Escrow Documents by the Contractor will be submitted by the Contractor to the Escrow Agent on the corresponding Escrow Documents Submission Date and promptly after the Contractor and the Department determine a need to update the Escrow Documents based on, but not limited to, pricing changes due to supply chain issues or inflation. For the avoidance of doubt, previous versions of the Escrow Documents will remain in escrow with the Escrow Agent and will be marked “Previous Version” with the date the version was updated.

**25.7.6 Storage**

The Escrow Documents will be stored at the following address:

\_\_\_\_\_ Bank

Attn: Escrow Services

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

The Contractor will bear the cost for storing the Escrow Documents.



### 25.7.7 Examination and Copying

The Escrow Documents may be examined and, as permitted by the Escrow Agreement, copied by the Department and the Contractor at any time deemed necessary by the Department or the Contractor and for any reason, and 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. No other person will have access to the Escrow Documents.

### 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. To the extent that any document in escrow is a Design Document, it shall be the property of the Department.

### 25.7.9 Final Disposition and Return of Escrow Documents

The Escrow Documents will be returned to the Contractor 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 Assignment by the Department

With the prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, the Department may assign all or part of its right, title, and interest in and to this PDBC, including rights with respect to the Surety Bonds and rights pertaining to other performance security made in favor of the Department, including under any Guaranty, to any governmental entity including Kentucky that succeeds to the governmental powers and authority of the Department

#### 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 each Early Work Change Order 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, Equipment and 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, Equipment and 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 Notice to Parties

As to ODOT:

Brent Spence Bridge Corridor Project Manager  
505 South SR 741  
Lebanon, Ohio 45036

The ODOT Project Manager will coordinate notice to other parties including KYTC in accordance with the approved Major Project Management Plan and the Interstate Cooperative Agreement.

## 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 bid 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 bid 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, 201 KAR 18, 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

\*\*\*\*\*

Approved as to Form and Legality:

\_\_\_\_\_  
Attorney General  
David Yost

**[CONTRACTOR]**

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Name

---

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>BEP</b>	BIM Execution Plan
<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>BSMT</b>	Bi-State Management Team
<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>	Environmental Assessment
<b>EAF</b>	Electric Arc Furnace
<b>ECFA</b>	Estimated Cost of Force Account
<b>EDA</b>	Earth Disturbing Activity
<b>EEI</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>FONSI</b>	Finding of No Significant Impact
<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>ICA</b>	Interstate Cooperative Agreement
<b>ICE</b>	Independent Cost Estimator
<b>ICEA</b>	Insulated Cable Engineers Association
<b>IDQF</b>	Independent Design Quality Firm
<b>IDQM</b>	Independent Design Quality Manager
<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>JDM</b>	Jurisdictional Design & Maintenance
<b>JDMA</b>	Jurisdictional Design & Maintenance Authority
<b>JMF</b>	Job Mix Formula
<b>JV</b>	Joint Venture
<b>KYTC</b>	Kentucky Transportation Cabinet
<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>OKI</b>	Ohio-Kentucky-Indiana Regional Council of Governments
<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>PMO</b>	Project Management Office
<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>RMP</b>	Risk Management Plan
<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>SCE</b>	State Cost Estimator
<b>SDS</b>	Safety Data Sheets
<b>SF</b>	Standard Fabricated members (structures)

<b>SI</b>	International System of Units (Metric)
<b>SM</b>	AASHTOWare Project Sitemanager <sup>TM</sup>
<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-methylolpropane 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 AASHTIO 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.

**Alternative Technical Concept (ATC)** means a concept proposed by the Contractor during the Preconstruction Phase as further described in Section 2.3 (Design Submittals) of Exhibit E (Technical Requirements).

**As-Built Drawings** 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 Schedule** has the meaning assigned in Exhibit T (Critical Path Method Progress Schedule).

**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).

**Base Design** means initially, the drawings depicting the design of the Project provided by the Department during the RFP phase and included in the Technical Requirements, as validated by the Contractor during Sub-Phase 1A and further developed by the Contractor during Sub-Phase

1B such that the Base Design depicts the layout of the Project included in the Phase 2 Project Scope and used to develop the Phase 2 Change Order.

**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 Section 2.4 (Building Information Model) of Exhibit E (Technical 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).

**Best Management Practice Plan** means the documentation detailing how the Contractor intends to conform to the requirements of Section 213 of the KYTC Standard Specifications.

**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.

**Cabinet** means the Kentucky Transportation Cabinet.

**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, Base Design 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.

**Channel** means a natural or artificial watercourse as applicable to KYTC specifications.

**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, any Early Work Package or the Phase 2 Work which shall be the date described as the 'Commencement Date' in the Notice to Proceed applicable to the Work.

**Commercial Quality or Grade** means Materials readily available from commercial sources. These materials require no sampling or testing as applicable to KYTC Standards and Specifications.

**Commonwealth** means the Commonwealth of Kentucky.

**Community Engagement Plan** means the plan setting forth how the Contractor will support the local community as described in Section 5.8 (Community Engagement Plan) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**Companion Bridge** means the new Bridge over the Ohio River adjacent to the Existing Brent Spence Bridge.

**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.

**Conceptual Design** means design information provided by the Department including the layout of the Project described in Section 1 (General) of Exhibit E (Technical Requirements) and LD-07 (Concept I-W Exhibit).

**Conceptual Maintenance of Traffic Plan and Summary Report** means the Contractor's plan for Maintenance of Traffic, per Section 21 (Maintenance of Traffic) of Exhibit E (Technical Requirements).

**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 Quality Management Plan (CQMP)** means the Contractor's plan to ensure quality control and quality acceptance procedures for the Construction Work prepared in accordance with Section 3 (Quality Management) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**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. Early Work performed during Phase 1 may include Construction 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 Fee** means the negotiated percentage incorporated into any approved GMP Contract Price.

**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.

**Corrective Action Request** means the Contractor’s plan for taking Corrective Action in respect of Nonconforming Work, in accordance with Section 3.7 (Nonconforming Work) of Exhibit E (Technical Requirements).

**Corrective Work Plan (CWP)** means the plan described in ODOT C&MS Section 501.05.C (Corrective Work).

**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, the Independent Cost Estimator, and the State Cost Estimator 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 Section 5.3 (DBE Outreach Plan) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**DBE Performance Plan** means the performance plan for achievement of DBE compliance described in Section 5.1 (DBE Performance Plan) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**DBT Construction Manager** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT DBE/EEO Project Plan Coordinator** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Design Manager** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Design QC Manager** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Independent Design Quality Firm Manager** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Lead Bridge Superintendent** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Lead Highway Design Engineer** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Lead Highway Superintendent** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Lead Independent Companion Bridge Engineer** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Lead Structural Design Engineer** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**DBT Project Management Plan (DBT PMP)** means the plan addressing management, administration, design, investigations, construction, environmental monitoring and compliance described in Section 2.1 (DBT Project Management Plan) of Exhibit E (Technical Requirements).

**DBT Project Manager** means the Key Personnel of that name identified in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements).

**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, in each case on the basis of the Base Design, as more fully described in the Project Scope.

**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.

**Design Quality Management Plan (DQMP)** means the Contractor's plan describing the internal quality control and quality assurance procedures, prepared in accordance with Section 3.3 (Design Quality Management Plan) of Exhibit E (Technical Requirements).

**Design Work** means all Phase 1 Work or Phase 2 Work related to the design, redesign, engineering, or architecture of the Project, including validation of the Base Design, 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, Kentucky Board of Engineers and Land Surveyors and has fulfilled the Prequalification requirements under ORC 5526.04 and KRS 45A.825.

**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.

**Early Work** means any Work performed pursuant to an Early Work Package.

**Early Work Package NTP** means the NTP issued by the Department to the Contractor pursuant to Section 2.8.4 (Notice to Proceed for Early Work) of the PDBC.

**Early Work Package** means any package comprising Design Work, Construction Work or both that is proposed (or directed) to be performed during Phase 1, subject to execution of a related Early Work Package Change Order and issuance of an Early Work NTP including any Early Work Packages proposed under Section 2.3.3.1 (Early Work Package Proposal) of the PDBC.

**Early Work Package Change Order** means a Change Order issued by the Department to the Contractor with respect to an approved Early Work Package.

**Early Work Package Contract Price** means, with respect to an Early Work Package, the total compensation payable or to be payable, to the Contractor under a Change Order for the completion of that Early Work Package, as may be modified by any authorized cost changes under any further Change Orders. The basis for an Early Work Package Contract Price (GMP or Lump Sum) shall be as set out in the accepted Early Work Proposal.

**Early Work Package Proposal** means the Contractor's proposal for the performance of an Early Work Package in the form required and including the information required under Section 2.3.3.1 (Early Work Package Proposal) of the PDBC.

**Effective Date** is defined in the preamble of this PDBC.

**Electronic Content Management System** means the Department's computerized system Project document and records management established pursuant to Section 2.1.3 (Document Control) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**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.

**Encroachment Permit** has the meaning assigned in the ODOT or KYTC Encroachment Permit Manual, as applicable.

**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, or the Kentucky Board of Engineers and Land Surveyors (as applicable) 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) or KRS 322.010 (4) (a), 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, Plans for structures for Maintaining Traffic, and Corrective Work Plans.

**Environmental Assessment (EA)** has the meaning assigned in Section 7 (Environmental) of Exhibit E (Technical Requirements).

**Environmental Commitments** means the compliance measures, documentation, timing, and responsibilities described in EN-28 (Environmental Commitments) and Section 7.1 (Environmental Commitments) 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.

**Estimate** 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.

**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.

**Existing Brent Spence Bridge** has the meaning set forth in Section 1 (General) of Exhibit E (Technical Requirements).



**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/or the KYTC External Audit Branch 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, which shall be substantially consistent with the Contractor's Base Design 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 Estimate** 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.

**FONSI** means the Finding of No Significant Impact for the Project on August 9, 2012.

**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.

**Geotechnical Report** means the geotechnical report to be prepared by the Contractor for Work within the Kentucky JDM in accordance with Section 12 (Geotechnical) of Exhibit E (Technical Requirements).

**Geotechnical Exploration Report** means the geotechnical report to be prepared by the Contractor for Work within the Ohio JDM in accordance with Section 12 (Geotechnical) of Exhibit E (Technical Requirements).

**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 1.2 (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 or KYTC.

**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 any Early Work Package, 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 Contractor's Fee under any GMP Contract Price at Completion of the Contract (or completion of the applicable Work Package), and the GMP Contract Price and Contractor's Fee 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.

**Independent Design Quality Firm (IDQF)** means the organization identified in Exhibit C (Proposal Commitments).

**Independent Cost Estimator (ICE)** means the Independent Cost Estimator to be appointed by the Department to validate the Pricing Proposals submitted by the Contractor.

**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.

**Interstate Cooperative Agreement (ICA)** means the document included in Exhibit Y (Interstate Cooperative Agreement).

**Jurisdictional Design & Maintenance (JDM)** means the regional location, as defined within the Contract, for which the applicable ODOT or KYTC design and construction specifications, standards, guidance, special notes, Special Provisions, processes, manuals, technical memos, laws, regulations, or any other guidance applies. Unless otherwise specifically identified, the JDM shall be the state boundaries with which the Construction Work is or will be occurring.

**Jurisdictional Design & Maintenance Authority (JDMA)** means the authority having jurisdiction for design and construction specifications, standards, guidance, special notes, special provisions, processes, manuals, technical memos, laws, regulations, or any other guidance applies. Unless otherwise identified in the Contract Documents, the JDMA shall be ODOT or KYTC depending upon the state boundaries with which the Construction Work is or will be occurring.

**Key Personnel** means those individuals named and listed in Exhibit C (Proposal Commitments) as filling:

- (a) the Key Personnel positions listed in Section 2.1.2 (Key Personnel) of Exhibit E (Technical Requirements); 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.

**KYTC** shall mean the Cabinet and may be used interchangeably with “Commonwealth” or “Cabinet.”

**KYTC Standards and Specifications** means those standards and specifications designated as originating from KYTC under Table 1-1 (Standards and References) of Exhibit E (Technical Requirements), as the same may be amended and updated in conjunction with an applicable Proposal.

**Laboratory** means the testing laboratories under the direct management of ODOT or KYTC, or specifically contracted with ODOT or KYTC 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 Kentucky, Ohio or federal environmental laws and regulations pertaining to the Project. “Laws,” however, excludes Governmental Approvals.

**Lead Agency** has the meaning assigned in Section 3.1 of the Interstate Cooperative Agreement Regarding the Brent Spence Bridge Corridor Project.

**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

**Lump Sum** means a form of pricing and compensation for a Work Package, Buildable Unit or the Phase 2 Work in which the Contractor agrees to perform the Work for a fixed dollar amount that is subject to adjustment only for Change Orders, Extra Work, Excusable Compensable Delays or other adjustments in accordance with the Contract Documents.

**Lump Sum Contract Price** means any Price Proposal approved as a Lump Sum.

**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.

**Major and Minor Items** means, as applicable to KYTC Standards and Specifications, all original Contract Items having a value of 10 percent or more of the original Contract amount, based on the original Contract price and original estimated quantity, are major items. All remaining items are minor items.

**Major Subcontractor** means a Subcontractor or Subconsultant under contract to perform Work with a value exceeding \$500,000.

**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 completion of an Early Work Package, the milestone for opening to traffic of the Companion Bridge, 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.

**Model as a Legal Document** means the BIM is to be signed and/or sealed per the requirements set for by the Ohio Board of Engineers Surveyors, Ohio Administrative Code, and Ohio Revised Code and the Kentucky Board of Engineers and Surveyors and Kentucky Revised Statutes as appropriate for the project.

**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).

**NEPA Documents** means the FONSI or any Environmental Assessment or Supplemental Environmental Assessment, and any revisions to the foregoing.

**Noncompliance Event** means any Contractor breach or failure in the performance of obligations under the Contract Documents set forth in Exhibit F (Noncompliance Points System).

**Noncompliance Events Table** has the meaning set forth in Exhibit F (Noncompliance Points System).

**Noncompliance Points** means the points that may be assessed by the Department for certain Noncompliance Events, as set forth in Exhibit F (Noncompliance Points System).

**Nonconformance Report (NCR)** means the report pertaining to Nonconforming Work which shall be generated by the Contractor and which may be generated by the Department in the circumstances set forth in Section 3.7.1 (Nonconforming Work Process) of Exhibit E (Technical Requirements).

**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 Determination** means the Notice issued by the Department with respect to Noncompliance Events as described in Exhibit F (Noncompliance Points System).

**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 or Early Work. The Notice to Proceed shall establish any conditions and restraints necessary for, or incident to, the performance of the Phase 1 Work, Phase 2 Work or Early 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 Table 1-1 (Standards and References) 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.

**Permitting Plan** means the plan to be prepared by the Contractor to determine roles and responsibilities for permitting as described in Section 7.2 (Permitting) of Exhibit E (Technical Requirements).

**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, an Early work 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 and, if applicable, Early 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 Mark-Up** means the percentage mark-up applied to the Phase 1 Work in order to establish the Sub-Phase 1A Maximum Prime Compensation and the Sub-Phase 1B Maximum Prime Compensation.

**Phase 1 Multiplier Rate** means the multiplier for Professional Services undertaken in the performance of the Phase 1 Work as set forth in Exhibit B (Contract Particulars). The Phase 1 Multiplier Rate shall include direct labor costs, overtime payments, indirect costs (overhead), travel, subsistence, non-salary direct costs and facilities capital cost of money.

**Phase 1 Work** encompasses the Contractor's performance of all contractual requirements associated with Sub-Phase 1A (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 Multiplier Rate for FAR Participants** means the multiplier for Professional Services undertaken in the performance of the Phase 2 Work by FAR Participants as set forth in Exhibit B (Contract Particulars). The Phase 2 Multiplier Rate for FAR Participants shall include direct labor costs, overtime payments, indirect costs (overhead), travel, subsistence, non-salary direct costs and facilities capital cost of money.

**Phase 2 Multiplier Rate for Non-FAR Participants** means the multiplier for Professional Services undertaken in the performance of the Phase 2 Work by non-FAR Participants as set forth in Exhibit B (Contract Particulars). The Phase 2 Multiplier Rate for Non-FAR Participants shall include direct labor costs, overtime payments, indirect costs (overhead), travel, subsistence, non-salary direct costs and facilities capital cost of money.

**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 and KYTC'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 and by the Kentucky Transportation Cabinet (KYTC) in accordance with Kentucky Administrative Regulations (KAR) 603 KAR 2:015, 600 KAR 6:040, and other relevant laws. The Department's and KYTC's Prequalification requirements are set out in the applicable Consultant Prequalification Requirements and Procedures, posted on the Department's and KYTC'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.

**Preventative Action Report (PAR)** has the meaning set forth in Section 3.7.6 (Corrective / Preventative Action Report) of Exhibit E (Technical Requirements).

**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 Base Design 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 or State of Kentucky;
- 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 Brent Spence Bridge Corridor 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) and Section 1.1 (Project Goals) of Exhibit E (Technical Requirements).

**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 Management Office (PMO)** means the facility in which the Parties will co-locate as described in Section 4.1 (Project Management Office) of Exhibit E (Technical Requirements).

**Project Management Plan (PMP)** see DBT Project Management Plan.

**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 11.1 (General Right-of-Way) of Exhibit E (Technical Requirements), together with all additional properties acquired at the Contractor’s request in accordance with Section 11.2 (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 Table 1-1 (Standards and References) of Exhibit E (Technical Requirements), as may be amended in the Project Scope.

**Proof-of-Concept** means the action to be undertaken by the Contractor during Sub-Phase 1A to validate the Base Design or otherwise amend the Base Design to establish a concept for the Project that is acceptable to the Department, is constructable and feasible and achieves the Department's goals and objectives as set forth in Section 1.1 (Project Goals) of Exhibit E (Technical Requirements).

**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 Check Point (QCP)** has the meaning given to such term in the Project Scope.

**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.

**Railroad Agreement** means each of the agreements between the Department and the Railroads described at Section 7.4 (Railroad Agreements) of the PDBC and Section 10.2 (Railroad Agreement) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**Railroad Coordination and Management Plan** means the plan to be prepared by the Contractor for railroad coordination as defined in Section 10 (Railroads) of Exhibit E (Technical Requirements).

**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 or the Kentucky Board of Engineers & Land Surveyors to practice professional engineering in the State of Ohio or Kentucky respectively.

**Registered Surveyor** means a surveyor registered with the Ohio State Board of Registration for Professional Engineers and Surveyors or the Kentucky Board of Engineers & Land Surveyors to practice professional surveying in the State of Ohio or Kentucky respectively.

**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.

**Regulated Materials Management Plan (RMMP)** means the Contractor's plan for Regulated Materials Management as described in Section 7.4 (Regulated Materials) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**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 Management Plan (RMP)** means the Contractor's plan for risk management for its performance of the Phase 1 Work and the Phase 2 Work and for the Project risks owned by and allocated to, the Contractor through the Risk Register.

**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 Lump Sum or GMP, as applicable, into items of work, showing estimated quantities of Work in sufficient detail to determine testing and Material reporting requirements per ODOT Standards and Specifications or KYTC Standards and Specifications, as appropriate.

**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.

**Spill Prevention Control and Countermeasures Plan or SPCC** means a plan prepared by the Contractor in accordance with the Project Scope that provides specific guidance for managing, handling, and disposing of oil spills.

**State Highway Engineer** means, when referenced in KYTC specifications, the State Highway Engineer of KYTC.

**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 [Governing Regulations]. The Submittal of a Standards Deviation is described in Section 1.3 (Standard Deviation Submittal Requirements) of Exhibit E (Technical Requirements) as may be amended in the Project Scope.

**State** refers to the State of Ohio, or the Commonwealth, as applicable, represented by the Director of Transportation, Secretary of the Cabinet or authorized designee.

**State Cost Estimator (SCE)** means the estimator appointed by the Department to develop an engineer's estimate prior to final pricing agreement in accordance with ORC 557.01 (State Cost Estimator).

**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 1.2 (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 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).

**Superpave Mix Design Technologist (SMDT)** means an inspector qualified by the KYTC to submit, adjust, or approve asphalt mix designs as applicable to KYTC specifications.

**Superpave Plant Technologist (SPT)** means an inspector qualified by the KYTC to perform routine inspection and process control, acceptance, or verification testing on asphalt mixtures as applicable to KYTC specifications.

**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 Environmental Assessment (EA)** has the meaning assigned in Section 7 (Environmental) of Exhibit E (Technical Requirements).

**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).

**Traffic Incident Management Plan** means Contractor's plan for detection and response to incidents, as part of the TMP, as described in Section 2 (Project Management) and Section 21 (Maintenance of Traffic) of Exhibit E (Technical Requirements).

**Traffic Management Plan (TMP)** means the Contractor's plan for temporary traffic control prepared in accordance with Section 2 (Project Management) and Section 21 (Maintenance of Traffic) of Exhibit E (Technical Requirements) and providing information to the public on traffic information and access pursuant to Section 2 of Exhibit E as may be amended in the Project Scope.

**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 9 (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, any Early 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, an Early Work Package or the package attached to the Phase 2 Change Order.

**Work Package Mark-Up** means the percentage mark-up established in conjunction with the conversion any GMP Price Proposal into a Lump Sum Price Proposal for a corresponding Work Package.

**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, an Early Work 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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**BRENT SPENCE**

**BRIDGE CORRIDOR**



BRENT SPENCE BRIDGE CORRIDOR PROJECT

# EXHIBIT E

# TECHNICAL REQUIREMENTS

ODOT PID 116649 | KYTC PROJECT ITEM NO. 6-17  
ODOT CONSTRUCTION PROJECT 23-3000

APRIL 10, 2023

ADDENDUM 10



TEAM  
**KENTUCKY**<sup>®</sup>

TRANSPORTATION  
CABINET

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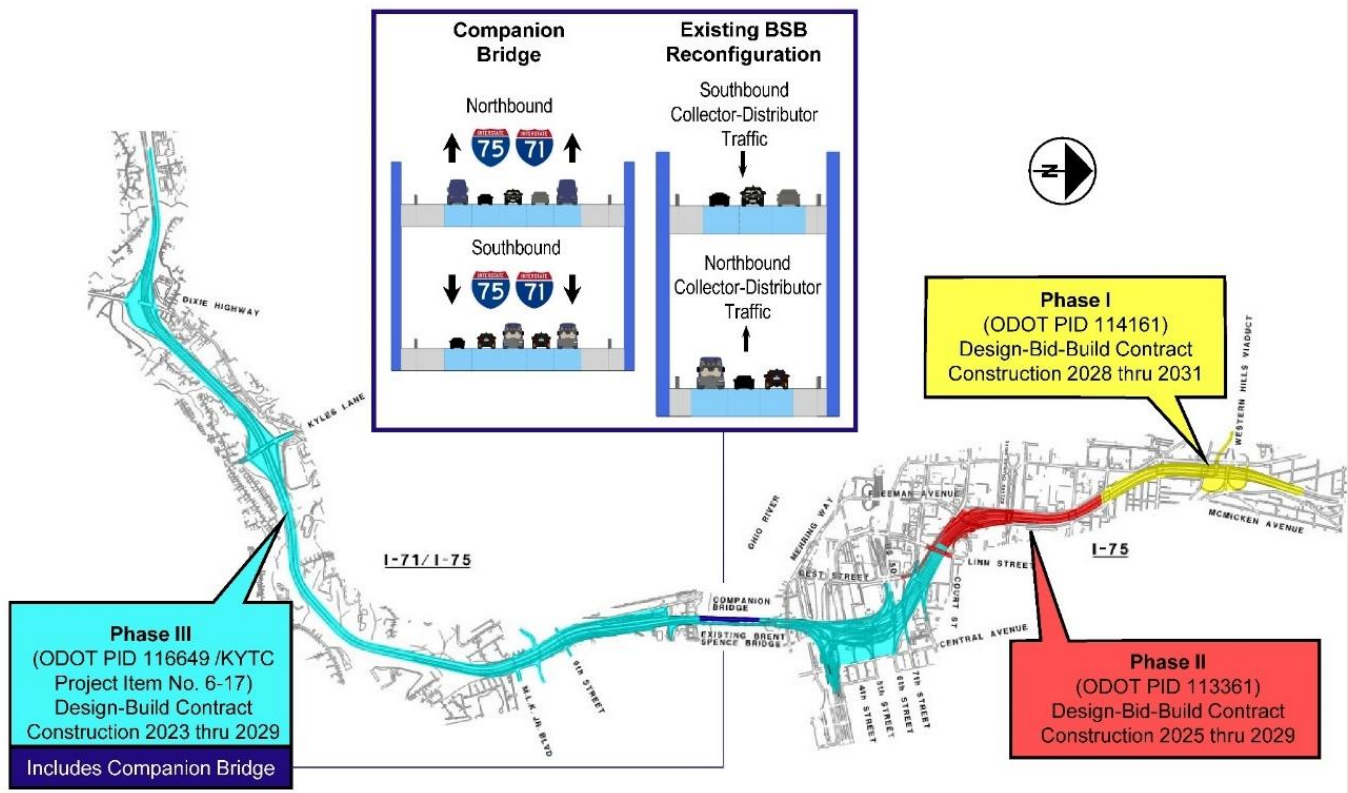
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# 1. GENERAL

The Brent Spence Bridge (BSB) corridor consists of 7.8 total miles of I-71 and I-75 located within portions of Ohio and Kentucky. This corridor is located within the Greater Cincinnati/Northern Kentucky region and is a major route for regional and local mobility. Regionally, the BSB carries both I-71 and I-75 traffic over the Ohio River and connects to I-74, I-275, and US-50. The corridor is also one of the busiest trucking routes in the United States, connecting Michigan to Florida via I-75. The BSB corridor also facilitates local travel by providing access to downtown Cincinnati in Hamilton County, Ohio and Covington in Kenton County, Kentucky.

The Brent Spence Bridge (BSB) corridor was split into three phases as depicted in [Figure 1-1](#) (Brent Spence Bridge Corridor Implementation Phasing) below. The Brent Spence Bridge Corridor Project (PID 116649) (the Project), or Phase III, will construct approximately five miles of I-71/I-75 in Kentucky and one mile of I-75 in Ohio and a new Companion Bridge over the Ohio River just to the west of the existing Brent Spence Bridge and rehabilitate the existing Brent Spence Bridge. Design of Phase I (ODOT PID 114161) and Phase II (ODOT PID 113361) are occurring under separate contracts.

**Figure 1-1: Brent Spence Bridge Corridor Implementation Phasing**



The Project will:

- A. Reconstruct and widen approximately six miles of I-71/I-75 and reconfigure interchanges from south of the Dixie Highway interchange in Kentucky to Linn Street in Ohio (approximately 5 miles in Kentucky and 1 mile in Ohio);
- B. Build a new northbound I-75 exit at Ezzard Charles Drive;
- C. Rehabilitate and reconfigure the existing double decker BSB to reduce the number of lanes on each deck from four to three and increase inside and outside shoulder widths;
- D. Construct a double decker Companion Bridge with five lanes on each deck west of the existing BSB;
- E. Extend northbound frontage roads connecting West 5th Street and Pike Street in Kentucky;
- F. Extend southbound frontage roads connecting West 4th Street and Pike Street in Kentucky;
- G. Construct a collector-distributor system to connect I-71/I-75 traffic to and from the local street network between West 12th Street in Kentucky and Ezzard Charles Drive in Ohio; and
- H. Construct a collector-distributor system between Dixie Highway and Kyles Lane in Kentucky to reduce weaving movements on I-75.

Through value engineering workshops and continued studies, the Department is moving forward with Concept I-W as the Conceptual Design for the Project. Reference Information Documents (RID) provide additional information regarding Concept I-W and are identified throughout these Technical Requirements. The Contractor shall use LD-07 (Concept I-W Corridor Exhibit) as a basis for the development and validation of the Base Design. Additional geometric modifications and Alternative Technical Concepts that meet project goals, environmental commitments, and local government expectations can be evaluated during Sub-Phase 1A. Limits for the entire BSB corridor are shown in the RIDs. The Project Limits encompass Phase III only, as graphically depicted in [Figure 1-1](#) (Brent Spence Bridge Corridor Implementation Phasing).

## 1.1 Project Goals

### 1.1.1 Primary Goals

The primary goals identified as part of the Brent Spence Bridge Corridor NEPA decision are the following:

- A. Improve traffic flow and level of service;
- B. Improve safety;
- C. Correct geometric deficiencies; and
- D. Maintain connections to key regional and national transportation corridors.

### 1.1.2 Contract Objectives

To meet the primary goals for the Project, the Department has established the following specific contract objectives:

- A. Maximize the Project scope within the programmed funding amounts through innovation, design optimization and effective risk mitigation;

- B. Build the Project with a context sensitive design that fits within the community;
- C. Maximize the public investment in the Project by minimizing the footprint;
- D. Minimize the footprint of the interstate system to maximize potential developable space;
- E. Improve neighborhood connectivity across the interstate;
- F. Minimize traffic disruption during construction, with minimal detours or diversion of traffic to local streets;
- G. Provide opportunities for Workforce Development and DBE utilization;
- H. Provide strong aesthetic value along the Project corridor;
- I. Achieve effective project delivery;
- J. Minimize physical intrusion and impact;
- K. Create best environmental outcomes;
- L. Design for sustained quality of life;
- M. Improve the local road aesthetics when crossing the interstate; and
- N. Open the new Companion Bridge to traffic by July 15, 2029.

## 1.2 Governing Regulations

It is the responsibility of Contractor to acquire and utilize the appropriate manuals related to the Design and Construction Work required to complete the Project. A list of Project Standards is provided in [Table 1-1 \(Standards and References\)](#) for the convenience of Contractor, however, the provision of such a list does not relieve the Contractor from acquiring and utilizing the appropriate manuals. The Contractor shall maintain with the DBT Project Management Plan (DBT PMP) a current listing of the Project Standards. Project Standards are unique depending on the location of the work. Work in Ohio shall conform to ODOT standards and specifications, and Kentucky work starting at the northern approach of the Companion Bridge shall conform with KYTC standards and specifications. More specifically, the forward abutment backwall, substructure unit, and expansion joint of the Companion Bridge just to the north side of the Ohio River in Cincinnati, Ohio shall conform to the KYTC standards. The approach slab and all other work north of the expansion joint shall conform to ODOT standards and specifications. Any ground improvements on the north side of the Ohio River such as paving, curb, sidewalk, drainage, etc. shall be per ODOT standards and specifications. In some instances, only specific sections of the referenced standard apply, as specified in these Technical Requirements. The Progressive Design-Build Contract (PDBC) [Section 1 \(Contract Documents and Interpretation\)](#) provides requirements regarding irreconcilable conflicts, ambiguities, or inconsistencies among the Project Standards.

Contractor shall perform the Work in accordance with the most current version of each Project Standard or reference listed in [Table 1-1 \(Standards and References\)](#) at the time Notice to Proceed is given for Sub-Phase 1A.

Any standards, manuals and guidelines that are not included within the definition of Governing Regulations shall subject to the Department's approval prior to use. Any manuals or documents other than those reflected herein or in the PDBC require Department approval before use in the Work. The

Contractor shall obtain advance prior written approval from Department, for any Standards Deviation from the Governing Regulations, in addition to complying with all requirements regarding requested Standards Deviations set forth in Section 1.3 (Standards Deviation Submittal Requirements).

**Table 1-1: Standards and References**

<i>Author/Agency</i>	<i>Title</i>
<b>Ohio</b>	
ODOT	Location & Design Manual (Vol. 1-3)
ODOT	Special Provisions and Proposal Notes to be selected/provided by ODOT
ODOT	Standard Construction Drawings: Hydraulic, Pavement, Roadway, Structural, Traffic
ODOT	Plan Insert Sheets: Hydraulic, Roadway, Structural, Traffic
ODOT	Guidelines for Electronic Deliverables
ODOT	Bridge Design Manual
ODOT	Structures Design Data Sheets
ODOT	Geotechnical Design Manual
ODOT	Pavement Design Manual
ODOT	Ohio Manual on Uniform Traffic Control Devices (OMUTCD)
ODOT	Sign Designs and Markings Manual (SDMM)
ODOT	Sign Design Reference Packet (SDRP)
ODOT	Lighting Design Reference Packet (LDRP)
ODOT	Signal Design Reference Packet (SDRP)
ODOT	Traffic Engineering Manual
ODOT	Permitted Lane Closure Schedule (PLCS)
ODOT	Construction and Material Specifications
ODOT	Supplemental Specifications for Construction and Material Specifications
ODOT	State Highway Access Management Manual
ODOT	Manual for Administration of Contracts for Professional Services
ODOT	CADD Engineering Standards Manual
ODOT	Waterway Permit Manual
ODOT	Survey and Mapping Specifications
ODOT	Project Development Process (PDP) Manual



<i>Author/Agency</i>	<i>Title</i>
ODOT	Real Estate Administration Policies and Procedures Manuals
ODOT	Multimodal Design Guide
City of Cincinnati	Supplement to State of Ohio Department of Transportation Construction and Material Specifications
City of Cincinnati	Standard Drawings Department of Public Works Division of Engineering
City of Cincinnati	Department of Transportation and Engineering – Subdivision and Development Street Manual
City of Cincinnati	Traffic Safety Handbook (Blue Book)
City of Cincinnati	Sidewalk Regulations Book
City of Cincinnati	Stormwater Management Rules and Regulations, Stormwater Management Utility (SMU)
City of Cincinnati	SMU Design Manual
City of Cincinnati	SMU Standard Drawings
MSDGC	Metropolitan Sewer District of Greater Cincinnati Rules and Regulations and Standard Drawings
MSDGC	Capital Project Resource library
<b>Kentucky</b>	
KYTC	Drainage Manual (KDM)
KYTC	Pavement Design Guide
KYTC	Standard Specifications for Road and Bridge Construction
KYTC	Standard Drawings 2020 (includes Headwall Supplement) and Active Sepias 2020
KYTC	Highway Design Guidance Manual (HDGM)
KYTC	Special Notes/Special Provisions
KYTC	Professional Services Guidance Manual
KYTC	Traffic Operations Guidance Manual
KYTC	Geotechnical Guidance Manual, exhibits, and any Transmittal Memorandums
KYTC	Utilities and Rails Guidance Manual
KYTC	Permits Manual
KYTC	Aggregate Source Book
KYTC	Appraisal Guidelines Manual
KYTC	BMP Manual
KYTC	CADD Standards

<i>Author/Agency</i>	<i>Title</i>
KYTC	Construction Guidance Manual
KYTC	Construction Procurement Guidance Manual
KYTC	Environmental Analysis Guidance Manual
KYTC	Kentucky Bridge Inspection Procedures Manual
KYTC	Kentucky Product Evaluation List (KyPEL)
KYTC	Kentucky Methods Manual
KYTC	List of Approved Materials
KYTC	Materials Guidance Manual
KYTC	Materials Field Sampling & Testing Manual
KYTC	Planning Guidance Manual
KYTC	Pesticide Guidance Manual
KYTC	Precast/Prestressed Concrete Manual
KYTC	Relocation Assistance Guidance Manual
KYTC	Right of Way Guidance Manual
KYTC	Safety and Health Administration Guide
KYTC	Structural Design Guidance Manual (Interim), exhibits, and any Transmittal Memorandums
KYTC	Survey Manual Chapter 300
KYTC	Survey Manuals – Using State Plane and Project Datum Coordinates, NGS Benchmark Reset Information
KYTC	Kentucky Bridge Inspection Procedures Manual
KYTC	Traffic Operations Guidance Memos
City of Covington	Downtown Streetscape and Public Realm Design Guidelines
<b>Other Governing Agencies</b>	
AASHTO	T88, T194 and T289
AASHTO	A Guide for Transportation Landscape and Environmental Design
AASHTO	Guide for the Planning, Design, and Operation of Pedestrian Facilities
AASHTO	Guide for the Development of Bicycle Facilities
AASHTO	A Guide for Achieving Flexibility in Highway Design
AASHTO	A Policy on Geometric Design of Highways and Streets

<i>Author/Agency</i>	<i>Title</i>
AASHTO	Roadside Design Guide, 4th Edition
AASHTO	Highway Safety Design and Operations Guide
AASHTO	Roadway Lighting Design Guide
AASHTO	LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals.
AASHTO	An Informational Guide for Roadway Lighting
AASHTO	Standard Specifications for Transportation Materials and Methods of Sampling and Testing
AASHTO	LRFD Bridge Design Specifications, 9th Edition
AASHTO	LRFD Bridge Construction Specifications, 4th Edition
AASHTO	Standard Specifications for Highway Bridges, 17th Edition (for checking HS20 load only)
AASHTO	Guide Manual for Condition Evaluation and Load and Resistance Factor (LRFD) Highway Bridges, 3rd Edition with 2019 interim revisions
AASHTO	Manual for Bridge Evaluation, 3rd Edition with 2020 interim revisions
AASHTO	Guide Design Specifications for Bridge Temporary Works, 1995 with 2020 interim revisions
AASHTO	Geometric Design of Highways and Streets, 7th Edition
AASHTO	A Policy on Design Standards - Interstate System, 2016 Edition
AASHTO	Bridge Security Guidelines, 2nd Edition
AASHTO	Manual for Assessing Safety Hardware (MASH)
AASHTO/AWS	D1.5M/D1.5:2020 Bridge Welding Code, 2010
ACI	ACI 207.1 R-96, "Mass Concrete"
ACI	ACI 305, R-99, "Hot Weather Concreting"
ACI	ACI 306, R-02 "Cold Weather Concreting"
ADA	Americans with Disabilities Act Accessibility Guidelines
ANSI A300 (Part 1)	Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance – Standard Practices
ANSI A300 (Part 2)	Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance – Standard Practices – Part 2 – Fertilization
ANSI A300 (Part 3)	Tree Care Operations – Tree, Shrub and Other Woody Plant – Standard Practices – Part 3 – Tree Support Systems
ANSI Z60.1	American Standard for Nursery Stock
API	American Petroleum Institute RP 1102
ASTM	ASTM C1324 Standard Test Method for Examination and Analysis of Hardened Masonry Mortar

<i>Author/Agency</i>	<i>Title</i>
ATSSA	Portable Changeable Message Sign (PCMS) Handbook
AREMA	AREMA Manual for Railway Engineering
CRSI	Concrete Reinforcing Steel Institute Manual of Standard Practice
CSXT	Public Project Information for Construction and Improvement Projects That May Involve the Railroad
CSXT	Standard Specifications for the Design and Construction of Private Sidetracks
CSXT	Minimum Safety Requirements for Contractors Working on CSX Property
CSXT	CSX Design and Construction Standard Specifications for Pipeline Occupancies
CSXT	CSX Standard Clearance Matrix and CSX Clearance Diagram
EPA	Environmental Services Handbooks and Guidelines
FAA	Advisory Circular 70/7460-1M
FAA	Advisory Circular 150/5345-43J
FAA	Advisory Circular 150/5345-53D
FHWA	FHWA-HI-99-007, Rock Slopes
FHWA	FHWA-NHI-01-023, Shallow Foundations
FHWA	FHWA/NHI 10-016-IF-99-025 Drilled Shafts: Construction Procedures and LRFD Design Methods Manual
FHWA	Technical Manual for Design and Construction of Road Tunnels – Civil Elements, Report No. FHWA – NHI-10-034
FHWA	Program Guide Utility Relocation and Accommodation
FHWA	HEC 15 Design of Roadside Channels with Flexible Linings, Third Edition
FHWA	HEC 18 Evaluating Scour at Bridges
FHWA	HEC 21 Design of Bridge Deck Drainage
FHWA	HEC 22 Urban Drainage Design Manual, 3rd Edition
FHWA	HEC 23 Bridge Scour and Stream Instability Countermeasures
GLUMRB	10 State Standards
NACTO	Urban Street Design Guide
NACTO	Global Street Design Guide
NACTO	Urban Bikeway Design Guide
NFPA	Standard for the Installation of Lightning Protection Systems, NFPA 780

<i>Author/Agency</i>	<i>Title</i>
PCI	Design Handbook
PCI	Bridge Design Manual Volume 1 and 2
PTI	Recommendations for Stay-Cable Design, Testing, and Installation
PTI	Specification for Multistrand and Grouted Post Tensioning
PTI	Specifications for Grouting of PT Structures
TRB	Highway Capacity Manual
TRB	NCHRP Report 529, Guideline and Recommended Standard for Geofoam Application in Highway Embankments
UL	Underwriters Laboratories, Inc., Lightning Protection Components, UL 96 and UL 96A
USACE Engineering Circular EC 1165-2-220	Policy and Procedural Guidance for Processing Request to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408
Note – Project Standards may be available at the following locations: <a href="https://www.dot.state.oh.us/drrc/Pages/default.aspx">https://www.dot.state.oh.us/drrc/Pages/default.aspx</a> <a href="https://transportation.ky.gov/Organizational-Resources/Pages/Policy-Manuals-Library.aspx">https://transportation.ky.gov/Organizational-Resources/Pages/Policy-Manuals-Library.aspx</a> <a href="https://www.cincinnati-oh.gov/stormwater/construction-and-design/rules-regulations/">https://www.cincinnati-oh.gov/stormwater/construction-and-design/rules-regulations/</a> <a href="https://www.cincinnati-oh.gov/dote/permits-licenses/dote-resource-center">https://www.cincinnati-oh.gov/dote/permits-licenses/dote-resource-center</a>	

### 1.3 Standards Deviation Submittal Requirements

The Contractor must submit Standards Deviation documents for consideration by the Department. Additionally, the Department may identify, and process Deviations not originated by the Contractor, but that it believes are of benefit to the Project for incorporation by the Contractor.

The Contractor shall clearly identify each individual portion of the Standards Deviation proposal that is a proposed change to the Project Standards and the Contract Documents. Submit one electronic copy (PDF format) of each Standards Deviation to the Department.

Each Standards Deviation submittal must contain and clearly depict the following information applicable to the Deviation:

- A. Description: Provide a detailed description of the Standards Deviation including specifications and conceptual drawings.
- B. Deviation: Reference all the specific section(s) in the Contract Documents which are inconsistent with the proposed Deviation, provide an explanation of the nature of these deviations from the referenced section, and a request for approval of such deviations. Provide proposed language for the referenced section that is in keeping with the Standards Deviation which can be seamlessly incorporated into the Contract Documents. Seamless incorporation will be at the determination of the Department.
- C. Usage: A description of where and how the Standards Deviation would be used on the Project.
- D. Traffic and Safety Impacts: A discussion of the impacts the Standards Deviation will have on vehicular, pedestrian, and cyclist traffic and safety, including an operational analysis, if relevant.

- E. Maintenance of Traffic Impacts: A discussion of the impacts the Standards Deviation will have on maintenance of traffic during construction.
- F. Environmental Impacts: A discussion of how the Standards Deviation is in accordance with the approved project Environmental Document and will meet environmental commitments and not cause increased community impacts.
- G. ROW Impacts.
- H. Utilities: A discussion of utility (public and private) impacts.
- I. Maintenance: A discussion of the long-term maintenance impacts of the proposed Deviation.
- J. History: A detailed description of other projects on which the proposed Standards Deviation has been used; including contact information (name, title, phone number, address, and email) for project owners that can confirm Deviation implementation.
- K. Inspection: Any additional testing and inspection requirements during construction and during the expected life of the installation.
- L. Costs: A discussion of cost savings of the proposed Standards Deviation.

## 1.4 Design Criteria

Contractor and Designer shall develop a Proof-of-Concept that will validate or otherwise amend the Base Design in accordance with [Section 1.2](#) (Governing Regulations) and/or an accepted Standards Deviation in accordance with [Section 1.3](#) (Standards Deviation Submittal Requirements). The specific design criteria for the Project shall be submitted to the Department for review and approval.

Functional classifications, design speeds, legal speeds, and maintaining agency of roadways that are designed and constructed as part of this Project or will be crossed by a new bridge or other structure as part of this Project are provided in [Table 1-2](#) (Design Designation, Design Criteria and Maintaining Agencies) as a basis for the specific design criteria to be submitted by the Contractor. The specific design criteria shall follow the standards and specifications set forth in [Section 1.2](#) (Governing Regulations) unless a design exception is approved by the Federal Highway Administration (FHWA) per [Section 1.3](#) (Standards Deviation Submittal Requirements). Non-standard features needing justification and FHWA approval are defined as those not meeting the criteria cited in [Section 1.2](#) (Governing Regulations) and not previously approved in the Environmental Assessment (EA). Decisions to deviate from the Base Design plans may require a review by the Department and FHWA in relation to the EA, reevaluation, and other environmental approvals. If determined that the proposed deviations require a further reevaluation of the EA or other environmental approvals, the DBT shall coordinate with the Department to prepare a reevaluation submittal to FHWA. DBT will update the project schedule based on FHWA review times provided by the Department. A draft version of the LD-10 (Design Exceptions) listing current design exceptions is provided with the RIDs, see further information regarding design exceptions in [Section 15](#) (Roadway).

The Project design speeds for all facilities shall meet or exceed the minimum design speeds as shown in [Table 1.2](#). The existing legal/posted speeds are to remain the same on all existing facilities. The terrain for the project is rolling. A schematic of the design speeds is shown in LD-09 (Concept I-W Design and Legal Speeds Exhibit (from 12th Street to north end of Project)).

The Contractor shall cause all Design and Construction Work on city streets to comply with the applicable local agency standards. If the local agency does not have a Standard Construction Drawing, applicable ODOT or KYTC Standard Construction Drawings shall apply.

**Table 1-2: Design Designation, Design Criteria and Maintaining Agencies**

<i>Roadway</i>	<i>Functional Classification</i>	<i>Other Designations</i>	<i>Design Speed (MPH)</i>	<i>Legal/Posted Speed (MPH)</i>	<i>Maintaining Agency</i>
<b>Kentucky</b>					
I-71	Urban Interstate		55	55	KYTC
I-75	Urban Interstate		55	55	KYTC
I-71/I-75 Collector Distributor (CD)	Urban Other Freeways and Expressways		55*	55*	KYTC
US 25	Urban Minor Arterial	Dixie Highway	35	35	KYTC
KY 1072	Urban Minor Arterial	Kyles Lane	35	35	KYTC
KY 1120	Urban Principal Arterial	West Martin Luther King Jr. Blvd/12 <sup>th</sup> Street	30	30	KYTC
West 12 <sup>th</sup> Street	Urban Local Street	CS-2043	25	25	City of Covington
US 25	Urban Minor Arterial	Pike Street	30	30	KYTC
West 9 <sup>th</sup> Street	Urban Local Street	CS-2064	25	25	City of Covington
KY 8	Urban Principal Arterial	West 5 <sup>th</sup> Street	30	30	KYTC
KY 8	Urban Principal Arterial	West 4 <sup>th</sup> Street	30	30	KYTC
Simon Kenton Way	Urban Collector Street		30	30	KYTC
Bullock Street	Urban Collector Street		30	30	KYTC
KY 2967	Urban Local Street	East Orchard Road	25	25	KYTC
Rivard Drive	Urban Local Street	CS-9044	25	25	Fort Wright
Hewson Street	Urban Local Street	CS-2599	25	25	City of Covington
Crescent Avenue	Urban Local Street	CS-2007	25	25	City of Covington
W. 3 <sup>rd</sup> Street	Urban Major Collector Street	CS-2609	30	30	City of Covington
<b>Ohio</b>					
I-71	Urban Interstate		55	55	ODOT
I-75	Urban Interstate		55	55	ODOT

<i>Roadway</i>	<i>Functional Classification</i>	<i>Other Designations</i>	<i>Design Speed (MPH)</i>	<i>Legal/Posted Speed (MPH)</i>	<i>Maintaining Agency</i>
US 50	Urban Other Freeways and Expressways	6 <sup>th</sup> Street Expressway	50	50	ODOT
CD Road	Interstate/Other Freeways		55*	55*	ODOT
W. 2 <sup>nd</sup> Street	Urban Principal Arterial		25	25	City of Cincinnati
W. 3 <sup>rd</sup> Street	Urban Principal Arterial		25	25	City of Cincinnati
W. 5 <sup>th</sup> Street	Urban Collector Street		25	25	City of Cincinnati
W. 6 <sup>th</sup> Street	Urban Collector Street		25	35*	City of Cincinnati
W. 7 <sup>th</sup> Street	Urban Principal Arterial		25	25	City of Cincinnati
W. 8 <sup>th</sup> Street	Urban Principal Arterial		25	25	City of Cincinnati
W. 9 <sup>th</sup> Street	Urban Principal Arterial		25	25	City of Cincinnati
Winchell Avenue	Urban Minor Arterial		35	35	City of Cincinnati

\*The CD system is part of the mainline interstate, so CD roadway speeds shall be designed to match the mainline speed of the interstate. Design of the ramps from the CD system to the local street network need to be designed in a manner that can calm traffic and lower speeds as vehicles enter the urban core and connect to the local street network. The diverge of the CD system to the ramps shall be evaluated at a design speed of both the middle and upper range of the ramp design speed. As such ramp design speeds can be designed at the lower range design speed.

### 1.5 Airway/Highway Clearance for Airports and Heliports

The Contractor shall perform an airway/highway clearance study. Additional Federal Aviation Administration (FAA) coordination and permitting may be required depending on Contractor design and construction. The Contractor is responsible for this coordination and permitting.

### 1.6 Compatibility Requirement

As identified in Section 1 (General), the Project is the southern-most phase of multiple contracts to construct the Brent Spence Bridge corridor. The Contractor shall design and construct the Project to be compatible with the other phases of the corridor, especially at the northern Project terminus near Linn Street and the Department’s adjacent Phase II project (ODOT PID 113361).

### 1.7 Video Monitoring

The Contractor shall provide continuous video monitoring of construction using high-definition cameras. The Contractor shall provide the cameras and be responsible for all installation, equipment, power, connections, and maintenance of the camera. The supplier shall determine the locations for the best views of construction. Based on the supplier’s determination, the Contractor shall obtain Department approval of the camera locations prior to placement. Video monitoring requirements shall be in compliance with Appendix GN-05 (Video Monitoring Specifications). The system shall be operational from 30 Days prior to the beginning of construction through Completion of the Contract. Control of the



camera shall be handled by the Department. The Contractor shall maintain an archive of the data recorded by the camera.

Upon Completion of the Contract, the Contractor shall remove the camera equipment and provide archive data encompassing the duration of the Project to the Department. Format of archive data must be acceptable to the Department.

The Contractor shall be responsible for producing at minimum six professional-quality video vignettes per year highlighting Project operations. The Contractor shall obtain Department Approval of the timing and content for each vignette. These videos shall be 30 seconds to two minutes long.

The Contractor shall include video monitoring in the Opinion of Probable Cost (OPC).

## **1.8 Naming Conventions**

### **1.8.1 File Naming Convention**

Files shall be organized according to the state where the improvements are being constructed, i.e., Kentucky and Ohio.

### **1.8.2 Sheet Naming Convention**

All sheets south of the north ends of the Companion and Existing Brent Spence Bridges shall follow KTYC naming standards found in KYTC CADD Standards.

All sheets north of the north ends of the Companion and Existing Brent Spence Bridges shall follow ODOT naming standards found in ODOT's CADD Engineering Standards Manual.

## **1.9 Drawing Format**

Drawings shall be organized according to the state where the improvements are being constructed, i.e., Kentucky and Ohio. The dividing line will be the north ends of the Companion and existing Brent Spence Bridges. All sheets south of the north ends of the Companion and Existing Brent Spence Bridges shall follow KTYC drawing format requirements found in KYTC CADD Standards.

All sheets north of the north ends of the Companion and Existing Brent Spence Bridge shall follow ODOT drawing format requirements found in ODOT's CADD Engineering Standards Manual.

## 2. PROJECT MANAGEMENT

### 2.1 DBT Project Management Plan

#### 2.1.1 Purpose and Format of the DBT PMP

In accordance with the requirements of the Project, develop and implement a written DBT Project Management Plan (DBT PMP) for all elements of the Project, including, but not limited to, management, administration, design, Internal organization systems, document management, communication plan, investigations, construction, environmental monitoring, and compliance.

The PMPs shall be consistent with ISO principles (ISO 9001:2000 Quality Management Systems- Requirements; ISO 9004:2000 Quality Management Systems - Guidelines for Performance Improvement; ISO 9000:2000 Quality Management Systems- Fundamentals and Vocabulary; ISO:19011:2004 Guidelines for Quality and/or Environmental Management Systems Auditing; ISO 14001:2004 Environmental Management Systems-Specifications with Guidance for Use).

Engage the Department in the DBT PMP development process to facilitate the process and ensure understanding. The Department's participation in the development of the DBT PMP does not waive the Contractor's responsibility for the quality of the Work, nor does it ascribe any responsibility to the Department for the Work. Further, this involvement does not preclude subsequent rejection of the DBT PMP by the Department.

The Department will audit and monitor the activities described in the DBT PMP to assess the Contractor's performance. All commitments and requirements contained in the DBT PMP shall be verifiable.

The implemented DBT PMP shall accomplish the following functions and objectives:

- A. Successfully deliver the Project within the accepted Project Schedule; and
- B. Construct a high-quality Project that meets the requirements of the Contract Documents.

The DBT PMP must delineate how the Contractor will ensure all disciplines, aspects and elements of the Work will comply with the requirements of the Contract Documents and all materials incorporated into the Work will perform satisfactorily for the purpose intended and conform to the Contract requirements. The general outline and the minimum content of the DBT PMP is described below and in [Section 2.1.2](#) (Key Personnel) through [Section 2.1.8](#) (Utilities Plan).

##### 2.1.1.1 DBT Management Plan

- A. The purpose of the DBT Management Plan is to provide the Department with a clear view of the project management approach undertaken by the Contractor for all aspects of the Project. It shall clearly identify responsibilities and procedures for each Project management activity and demonstrate a thorough understanding of the Project requirements.
- B. The DBT Management Plan shall reference and consider all other PMPs and link their relevance to each other and to the management approach.
- C. The DBT Management Plan is an umbrella document that describes the Contractor's managerial approach, strategy, and quality procedures to design and build the Project and achieve all requirements of the PDBC. The DBT Management Plan shall include an organization

chart outlining the basic structure of the Contractor's Project organization including well defined roles for the design and construction; sub-organizations (such as consulting, subcontractors, suppliers) and a description of the roles; relationship with the Contractor, Designer, Subconsultant, Subcontractor, and third parties; organizational chart with responsibilities, professional qualifications, and Work to be accomplished by each member of the management team and each sub-organization, including identified subcontractors and suppliers.

- D. The DBT Management Plan shall describe how all PMPs fit within the overall quality management system, responsibilities for developing and maintaining the plans and the schedule for implementation.
- E. The DBT Management Plan shall address the Contractor's schedule and procedures for preparation of amendments and submission of amendments to any part of the PDBC.
- F. The DBT Management Plan shall be linked to the QMSP in Section 3 (Quality Management).

### 2.1.2 Key Personnel

Describe the roles of those involved in project management and the interactions between them.

The project management organization of the Contractor must include the following:

- A. An organizational chart for each phase of the Project (Sub-Phase 1A, Sub-Phase 1B and Phase 2) showing lines of authority and reporting responsibilities for all Project disciplines.
- B. The name, position, qualifications, duties, responsibilities, and authorities of each person proposed for a project management function, including the following minimum named persons:
  1. DBT Project Manager.
  2. DBT Design Manager.
  3. DBT Design QC Manager (See Section 2.1.2.3 (Other DBT Lead Personnel Requirements)).
  4. DBT Lead Structural Design Engineer.
  5. DBT Lead Highway Design Engineer.
  6. DBT Lead Independent Companion Bridge Engineer.
  7. DBT Independent Design Quality Firm (IDQF) Manager.
  8. DBT Construction Manager.
  9. DBT Lead Bridge Superintendent.
  10. DBT Lead Highway Superintendent.
  11. DBT Diversity and Inclusion Manager.

#### 2.1.2.1 Duties and Experience Requirements

- A. DBT Project Manager:
  1. Ultimately responsible for the Contractor's performance and ensures that personnel and other resources are made available. Responsible for all aspects of the Project, including, but not limited to, overall design, environmental compliance, construction, quality management, and contract administration.
  2. Shall have at least 15 years of design-build experience managing the design and construction of major highways, interstate-to-interstate interchanges, or navigable river bridge structures, with preference for both. The DBT Project Manager shall be assigned to

the Project full time and meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).

**B. DBT Design Manager:**

1. Responsible for ensuring overall Project design is completed and all design requirements are met for the Project, inclusive of all structures and structural elements (bridge substructures and superstructures, retaining walls) and roadway items (alignment, drainage, pavement, lighting, traffic signals, maintenance of traffic, etc.).
2. Shall have at least 15 years of recent experience, experience with integrated project delivery preferred, managing the design of major projects, and with complex maintenance of traffic design experience. The DBT Design Manager must be a licensed professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of Contract. The Design Manager shall be assigned to the Project full time and meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).

**C. DBT Lead Structural Design Engineer:**

1. Actively manages and serves as point of contact for all structural designs. Responsible to ensure that all requirements of the design for all structural elements on the Project, including bridges, box culverts, walls, and foundations are met.
2. Shall have at least 15 years of recent similar experience. They must be a licensed professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of Contract. The DBT Lead Structural Design Engineer shall meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).

**D. DBT Lead Highway Design Engineer:**

1. Responsible for ensuring all highway geometric, drainage and traffic components on the Project are completed and all design requirements are met.
2. Shall have at least 15 years of recent similar experience. They must be a registered professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of contract. The DBT Lead Highway Design Engineer shall meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).

**E. DBT Lead Independent Companion Bridge Engineer:**

1. Responsible for the independent design check of the Companion Bridge. Must be employed by a qualified, independent professional firm selected and subcontracted to the DBT, independent of the original bridge design for the Project.
2. Shall have at least 10 years of experience in the design and review of complex bridges for major highway projects of similar size and complexity. They must be a registered professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of contract. The DBT Lead Independent Companion Bridge Engineer shall meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).

F. DBT IDQF Manager:

1. Responsible for managing the Design Quality Assurance for the Project. Must be a member of the IDQF. Responsible for ensuring that the requirements of the Design Quality Management Plan are being met and to manage any other matters related to design quality compliance.
2. Shall have at least eight years of experience in quality management. IDQF must be a registered professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of contract. The DBT IDQF Manager shall meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).

G. DBT Construction Manager:

1. Actively manages the overall construction of the project. Responsible for overall construction inclusive of all structures and structural elements (bridge substructure and superstructure, retaining walls,) and roadway items (alignment, drainage, pavement, lighting, traffic signals, maintenance of traffic, etc.). Must be an employee of the Principal Participant.
2. Shall have at least 10 years of recent management experience, design-build experience preferred, in highway construction, interstate-to-interstate interchanges, and/or major river bridge structures with complex maintenance of traffic challenges. The DBT Construction Manager shall be assigned to the Project full time and meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).

H. DBT Lead Bridge Superintendent:

1. Actively manages the construction activities of the bridge components and coordinates with the highway components. Will be managed by the DBT Construction Manager. Will be responsible for daily scheduling, supervising all bridge construction activities and tasks, ensuring the safety and compliance of the Project Site, production of submittals, schedule, budget, and achievement of QC requirements, including work performed by bridge Subcontractors. This position is required for the duration of all construction-related activities on the Project and shall meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).
2. Shall have at least fifteen 15 years of demonstrated experience overseeing work on major bridge construction projects having similar type of work, and complexity, including projects having multiple operations ongoing simultaneously. Experience as a project superintendent should include at least one project having a construction value in excess of \$300,000,000.

I. DBT Lead Highway Superintendent:

1. Actively manages the construction activities of the highway components and coordinates with the bridge components. Will be managed by the DBT Construction Manager. Will be responsible for daily scheduling, supervising all highway construction activities and tasks, ensuring the safety and compliance of the Project Site, production of submittals, schedule, budget, and achievement of QC requirements within their teams, including Subcontractors working within their highway components. This position is required for the duration of all construction-related activities on the Project and shall meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).
2. Shall have at least 15 years of demonstrated experience overseeing work on major highway construction projects having similar type of work, and complexity, including projects having multiple operations ongoing simultaneously. Experience as a project superintendent should include at least one project having a construction value in excess of \$300,000,000.

J. DBT Diversity and Inclusion Manager:

1. Shall be responsible for all aspects of the DBE, OJT, and EEO for the project, including but not limited to overseeing DBE/OJT/EEO compliance goals for the Project, promotion and outreach for DBE contract opportunities and participation, promotion and outreach for OJT and workforce development opportunities, participation in and reporting to the Diversity and Inclusion Outreach Committee, administration of DBE contracts, prompt payment monitoring for all subcontractors, subconsultants, and suppliers, resolution of any payment issues, reporting of monthly DBE/OJT/EEO participation goals to the Department, monitoring Commercially Useful Function (CUF), and ensuring compliance with prevailing wage requirements. DBT Diversity and Inclusion Manager shall be assigned to the Project full time and meet the co-location requirements in accordance with Section 4 (Co-Location Facilities for Contractor and Department Forces).
2. DBT Diversity and Inclusion Manager shall have at least 10 years of experience with a background and understanding of DBE, CUF, and EEO requirements. DBT Diversity and Inclusion Manager shall have experience on federally funded projects.

### 2.1.2.2 Additional Key Personnel Requirements

All personnel listed in this Section 2.1.2.2 shall comply with the following:

- A. Be an employee or Subcontractor of the Contractor for Contractor positions. Positions listed as “Independent” shall be an employee of a Subcontractor.
- B. Have sufficient authority and organizational freedom to prevent and resolve quality problems, and to implement continuous improvement measures.
- C. One individual may not fill the role of more than one position.
- D. Meet co-location and duration requirements in Section 4.1 (Project Management Office).

### 2.1.2.3 Other DBT Lead Personnel Requirements

Unless otherwise approved by Department, the Other Lead Personnel and their minimum qualifications for the Project include the following:

A. DBT Design QC Manager:

1. Shall be responsible for the control of the design production processes and resulting work products. Must be an employee of the Lead Designer.
2. Shall have at least 10 years of experience managing the design quality component of projects of similar scope and complexity. Must be a licensed professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of Contract.

B. Lead DBT Scheduler:

1. Shall have a minimum of five years of experience in developing and managing Primavera Schedules on projects of similar scope and complexity. See PDBC Exhibit T (Critical Path Method Progress Schedule).

C. Lead DBT Traffic Control Engineer:

1. Shall have experience in work zone safety, work zone traffic control design, signing design, pavement marking design, with a minimum of 10 years recent experience in traffic control engineering and traffic management on projects of similar scope and complexity. Must be a



licensed professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of Contract.

D. Lead DBT Geotechnical Engineer:

1. Shall be responsible for ensuring the geotechnical designs and any necessary geotechnical input for structural designs are completed in accordance with the requirements of the Contract Documents.
2. Lead DBT Geotechnical Engineer shall have supervisory experience in geotechnical design and construction support of roadways, bridges, retaining walls, and other highway-related elements. Must be familiar with the AASHTO LRFD Bridge Design Specifications and must be responsible for the geotechnical design elements of the Project. The Lead DBT Geotechnical Engineer must have prior experience designing interstate projects in southwest Ohio and northern Kentucky. Individual state specific Lead DBT Geotechnical Engineers may be identified by the Contractor.
3. Shall have a minimum of 10 years of experience on projects of similar size and complexity. Must be a licensed professional engineer in the State of Ohio and Commonwealth of Kentucky or be able to obtain licensure by award of Contract. The Lead DBT Geotechnical Engineer must be available whenever design Work and construction Work are being performed.

E. DBT Utility Manager:

1. Shall be knowledgeable of ODOT and KYTC procedures for accommodating and Relocation of utilities. The DBT Utility Manager (UM) Shall manage all utility coordination and utility design activities with the overall Project design.
2. Shall have a minimum of 10 years of experience in the role of a utility coordinator or utility manager on a project of similar size and complexity. Shall be authorized by the DBT to approve all technical modifications associated with Utility Relocations and modifications to the Utility Agreements.

F. DBT Utility Design Coordinator:

1. The Utility Design Coordinator (UDC) shall be a Registered Professional Engineer in the State of Ohio and the Commonwealth of Kentucky. The UDC shall be responsible for coordinating the Utility Relocation design with the overall highway design features during the planning, design, and construction phases of the work. This also includes coordination efforts to ensure that the design and relocation for each individual Utility is compatible with other Utility Relocation work for the Project.

#### **2.1.2.4 Contractor and IDQF Requirements**

The Contractor and IDQF (only for their area of design verification authority) shall comply with the following:

- A. Determine the necessary competence and qualifications for all personnel performing Work affecting quality and ensure they are competent on the basis of appropriate education, training, skills, experience, and certifications.
- B. Provide training to all personnel performing Work affecting quality to ensure they understand the relevance and importance of their activities, the expectations and requirements of their Work, and their specific roles and responsibilities.
- C. Provide training, where necessary to achieve necessary competence.
- D. Maintain records of education, training, certifications, skills, and experience.

The Contractor shall document within the DBT PMP the Contractor management's commitments through processes and descriptions of the quality policies and objectives that will be implemented throughout its organization. The policies shall demonstrate the Contractor's senior management's commitment to implement and continually improve the quality management system for the Work.

### 2.1.3 Document Control

The DBT PMP shall describe the means by which all documents required are:

- A. Controlled in accordance with Department's Electronic Content Management System (ECMS) and other systems including identification and control of trade secrets.
- B. Created and retained in the Department's ECMS.
- C. Reviewed to confirm all requirements of the Contract Documents are met prior to submittal.
- D. Reviewed and updated as necessary and re-approved by the same personnel that performed the original approval.
- E. Identified to ensure that changes and revision status are known.
- F. Available at all points of use, including the IDQF and the Department.
- G. Distributed as required.
- H. Prevented from unintended use, if obsolete.
- I. Organized, indexed, and delivered to the Department for final acceptance.

The Department will partner with the Contractor to establish a format within the ECMS and grant needed access for the Contractor's personnel to assist in the management of the site. The Department's ECMS will be the official project record for the Project.

Describe the means by which records established to provide evidence of conformity to requirements and the effective operation of the quality program are identified, stored, protected, readily retrieved, retained according to the Department's Record Retention Policy, and disposed of.

Describe the procedures for meeting documentation requirements and document control of all Design Documents.

As part of the DBT PMP the Document Control plan shall document correspondence distribution and submittal requirements. Contractor shall provide copies of all correspondence between the Contractor and other agencies, including cities, Government Agencies, Railroads, and Utility Owners, to the Department via the Department's ECMS at the time of submittal to the applicable agency.

DBT Document Control Plan shall include collection, retaining, and uploading to the Department's ECMS, within five Working Days of the activity to which the document pertains, the following, all of which shall be in a format acceptable to the Department:

- A. Evidence that all required activities have been performed.
- B. Type, number, and results of all current quality management activities, including reviews, verifications, audits, Nonconformances, Corrections, Opportunities For Improvement, Corrective Actions, Preventive Actions and monitoring of Work performance and progress.



- C. Documentation used and created by the IDQF for review of design submittals, including all Design Documents included with interim and final design submittals, review comments, and disposition of comments.
- D. Engineered, Shop and Working drawings.
- E. Minutes of all Contractor and IDQF meetings (distribute draft minutes within 48 hours).
- F. For railroad and utility work, documentation of the design as well as documentation of utility and railroad personnel on-site performing Work, including inspection and flagging. The documents shall be maintained separately for each individual utility and railroad facility.
- G. Any other document not listed above provided by the Contractor.

The Document Control Plan shall be linked to the QMSP in Section 3 (Quality Management).

### 2.1.4 Quality Planning

Plan, develop, and document in the DBT PMP the processes needed to deliver the Work in accordance with the requirements of the Contract Documents, including but not limited to the following and Section 3 (Quality Management):

- A. Geotechnical investigations and testing.
- B. Field survey verification. The Contractor shall be responsible for the cost and repair of any damage to survey monuments caused by the Work within a duration agreed to by the Department.
- C. Control of monitoring and measurement devices, to ensure that tools, gages, instruments, and other measuring and testing devices used in activities affecting quality are properly maintained, controlled, calibrated, certified, and adjusted at specified periods to maintain accuracy within necessary limits.
- D. Design planning, to establish the responsibilities, checks, reviews, timing, procedure, or reference standard, and resulting records for all design submittals.
- E. Design requirements definition, to ensure that all users have the current and complete set of requirements applicable to their work.
- F. Deviations from the requirements of the Contract Documents, to ensure that general or specific Deviations from requirements occur only with the Department's approval.
- G. Validation of computer programs and checking of inputs.
- H. Cross-discipline reviews, to ensure consistency and prevention of coordination errors.
- I. Conformance checking, to ensure the right requirements are being utilized.
- J. Fitness for use reviews, to ensure that Work will meet generally implied expectations.
- K. Accuracy checking, to ensure requirements are designed right.
- L. Style checking, to ensure compliance with appearance needs, i.e., CADD, file type, spelling, etc. per Section 1.9 (Drawing Format).
- M. Constructability reviews, to ensure the functionality, accessibility, and maintainability of the Work.
- N. Over-the-shoulder reviews.
- O. Scope checking to verify the completeness of submittals.

- P. External (Third Party) reviews, to obtain input and buy-in.
- Q. Design change notices, to ensure that revisions to design are controlled by the Engineer of Record and communicated clearly to all points of use.
- R. Field design change requests, to ensure that all and any changes to design occur only under the direction or approval of the Engineer of Record.
- S. Construction planning, to establish the responsibilities, timing, procedure, or reference standard, and resulting records for all incoming, in-process and final products. Site Manager will be required for Ohio and Kentucky Work.
- T. Pre-activity construction meetings, to ensure all parties responsible for the quality of the Work have a common understanding of the requirements, the design intent, the applicable Design Documents, procedures, laws, regulations related to the Work. Pre-activity meetings shall be held for all significant activities and repeated whenever there are significant changes in personnel or working conditions, and when there has been a significant lapse of time since the activity was last undertaken.
- U. As-Built Documents of the Work performed within 60 Workdays of installation, to ensure accurate and timely documentation of the constructed Project.
- V. Timely completion of punch-list items.
- W. Project closeout.
- X. Warranty Work, to control the identification and resolution of warranty issues.

### **2.1.5 Environmental Monitoring and Compliance Plan**

Describe in the DBT PMP the methods, processes, and procedures to provide for the effective implementation and documentation of the environmental protection, training, compliance, and monitoring program.

The Contractor shall include methods, processes, and procedures to ensure compliance with final environmental commitments for the Project. It should be noted that these may require specific performance measures for compliance.

Contractor shall include the use of the SWPPP Track pursuant to ODOT SS832 for Work on the entire Project as part of the process and procedures. The Contractor shall include separate bid item codes for KYTC and ODOT.

In addition to the certifications required in SS832.11, individuals involved with SWPPP creation and/or inspection, shall also hold the KEPSC Roadway Inspectors (KEPSC-RI) certification offered through the University of Kentucky.

### **2.1.6 Safety and Health Plan**

Describe the safety organization including personnel, policies, plans, training programs, Project Site controls, and Incident management and response plans to ensure the health and safety of personnel, including response to a Pandemic, involved in the Project and the general public affected by the Project. Contractor to include procedures for immediately notifying the Department of all Incidents arising out of or in connection with the performance of the Work.

### 2.1.7 Public Information and Communication Plan

- A. The manner in which Contractor's organization will respond to requests for information, communicate changes or revisions to relevant Contractor personnel, and notify affected stakeholders before and after changes are made.
- B. Processes and procedures for communication of Project information between Contractor's organization, Department, Governmental Entities (e.g., permitting agencies), Utility Owners, other third parties, and the public.
- C. The Contractor shall or shall cause to be developed a Public Information Plan (PIP) for the Work period as part of its overall Communication Plan.
- D. The PIP will fit within the context of the broader Communications Plan and will address:
  - 1. The identification of stakeholders and the outreach tactics that will be used by the Contractor and responsibilities of the Contractor. Department will engage stakeholders.
  - 2. Training of relevant Project personnel in crisis communications, media relations and community outreach techniques to be provided by the Department.
  - 3. Describes proposed communication tools to supplement outreach efforts, such as brochures, educational opportunities, newsletters, and preparation of press releases. The PIP also describes the process the Contractor will provide communication assets for maintaining and updating existing communication assets developed by Department during the NEPA process, including Project identity, Project website, and social media sites.
- E. Aesthetics Meeting Requirements:
  - 1. Contractor shall support Department in the review of options of the aesthetic design. See Section 19 (Aesthetics and Enhancements).
- F. Contractor's Response to Inquiries and Comments:
  - 1. Questions or comments from residents, businesses, or other members of the public shall be referred to the Department within half a Business Day. Contractor shall take the necessary steps to facilitate such contact.
  - 2. If Contractor receives a complaint regarding its conduct of Work, DBT shall notify the Department within half a Business Day. Contractor shall provide the necessary information, staff support, and representation to assist in resolving the complaint.
  - 3. On occasions specified by Department, Contractor shall commit its Project Manager to serve as a spokesperson for the Project for technical, safety, and other issues with certain designated audiences.
- G. Recording of Progress through video and photography.
- H. Coordination of construction-related information for inclusion on all Project communication material.
- I. Provision of information to motorists and stakeholders to facilitate the Maintenance of Traffic (MOT) during construction. This will include:
  - 1. Packaging of all MOT information, such as anticipated delays and lane closures, for provision to the Project Communication Team on a regular basis, to facilitate communication to the media, stakeholders, and the broader community.
  - 2. Communication with direct impact area property owners.
  - 3. Communication with elected officials and other key stakeholders.

4. Coordination with local agencies.
5. Support Department program to inform motorists and the broader community about expected traffic changes/delays (such as on road signage, SMS, and email alerts).
6. Information to stakeholders about events in the area that may be affected by construction activities.

J. Linkage to other PMPs and the QMSP.

### 2.1.8 Utilities Plan

The Utilities Plan will define the utility coordination, adjustment, and relocation activities during the design and construction of the Project and will address:

- A. The roles and responsibilities of the Contractor, the Department, and Utility companies/owners.
- B. Utility agency coordination plans and process.
- C. The Utility Relocation and adjustment process.
- D. Applicable guidelines, laws, and regulation.
- E. The application of prior rights and cost allocations.
- F. The utility easement acquisition process, if required.
- G. Utility agreements including KYTC Memorandum of Understanding (“MOU”) and/or the development of Project specific utility relocation agreements.
- H. Relocations and adjustments of utility facilities included in the Contractor’s Contract.
- I. Relocations and adjustments of utility facilities performed by the utility company/owner or their contractor.
- J. The coordination with the Contractor, the Department, KYTC, Utilities, Utilities’ designers, and contractors.
- K. The identification and resolution of utility conflicts and interdisciplinary coordination.
- L. The development and maintenance of a Utility tracking report.
- M. The process for revising utility plan and estimates.
- N. The process of payment of utility company progress and final billings by the Department and KYTC, to be further coordinated after Sub-Phase 1A NTP.
- O. The process for close out of utility relocations and processing as-builts, and if required land use permit applications.
- P. Identify monitoring and recording requirements.
- Q. On-going monitoring and compliance records tracking system.
- R. The roles and responsibilities related to Contractor provided MOT services for utilities and/or their contractors.
- S. Regularly updated impact on project schedule.
- T. Reporting and documentation mechanism.
- U. Linkage to other relevant PMPs and the QMSP.

### 2.1.9 Overall DBT Organization Plan

The Contractor shall describe the design and construction organizational arrangements it intends to implement. The organizational arrangements described should clearly identify responsibilities and reporting lines of staff, particularly relating to Key Personnel. The Contractor shall include an organization chart and communication protocol graphic (11-by-17 inch) illustrating the Proposer's Key Personnel and their prospective roles and responsibilities, as well as other principal participants and any known Subcontractors having a material role in the Project's design Work, design check Work, and construction Work.

The Contractor shall describe the interrelationships and interfaces between each discipline within the Offeror's organization (e.g., design, design check, shop drawing preparation and review, construction, and quality management).

The Overall DBT Organization Plan shall also describe the interrelationships and interfaces between the Contractor's organization, the Department and other governmental agencies, utility owners, stakeholders, businesses, the public and other contractors working in the vicinity and impacted by the construction of the Project. This description shall also, at a minimum, address the following activities:

- A. Reviews of plans and permits;
- B. Progress, workshop, partnering and utility coordination meetings; and
- C. Construction, engineering and inspection activities.

### 2.1.10 Risk Management Plan

The Contractor shall prepare a Risk Management Plan (RMP) and submit it to the Department for review and comment. This section includes the requirements applicable to the risk management activities to be performed during the performance of and in connection with, the Phase 1 Work and Phase 2 Work. Risk management will be integral to all phases of the Project, from planning and design, through construction and the execution of the Work, to operations, and to Project closeout.

- A. Department has prepared an initial Risk Register, included as Exhibit Z (Risk Register). Contractor to refer to PDBC Section 2.6 (Risk Identification, Pricing and Assignment) for the collaborate approach to risk identification, pricing, and risk assignment approach.
- B. The Contractor will be responsible for risk response planning and mitigation for those risks in accordance with the Approved RMP per PDBC Section 2.6.
- C. The Contractor shall prepare the initial RMP that includes a detailed plan for management of the risks owned by and allocated to it that are associated with the Phase 1 Work and an initial summary plan for management of the risks owned by and allocated to it that are associated with the Phase 2 Work. Prior to submittal of the Phase 2 Proposal, the RMP shall be updated with its detailed plan for management of risks associated with the Phase 2 Work.

### 2.1.11 Traffic Management Plan

The Contractor shall prepare, implement, and maintain a TMP in accordance with the Section 1.2 (Governing Regulations). Contractor shall obtain Department approval of the TMP prior to any construction Work.

The TMP shall include a Traffic Operations Plan (TOP), Maintenance of Traffic (MOT) Plans per Section 21 (Maintenance of Traffic), a Traffic Incident Management Plan (IMP), and a coordination process with the public information and communication plan. The TMP shall be developed in coordination with emergency service providers, school transportation officials, all affected Governmental Entities and other stakeholders. The TMP shall include procedures to communicate all MOT phase installations and changes with affected Governmental Entities and stakeholders.

**2.1.12 Construction Management Plan**

The Contract shall provide a Construction Management Plan, which may include relevant material submitted with its Proposal and submit it to the Department for review and comment. The Construction Management Plan shall provide how well the Contractor understands and is organized to manage construction, construction quality control and the tools that will be implemented to provide seamless interaction with the Department for the construction of a quality Project; provides how the progress of the construction work is reported to the Department and for control of the Work; provides how nonconformance issues in construction will be resolved; provides the method of updating the Baseline Schedule; provides how the work will be progressed in coordination with other agencies; provides the methods of maintaining detours and evaluates how the interaction with the Department’s construction inspection professional engineering firm and the materials testing firm/laboratory will occur and how this will contribute to the construction management and quality of the Project.

**2.1.13 PMP Submittal**

**2.1.13.1 Initial Project Activities**

Except for preliminary meetings, development of the Project Schedule and the development of the DBT PMP, no Design Work is allowed to be submitted using the Project until the Department has approved the following component management plans: DBT Project Management Plan, Document Control Plan, Quality Management System Plan (QMSP), and Design Quality Management Plan (DQMP).

At the Department’s sole discretion, the Department may approve portions of the DBT PMP to allow certain Work (e.g., design) to proceed as defined by the applicable portion of the DBT PMP.

**2.1.13.2 DBT PMP Approval**

Submit a draft DBT PMP of all the Management Plans listed in Table 2-1 (DBT PMP Component Management Plans). The DBT shall allow 15 Working Days for the Department to approve or reject initial DBT PMP submittals. For subsequent revisions to the DBT PMP, the Department requires 10 Working Days to approve or reject the submittal. Submit each DBT PMP revision after the approved to the Department during a submittal meeting, in which the Contractor shall provide an overview of the DBT PMP revision.

**Table 2-1: DBT PMP Component Management Plans**

<i>Plan Title</i>	<i>Submittal Deadline</i>	<i>Plan Updates*</i>
DBT Project Management Plan (DBT PMP)	40 Working Days after Sub-Phase 1A NTP	Annually (during the Term)



<b>Plan Title</b>	<b>Submittal Deadline</b>	<b>Plan Updates*</b>
Construction Management Plan	30 Working Days after Sub-Phase 1A NTP	With Sub-Phase 1B Proposal, Phase 2 Proposal, and Annually after Phase 2 NTP
Safety and Health Plan	30 Working Days after Sub-Phase 1A NTP	Annually (during the Term)
Quality Management System Plan	30 Working Days after Sub-Phase 1A NTP	Monthly Reporting & Quarterly Updates (during the Term)
Design Quality Management Plan	With Sub-Phase 1A Proposal	Quarterly, if required
Construction Quality Management Plan	With Sub-Phase 1B and Phase 2 proposal or 30 Working Days prior to beginning any construction work	Quarterly, if required (during construction)
Environmental Monitoring and Compliance Plan	60 Working Days prior to beginning any construction work	Quarterly, if required (during Phase 1 and Phase 2), Annually, (during the remainder of the Term)
Document Control Plan	30 Working Days after Sub-Phase 1A NTP	Quarterly, if required (during Phase 1 and Phase 2)
Utilities Plan	60 Working Days after Sub-Phase 1A NTP	Quarterly, if required (during Phase 1 and Phase 2)
Railroad Coordination and Management Plan (See <u>Section 10</u> (Railroads))	60 Working Days after Sub-Phase 1A NTP	As Required by the Department & Monthly Reporting during Construction
Communications Plan	30 Working Days after Sub-Phase 1A NTP	Annually, if required (during the Term)
Traffic Management Plan (TMP)/Traffic Incident Management Plan (IMP)	80 Working Days after Sub-Phase 1A NTP	Quarterly, if required (during Phase 1 and Phase 2)
Interim Baseline Schedule	With Sub-Phase 1A Proposal	See PDBC <u>Exhibit T</u> (Critical Path Method Progress Schedule)
Overall DBT Organization Plan	With Sub-Phase 1A Proposal	As Required Upon Key Personnel Changes
DBE Performance Plan, DBE Goal Attainment and Tracking Plan, DBE Outreach Plan, DBE Development Plan, and Compliance Plan	With Sub-Phase 1A Proposal, With Sub-Phase 1B Proposal and Phase 2 Proposal	As Required, Refer to <u>Section 5</u> (Diversity, Inclusion, and Outreach)
OJT Performance Plan and Workforce development Plan	With Sub-Phase 1B Proposal and Phase 2 Proposal	As Required, Refer to <u>Section 5</u> (Diversity, Inclusion, and Outreach)
Community Engagement Plan	With Sub-Phase 1A Proposal, With Sub-Phase 1B Proposal and Phase 2 Proposal	As Required, Refer to <u>Section 5</u> (Diversity, Inclusion, and Outreach)
Risk Management Plan	60 Working Days after Sub-Phase 1A NTP	As Required by the Department
<p>*Plans, records, and logs shall be available for review by the Department on an ongoing basis in accordance with the PDBC. Changes as required will be in accordance with the Technical Requirements. The Contractor shall update and submit each component part of the DBT PMP as part of each Work Package Proposal. The Department's approval of each updated component part of the DBT PMP shall be a condition precedent to the NTP for such Work Package. The term "updates" in this column means updates to the already approved Plans.</p>		

## 2.2 Project Meetings

The DBT Project Manager, shall attend all of the meetings described below. Meetings in addition to those described below may be required for special purposes as determined by the Department, these Technical Requirements, and the Contract Documents.

Project meetings will include the Contractor, the Department, and other active participants requested by the Department. Other active participants may include representatives from the Cities of Cincinnati, Covington, Ft. Wright, and Ft. Mitchell.

### 2.2.1 Sub-Phase 1A Scope Meeting

Prior to Sub-Phase 1A NTP, the DBT Key Personnel shall meet with the Department at a time and place to be determined by the Department for a Sub-Phase 1A Scope Meeting. The goals of the scope meeting are:

- A. Review and discuss the draft Sub-Phase 1A Proposal and adjust;
- B. To confirm the Technical Requirements are understood;
- C. To establish and explain policies and procedures for completion of a successful design;
- D. To establish the expectations of all components of the Project Schedule;
- E. To establish the expectations of the ongoing cost estimates; and
- F. To establish clear lines of communication and points of contact for Department, Contractor, Designer and Subconsultants.

### 2.2.2 Pre-Design Meeting

After Sub-Phase 1A NTP and prior to commencing Design Work, the DBT Key Personnel shall meet with the Department at a time and place to be determined by the Department for a Pre-Design Meeting. At or before the meeting Contractor shall furnish a list of proposed Subconsultants. The agenda of the meeting shall include the following items:

- A. Roles, Responsibilities, Emergency Contacts;
- B. Neighborhood awareness and communication protocols;
- C. Planned activity for the first 60 working days after NTP;
- D. Submittal of the list of intended Sub-consultants and other firms involved in the design process and the anticipated Design Work each is anticipated to perform; and
- E. Review of Department's ECMS procedure and expectations.

### 2.2.3 Cost and Schedule Meetings

- A. Initial Approach to Cost and Schedule meeting:
  - 1. No later than 15 Days after the Sub-Phase 1A NTP, the Contractor shall meet with the Department and Independent Cost Estimator (ICE) at a time and place to be determined by the Department, and actively participate in a working group meeting to discuss and develop an initial approach to costing the Project consistent with the requirements of PDBC Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). The purpose of this meeting is to establish the baseline Cost Model structure, input standards, and assumptions for the



formulation and ongoing updates and maintenance of all future OPCs, including design and construction cost and Project Schedule estimates. This 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. This initial meeting will be led by the Department.

2. Attendees:

- a. Department's Project staff, Department's Office of Estimating Staff, the ICE, the DBT Project Manager, Design Manager, Superintendents, and other parties defined by the Department and Contractor.

3. Agenda:

- a. Review the methods and procedures related to the Project Schedule and overall project progress.
- b. Introduction of the Contractor's Schedule team's qualified personnel that will develop and update the project schedule, including BIM 4D and 5D components if the DBT PMP plans incorporate them into the project.
- c. Content, format, and submittal requirements for schedules and reports.
- d. Schedule for other concurrent work under Department's separate contracts and coordination with other work and personnel.
- e. Review time required for submittals and resubmittals.
- f. Review time required for RFIs, Change Orders, Government Entity reviews and approvals, and project logistics.
- g. Requirements for tests and inspections by independent testing and inspecting agencies.
- h. Time required for mobilization and demobilization.
- i. List of Contract activities to be included in schedule and their associated naming conventions.
- j. Procedures for updating schedule.
- k. Proposed structure and assumptions for the Cost Model and establish input standards for the formulation of future cost estimates.
- l. Software limitations, if any.

4. Minutes:

- a. The Contractor will record and distribute meeting minutes.

B. Monthly Cost and Schedule Update Review Meetings:

1. Contractor shall schedule, attend, and actively participate in cost and schedule working group meetings with the Department and the ICE to review cost estimate organization, break-down, reconciliation of OPC and cost estimates. The Contractor shall lead the Monthly Cost and Schedule Update Review Meetings.

## 2.2.4 Design Progress Meeting

- A. Department will schedule regular Design Progress Meetings to determine the progress of the development of the Design Work. These meetings will start two weeks after the post award scope meeting. The meetings will occur once a week at a minimum and as required to accomplish design tasks.

**B. Attendees:**

1. Design Progress Meetings shall be attended by:
  - a. Department and Department's Consultants;
  - b. DBT's Key Personnel, at a minimum;
  - c. Major Subcontractors as applicable; and
  - d. Others as directed by Department.

**C. Agenda:**

1. The Contractor shall be responsible for developing the meeting agendas. The purpose of the meetings is to discuss significant items that could affect the completion of the Construction Drawings and Specifications and have a major impact of the quality, cost, and overall schedule for the Work. The agenda shall be submitted to Department a minimum of 48 hours prior to the meeting.

**D. Minutes:**

1. The Contractor will record and distribute meeting minutes. Meeting minutes shall be distributed no later than three Working Days after such meeting is held.

## **2.2.5 Project Coordination and Logistics Meetings**

- A. Schedule and administer as needed support, coordination and logistics meetings among stakeholders affected by the Work. Stakeholders include Contractor and all applicable Subcontractors, the Department and when applicable representatives of Government Entities affected by or having jurisdiction over the Work. Contractor shall coordinate with stakeholders to allow for their reasonable review prior to finalizing the Base Design, Cost, and Schedule Submittals. Incorporate all logistical and coordination topics into the Project Schedule to allow for at least 10 Working Days' notice of review.
- B. Agenda to include design criteria, limits of work, design alternatives considered, reasons that given alternatives were either discarded or adopted, or specific topics requested by the Department or stakeholders.
- C. Minutes:
  1. The Contractor will record and distribute meeting minutes.

## **2.3 Design Submittals**

### **2.3.1 Over-the-Shoulder Reviews**

Over-the-shoulder (OTS) reviews are informal examinations of Design Documents during the design process performed by the IDQF and the Department. Over-the-shoulder reviews will mainly assess whether the requirements and design criteria of the Contract Documents are being followed and whether design DBT PMP processes and procedures are being followed. Schedule over-the-shoulder reviews with the IDQF and invite the Department during the course of the development of each Buildable Unit, prior to Base Design, Interim and Final Submittals. The Contractor shall invite affected Utilities, Railroads, and City(s) to each over-the-shoulder review to provide opportunity to comment as requested or as otherwise deemed necessary by the Department. The Contractor shall define the frequency and timing of over-the-shoulder reviews.

Conduct over-the-shoulder reviews in the Project Management Office (PMO) and in the presence of the design personnel, with the intent of minimizing disruption of ongoing Design Work. The IDQF Manager, design staff, and the Department will jointly determine the materials to be compiled for each review. Formal assembly and submittal of drawings or other documents will not be required; however, the Contractor is encouraged to provide informal submittals to facilitate reviews. The over-the-shoulder review may be of progress prints, computer images, draft documents, working calculations, draft specifications or reports, or other Design Documents. If mutually agreed upon for specific review items, the over-the-shoulder review may be facilitated by the transfer of electronic files. The IDQF shall document the outcome of each over-the-shoulder review. It shall be the Contractor's responsibility to confirm whether comments made are in conformance with the Contract Documents.

### 2.3.2 Base Design Submittal

In collaboration with the Department and local government agencies, the Contractor shall develop a Proof-of-Concept that will become the Base Design. The Proof-of-Concept is the Base Design described in Section 1 (General) and includes any additional geometric modifications or Alternative Technical Concepts incorporated during Sub-Phase 1A.

Schedule a submittal meeting with the IDQF to present the Base Design Submittal. Notify other agencies, (i.e., FHWA, City(s), Railroads, and Utilities as applicable to the submittal) including the Department, at least 10 Working Days in advance of submittal meeting and attend meeting. At submittal meeting, provide an overview of the submittal, including a summary of all included information. Submittals with missing information will not be accepted. The submittal and timeframe by which it is submitted shall be in accordance with PDBC Section 4.8 (Department Review of Contractor Submittals).

Provide a complete review of all Design Documents with each formal IDQF review to ensure Contract Document requirements and design criteria are being met, including any calculations by the Lead Independent Companion Bridge Engineer (ICBE) for the Companion Bridge design submittals. The IDQF Manager is not allowed to release any design submittal that does not meet Contract Document requirements or was not developed in accordance with the DBT PMP. The IDQF does not have the authority to waive Contract Document requirements. In addition, the IDQF Manager will verify there are no conflicts between the Buildable Units being reviewed. All deviations from these requirements must be noted and corrected.

Upon IDQF approval and verification that a design submittal is in compliance with the Contract Documents, the Contractor must submit Design Documents including the IDQF quality certification to all applicable agencies requiring review and upload electronic copies to the Department's ECMS. Submittal requirements, beyond those stated in the Contract Documents, to agencies other than the Department shall be determined by and complied with by the Contractor.

Use the durations listed in Table 2-2 (Submittal Durations and Print Requirements for Sub-Phase 1A Base Design Reviews) in the Project Schedule for Sub-Phase 1A Base Design and reviews as follows. The Contractor shall submit an electronic searchable version (in PDF format that is Bluebeam compatible) along with full size and half size plans in accordance with ODOT's CADD Engineering Standards Manual and KYTC's CADD Standards and Table 2-2 (Submittal Durations and Print

Requirements for Sub-Phase 1A Base Design Reviews) simultaneously to the parties indicated in Table 2-2 (Submittal Durations and Print Requirements for Sub-Phase 1A Base Design Reviews) below.

**Table 2-2: Submittal Durations and Print Requirements for Sub-Phase 1A Base Design Reviews**

<i>Submittal</i>	<i>Review Times</i>	<i>Half size (full size)</i>
Department	15 Working Days	0
Each affected City(s)	15 Working Days	1
Railroad(s)	60 Working Days	2
Each affected Utility	20 Working Days	As Requested by the Utility Owner

Review times begin upon receipt of submittal following IDQF approval and the Working Day following the date on which the submittal is made. The Project work schedule for the Preconstruction Phase is a five-day workweek with each Working Day ending at 5 pm. Submittals made after 5 pm will be counted as submitted on the following Working Day. Design submittals are subject to Department audit over the course of design development. Department design audits may be limited to scope compliance; however, the depth, magnitude, type, and timing of the Department’s audit of design submittals will be at the Department’s sole discretion. As necessary, schedule comment resolution meetings with the Department to resolve comments received as a result of the Department audit.

The IDQF Manager must prepare and distribute minutes of each submittal and comment resolution meeting and shall ensure that all review comments are addressed by the Contractor and verified by the IDQF. Base Design Submittal shall include a written disposition of all comments made during formal interim design submittals.

Contractor shall prepare a Base Design Submittal that includes:

- A. Documentation that provides a complete accounting of the design validation process, including meeting minutes, internal and external communication, Requests for Information, submittals, transmittals, and other documents of similar nature and a complete listing of all documents reviewed during the design validation process;
- B. Design Analyses:
  - 1. Prepare design analyses of the requirements and calculations for each engineering design discipline and combined into the Design Criteria Report. Contractor to provide draft outline to Department for review prior to submittal;
- C. Base Design Plans and Reports;
- D. Draft Alternative Technical Concepts (ATCs) and innovation plan, due within 60 Working Days after Sub-Phase 1A NTP:
  - 1. Proposed ATCs from Conceptual Design documents shall be submitted with a redlined version of the baseline of each document in whole with the proposed revision shown and if required calculations for Department review. ATCs will follow an approval process led by the Contractor and facilitated and supported by the Department;

2. Ensure that recommendations identify impacts to long term maintenance and operations and any specialty inspection that may be required;
  3. Ensure that recommendations identify all impacts to previously approved federal, state, and local environmental approvals;
  4. Clearly identify and explain techniques, means and methods, phasing, scoping, or other items that result in the reduction of cost or schedule;
  5. Clearly quantify rough order of magnitude (ROM) cost and schedule implications for each ATC;
  6. Provide a list of ATCs developed and reviewed with the Department and identify ATCs that will be carried forward into the Base Design Submittal and Sub-Phase 1B and Phase 2;
  7. Contractor to perform an iterative process not to exceed 60 Working Days from submittal of the draft ATC and innovation plan to accept ideas to address goals listed in Section 1.1 (Project Goals), improve Project quality, reduce cost, shorten schedule; and
  8. During the ATC process, creativity and an objective problem-solving approach that addresses Project Goals, is an expectation of the Contractor in the Work in this Sub-Phase 1A.
- E. Continuous updates to OPC's necessary to support the ATCs and innovation process;
- F. Final ATCs and innovation plan, due 30 days after Department's comments on last OPC update and included in the Sub-Phase 1B Proposal;
- G. Continuous updates to the Project schedule necessary to support the OPC;
- H. Base Design Submittal quantities with appropriate item codes per state; and
- I. An overall schematic of all Buildable Units.

### 2.3.3 Sub-Phase 1B and Phase 2 Design Submittals

Schedule a submittal meeting with the IDQF to present each Interim and Final design submittal. Notify other agencies, (i.e., FHWA, City(s), Railroads, and Utilities as applicable to the submittal) including the Department, in advance of each submittal meeting and attend each meeting. At submittal meetings, provide an overview of the submittal, including a summary of all included information. Submittals with missing information will not be accepted.

Provide a complete review of all Design Documents with each formal IDQF review to ensure Contract Document requirements and design criteria are being met, including any calculations by the Lead Independent Companion Bridge Engineer for the Companion Bridge design submittals. The IDQF Manager is not allowed to release any design submittal that does not meet Contract Document requirements or was not developed in accordance with the DBT PMP. The IDQF does not have the authority to waive Contract Document requirements. In addition, the IDQF Manager will verify there are no conflicts between the Buildable Units being reviewed and any previously approved designs. All deviations from these requirements must be noted and corrected.

Upon IDQF approval and verification that a design submittal is in compliance with the Contract Documents, the IDQF must submit Design Documents to all applicable agencies requiring review and upload electronic copies to the Department's document management system. Submittal requirements, beyond those stated in the Contract Documents, to agencies other than the Department shall be determined by and complied with by the Contractor.

Use the durations listed in Table 2-3 (Submittal Durations and Print Requirements for Sub-Phase 1B and Phase 2 Reviews) in the Project Schedule for Sub-Phase 1B and Phase 2 reviews and comments/approvals as follows. The Contractor shall submit an electronic searchable version (in PDF format that is Bluebeam compatible) along with full size and half size plans in accordance with ODOT’s CADD Engineering Standards Manual and KYTC’s CADD Standards and Table 2-3 (Submittal Durations and Print Requirements for Sub-Phase 1B and Phase 2 Reviews) simultaneously to the parties indicated in Table 2-3 (Submittal Durations and Print Requirements for Sub-Phase 1B and Phase 2 Reviews) below.

**Table 2-3: Submittal Durations and Print Requirements for Sub-Phase 1B and Phase 2 Reviews**

<i>Submittal</i>	<i>Review Times</i>	<i>Half size (full size)</i>
Department	15 Working Days	0
Each affected City(s)	15 Working Days	1
Railroad(s)	60 Working Days	2
Each affected Utility	20 Working Days	As Requested by the Utility Owner

Review times begin upon receipt of submittal following IDQF approval and the following Working Day the submittal is made. The Project work schedule for the Preconstruction Phase is a five-day workweek with each Working Day ending at 5 pm. Submittals made after 5pm will be counted as submitted on the following Working Day. Design submittals are subject to Department audit over the course of design development. Department design audits may be limited to scope compliance; however, the depth, magnitude, type, and timing of the Department’s audit of design submittals will be at the Department’s sole discretion. As necessary, schedule comment resolution meetings with the Department to resolve comments received as a result of the Department audit.

The IDQF Manager must prepare and distribute minutes of each submittal and comment resolution meeting and shall ensure that all review comments are addressed by the Contractor and verified by the IDQF. Submittals shall include a written disposition of all comments made during formal design submittals.

**2.3.4 Phase 2 Released for Construction (RFC)**

Following review of final design submittals, resolve all outstanding issues and comments and prepare a full set of Design Documents stamped "Checked and Ready for Review." Schedule a submittal meeting with the IDQF to present the submittal. Notify other agencies, (i.e., FHWA, City(s), Railroads, and Utilities as applicable to the submittal) including the Department in at least 10 Working Days advance of the submittal meeting and attend each meeting. Provide an overview of the submittal, including a summary of all included information. The IDQF submittals with missing information will not be accepted.

**2.3.4.1 Plans Distribution Table**

The Contractor shall submit an electronic searchable version (in PDF format that is Bluebeam compatible) along with full size and/or half size plans in accordance with ODOT’s CADD Engineering



Standards Manual and KYTC’s CADD Standards and Table 2-4 (Submittal Durations and Print Requirements for RFC Submittals) simultaneously to the parties indicated in Table 2-4 (Submittal Durations and Print Requirements for RFC Submittals) below:

**Table 2-4: Submittal Durations and Print Requirements for RFC Submittals**

<i>Submittal</i>	<i>Review Times</i>	<i># of half sets</i>
Department	15 Working Days	5
Each affected City(s)	15 Working Days	4
Railroad(s)	60 Working Days	1
Each affected Utility	20 Working Days	As Requested by the Utility Owner

The IDQF must verify compliance with all Contract Document requirements and design procedures and verify that all comments from final reviews have been resolved. If upon IDQF review it is determined that it is questionable as to whether comments received from the Department or other agencies have been resolved or addressed appropriately, the IDQF Manager may consult with the commenter to resolve such comments.

The IDQF Manager must sign and stamp the Design Documents “Released for Construction” after the following requirements have been met:

- A. All IDQF, Department, and other agency comments and Nonconformances have been resolved.
- B. Design Documents have been designed in accordance with the requirements of the Contract Documents and are consistent with the overall design.
- C. Design Documents have been checked in accordance with the DQMP.
- D. All identified deviations have been approved by the Department.
- E. Design Documents have been Signed and Sealed by the Engineer of Record.
- F. Design Documents for the independent quality check must be Signed and Sealed by the Lead Independent Companion Bridge Engineer.

Provide detailed quantity estimates and ODOT and KYTC standard bid codes for all Work that requires quality sampling or testing and all materials subject to price adjustments (e.g., structural steel). Be consistent with the units used to determine frequency of sampling and testing. For example, if the number of compaction tests to be taken is based on a specific number of cubic yards of embankment, then the quantity estimate must also be in cubic yards. Quantities may be provided after Design Documents are Released for Construction; however, provided quantities prior to any construction commencing for the Work covered by the applicable Released for Construction Documents.

**2.3.5 Supplemental Plan Sheets**

Concurrent with the RFC plan submittal, provide the Department with supplemental plan sheet plots (PDF only) depicting existing utilities in color. Incorporate independent colors for each utility type. Make plots consistent with RFC drawings, however, only plan view sheets are required.

### 2.3.6 Design Changes Before Construction

Design changes may occur prior to construction or may occur after Released for Construction Plans and may be initiated by the Contractor or the Department.

For all design changes requiring calculations, the Designer, and Design QC Engineer shall conduct a documented check of all calculations. All design changes requiring alteration of design documents released for construction shall undergo all review and certification procedures included for the original design documents in the Design Quality Management Plan.

If a design change takes place after sign-off of the Released for Construction Plans, the Contractor shall prepare a Notice of Design Change (NDC) and submit it to the Department for review and comment. The NDC shall describe the change; identify and provide the Buildable Unit Plans, Specifications, calculations, and other documents impacted by the change; explain the reason for the change; list other Buildable Unit that will be impacted by the change; and describe the impacts to the Project Schedule, if any.

### 2.3.7 Field Design Changes and Submittals

All Field Design Changes (FDC) must be identified, received, tracked, reviewed, responded to, approved by authorized personnel, and distributed prior to their implementation in accordance with a defined procedure developed by the Contractor during Sub-Phase 1A. All field design changes must follow the same QMSP process as the original design. All reviews require an accelerated review and approval process. FDC review shall be given by the Department within five (5) Working Days of Submittal to the Department, depending on the complexity of the FDC the Department may establish a longer review time. The Contractor shall notify the Department of priority FDC requests if multiple FDCs are submitted within the same timeframe. A review response of approval, revise and resubmit, or accepted as noted will be provided to the Contractor by the Department through the ECMS.

In all cases, the DBT IDQF Manager must certify in writing that the field design change:

- A. Has been designed in accordance with Contract Document requirements.
- B. Has been checked in accordance with the DQMP.
- C. Has been reviewed by the IDQF.

### 2.3.8 As-Built Submittals

Produce As-Built Documents as the Project progresses and as physical Work on each Buildable Unit is completed, within 90 Workdays of the end Buildable Unit Milestone (See Exhibit T Critical Path Method Progress Schedule) approved by the Department as complete within the Project Schedule. Prepare As-Built Documents in conformance with ODOT and KYTC plan formats described in applicable standards and submit them in both hardcopy and electronic (PDF, TIFF, and CADD) format, including MicroStation and Open Roads Designer (ORD) files, conforming to ODOT and KYTC CADD standards. See Section 8.4.F (Design and Preconstruction Survey) for KYTC As-Built survey requirements. As-Built Documents shall include quantities for the Work associated with each Buildable Unit.

Group quantities in accordance with the Location and Design Manual, Volume 3, Section 1307, and provide them in Microsoft Excel or similar tabular format, as approved by the Department. Provide



instructions with each table of quantities, providing information that enables Department personnel to properly identify all quantities.

Prepare formal As-Built submittals for each Buildable Unit that incorporate all updates to the Released for Construction Documents including any design changes, actual field as-built changes, actual survey info; and up-to-date copies of all other Design Documents including Project reports, calculations, design files, etc. These submittals must include an overall schematic of all Buildable Units. Contractor to prepare an As-Built Documents Log indicating current status of the As-Built submittals to be reviewed during project coordination meetings.

Utility relocations performed by others, in conjunction with the Project (e.g., telecom, gas, private electric, other private utilities), do not need to be incorporated in the As-Built CADD files and plan sheets, however, the utility relocation plans must be included as an attachment to the As-Built submittal.

The IDQF will review and verify As-Built Documents for compliance with the Contract Documents prior to submittal to the Department.

The review of As-Built Documents will be performed by the Department with Contractor participation. All As-Built Buildable Unit submittals must be submitted as noted in [Table 2-5](#) (Project Management Submittals Tables), as a condition of Completion of the Contract or as a condition of Final payment per PDBC [Section 5.14.3](#) (Final Payment).

### **2.3.9 General Review Timeframe**

For any submittal not specifically named in this Technical Requirements document, anticipate 15 Working Days for the Department, 15 Working Days for affected City(s) review, and 20 Working Days for review by Utility Owners, Railroads, or other Government Entity if applicable.

## **2.4 Building Information Model (BIM)**

The Department may consider the use of Building Information Modeling (BIM) for Infrastructure workflows and/or model-based deliverables to facilitate construction activities in lieu of traditional plan development. Prior to BIM implementation, the DBT shall submit a BIM Execution Plan (BEP) to the Department for review and approval. BIM models as deliverables will not be accepted without an approved BIM Execution Plan and can adapt, with approval, throughout the design-build process. Submit the BIM Execution Plan prior to commencement of Sub-Phase 1A activities.

The BEP shall define a plan including, but not limited to, the following:

- A. The scope of model-based deliverables (i.e., for certain buildable units, or individual operations like earthwork or paving),
- B. The Level of Development (LOD) for each deliverable,
- C. The type of deliverables that will be submitted to the Department for each review stage and final as-built record retention,
- D. A workflow plan for all stakeholders to review and comment on the BIM deliverables, and
- E. If a Model as a Legal Document (MALD) is to be used, a means for the Engineer of Record to

sign and/or seal each BIM deliverable in accordance with requirements as set forth by the Ohio Board of Engineers and Surveyors, Ohio Administrative Code, and Ohio Revised Code and the Kentucky Board of Engineers and Surveyors and Kentucky Revised Statutes as appropriate for the project.

The BEP shall consist of a quality management plan that guides the use of digital information, including the roles and responsibilities of each party, the information to be included in each deliverable and format, and how and when the deliverables should be exchanged between stakeholders.

## 2.5 Submittals

Unless otherwise indicated, submit all Submittals in both electronic format and hardcopy format. Acceptable electronic formats include Microsoft Word, Microsoft Excel, or Adobe Acrobat (.PDF) files, unless otherwise indicated. At a minimum, the Contractor shall submit the following to the Department:

**Table 2-5: Project Management Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
DBT Project Management Plan (DBT PMP)	Approval	N/A	1	Within 40 Working Days after Sub-Phase 1A NTP	<u>2.1.1, and 2.1.13</u>
Sub-Phase 1A, Base Design Submittal	Approval	Refer to <u>Table 2-1</u> (DBT PMP Component Management Plans)	1		<u>2.3.2</u>
Sub-Phase 1B and Phase 2 Design Submittals	Approval	Refer to <u>Table 2-2</u> (Submittal Durations and Print Requirements for Sub-Phase 1A Base Design Reviews)	1		<u>2.3.3</u>
Released for Construction Documents	Submittal	7	1	Prior to construction Work covered by the RFC Documents	<u>2.3.4</u>
Supplemental Plan Sheets	Submittal	N/A	1	With RFC Documents	<u>2.3.5</u>
As-Built Submittals	Acceptance	2	1	Within 90 Workdays of completion of each Buildable Unit	<u>2.3.8</u>

## 3. QUALITY MANAGEMENT

### 3.1 General

The Contractor is responsible for the quality of the Work, including the Work and products of the Designer, Subcontractors, Subconsultants, fabricators, suppliers, and vendors.

### 3.2 Quality Management System Plan

- A. The Quality Management System Plan (QMSP) will define the quality management systems during the design and construction. The Design Quality Management Plan and Construction Quality Management Plan are appendices of the QMSP. The Contractor shall or shall cause to be completed all quality assurance and quality control activities required to manage its own processes as well as those of its Contractors, and suppliers. The QMSP shall:
1. Be developed consistent with ISO 9001 principles and clearly demonstrate how it will lead to continuing improvement;
  2. Define the Quality Management System roles and auditing responsibilities and procedures (internal and external);
  3. Establish quality objectives that are measurable and quantifiable;
  4. Provide an organizational chart with roles, responsibilities, and professional qualifications applicable to all stages of the project;
  5. Describe how the relevant requirements of the contract will be met;
  6. Require any Designer, Subconsultant, Subcontractor, or supplier employed by the Contractor for design and construction activities to develop, implement and maintain a quality management system compatible with the requirements;
  7. Be able to provide reports on quality with a tracking system, which at a minimum, includes:
    - a. Searchable data;
    - b. Summary of inspection and quality control activities;
    - c. Internal and external quality audits performed;
    - d. Non-conformances and their status, such as quality item description; date opened; date closed; status (open, closed, pending, follow-up required); disposition (repair, reject, rework); status; corrective actions;
    - e. How the non-conformity has been accepted by the Department, if applicable; and
    - f. Updates to the QMSP.
  8. Provide a means and procedure for “escalating” quality concerns of the Department or the Contractor;
  9. Provide a linkage amongst relevant Project Development Plans and address all quality-related items in those plans;
  10. Provide a document management system;
  11. Be updated regularly and produce a track-able record and reports of quality control, assurance, and audits; and

12. Explain the corrective action process for workmanship related quality issues in order to minimize the recurrence of such errors and quality problems.

### 3.3 Design Quality Management Plan

Provide and implement a comprehensive Design Quality Management Plan that describe how the Contractor and Designer intends to manage the design processes for the Work. No Design Submittals can be submitted until the Department has approved the DBT's Quality Management System Plan and Design Quality Management Plan.

Provide an organizational chart in the Design Quality Management Plan identifying key Designer and Subconsultant design management personnel. Include a description of responsibilities, qualifications, and authority of the key design management personnel and the organizational interfaces between other engineering groups disciplines which undertake the Design Work. The Design Quality Management Plan must address all phases and aspects of the Design Work.

The Design Quality Management Plan must, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:

- A. Design and computer input and output review;
- B. Verification of design inputs that incorporate on-Site measurements and/or inspections;
- C. Design verification to ensure that design input requirements have been met;
- D. Design validation to ensure that the final product is capable of meeting its intended use;
- E. Design changes;
- F. Control of non-compliant product;
- G. Compliance with design certification requirements;
- H. Design subcontractor quality assessment and procurement;
- I. External quality audits of design subcontractors;
- J. Internal quality audits;
- K. Corrective actions;
- L. Document management;
- M. Control of records;
- N. Interaction with design checking teams, including independent design checkers; and
- O. Any mandatory documented procedures in addition to the foregoing.

At a minimum, the above-listed procedures and flow charts must document who will do the work, what they will do, and what evidence is generated that they have done the work correctly. Provide a declaration with each submittal from the DBT Design Quality Manager that the Design followed the quality process and complies with the Design Quality Management Plan and any applicable independent design check certifications. The Design Quality Management Plan shall be linked to other relevant PMPs and the QMSP.

### 3.4 DBT Independent Design Quality Firm (IDQF)

The Contractor shall employ an IDQF who will be responsible for verifying compliance that all Design Work meets the requirements of the Contract Documents, facilitating continuous improvement of the design process, and meeting the quality assurance requirements that are assigned to the IDQF.

The IDQF shall not have any responsibility for, and shall remain independent from, all production activities for Design Work. All written or documented communications (including all notices, notifications, correspondence, meeting minutes, data, reports, transmittals, and emails) between the IDQF and the Contractor relating to the IDQF's responsibilities in connection with the Project shall be copied to the Department. In the event the IDQF determines that the Design Work (or any portion thereof) is not in accordance with the Contract, the DBT Design Manager and DBT Construction Manager shall not have the authority to over-rule the IDQF's determination.

The Contractor cannot terminate or seek the termination or removal of any IDQF personnel performing quality functions or with a judgment in the quality of the Design Work without the expressed written permission of the Department.

The IDQF must be the following:

- A. An independent entity; shall not be an Affiliate and shall not be owned or controlled by the Contractor or an Affiliate.
- B. A direct report to the DBT Project Manager.

### 3.5 DBT Lead Independent Companion Bridge Engineer

Provide a Lead Independent Companion Bridge Engineer (ICBE) from a professional firm who will be responsible for performing an independent check on the design of the Companion Bridge. This includes independent analysis using independently derived methodologies and modeling software for the geotechnical and structural design. The DBT Lead Independent Companion Bridge Engineer cannot be employed by the Contractor or the Engineer of Record firm.

The DBT Lead Independent Companion Bridge Engineer must have authority independent of and be equivalent (or higher) authority than the DBT Design Manager.

The Contractor cannot terminate or seek the termination or removal of the Lead Independent Companion Bridge Engineer without the expressed written permission of the Department.

The Lead Independent Companion Bridge Engineer must be the following:

- A. Employed by an independent entity, not owned by or an Affiliate of the Contractor or the Engineer of Record of the Companion Bridge.
- B. A direct report to the DBT Project Manager.

### 3.6 Early Work Packages and Phase 2 Construction Quality Management

Provide and implement a comprehensive construction quality management plan that describes how the Contractor intends to manage the construction processes in connection with the Work and integrate with the Department's testing, sampling, and inspection plan.

Provide a Construction Quality Management Plan that contains an organizational chart identifying key construction management personnel. Include a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between construction and other disciplines, including design, environmental management, and traffic management. Include all phases and aspects of the Work, including design and construction, in the Construction Quality Management Plan.

The Construction Quality Management Plan must, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes that the Contractor will be responsible for compliance with the Project Standards:

- A. Construction safety audits:
  - 1. Compliance with the Department's inspection, testing, and monitoring.
- B. Inspection, sampling and testing for Ohio Work required by C&MS 611.
- C. Field measurements and surveys.
- D. Materials identification and traceability including (Information provided by Contractor):
  - 1. Material sources.
  - 2. Mill certifications.
  - 3. Buy America certifications.
  - 4. General material certifications.
  - 5. Test data certifications.
  - 6. Mix designs.
- E. Subcontractors' quality assessment and procurement.
- F. Procurement monitoring compliant with the Subcontractor Bidding and Selection Plan.
- G. External quality audits of Subcontractors.
- H. Internal quality audits.
- I. Control of non-compliant product and process of addressing non-compliance by both Contractor and Subcontractors.
- J. Corrective Action Plan and process for addressing corrective actions to address and prevent the recurrence of Nonconforming Work as defined in [Section 3.7](#) (Nonconforming Work).
- K. Document management (Contractor for documents they produce/provide).
- L. Control of records (Contractor for what they produce/supply).
- M. Any mandatory documented procedures in addition to the foregoing.

At a minimum, document who does the work, what they do, and what evidence is generated that they have done the work correctly in the foregoing procedures and flow charts.

Integrate the Departments quality assurance specifications, process, and durations into the Construction Quality Management Plan.

Upload all Quality Documentation to the Department's chosen document management software and systems within 10 Working Days for access by the Department.

Integrate the Departments fabricator specifications, process, and duration into the Construction Quality Management Plan.

## 3.7 Nonconforming Work

### 3.7.1 Nonconforming Work Process

The process for identification of Nonconforming Work, the initiation of a Nonconformance Report (NCR), the identification and implementation of a Nonconforming Work remedy, and where applicable, the issuance of a Corrective Action Request (CAR) and production and implementation of a Preventative Action Report (PAR) are described below. The Contractor shall comply with the following processes for Nonconforming Work:

- A. Immediately cause an NCR to be initiated within the ECMS system in accordance with Section 3.7.2 (Initiation of NCR and Potential NCR). The Department and Department Authorized Representatives shall also be entitled to initiate an NCR.
- B. Detail the Nonconforming Work and the resulting NCR in the ECMS system along with a corrective action plan and reason for the NCR in accordance with requirements to be provided by the Department during Sub-Phase 1A.
- C. The Department will review the NCR for compliance with the Agreement and the accepted PMP. Where the Department does not certify its agreement with the NCR, the Contractor shall revise and resubmit the NCR via the NCR system.
- D. Following the Department's acceptance of the NCR, the Contractor shall implement the Nonconforming Work remedy accepted by the Department.
- E. Following implementation of the accepted Nonconforming Work remedy the Contractor shall notify the Department in order to verify implementation, document, and support NCR closeout.
- F. An NCR shall be closed when it meets the requirements set forth in Section 3.7.4 (Nonconforming Work Remedy).
- G. The Department may issue a CAR notice to the Contractor at any point during the Nonconforming Work process as set out in Section 3.7.5 (Corrective Action Request). In the event a CAR notice is issued, the Contractor shall submit a PAR in accordance with Section 3.7.6 (Corrective/Preventative Action Report).

### 3.7.2 Initiation of NCR and Potential NCR

The Department will initiate an NCR whenever the Department discovers from internal audits, external audits, inspections, testing, or by notification from the Contractor that Nonconforming Work has occurred. Whenever the Contractor becomes aware of Nonconforming Work, such party shall initiate an NCR. No later than 24 hours after initiation of an NCR, the Contractor shall upload to the ECMS system



all information required by the Department. The Contractor shall rectify or otherwise address the Nonconforming Work as described in the NCR, subject to the Department's acceptance, in a manner that allows each NCR to be closed within the period identified in the NCR, but in any event no later than the Substantial Completion Deadline, or as otherwise stated in the PDBC Section 5.9 (Unauthorized and Nonconforming Work).

Notwithstanding that Nonconforming Work has not yet occurred, a potential NCR shall be initiated whenever any of the following apply:

- A. An internal or external audit finding shows that a process or procedure in the PMP is not clearly documented.
- B. It has been discovered that the applicable reviews, testing, or inspections related to the Work may not have been followed and the Project Documents or records are incomplete or inconclusive.
- C. Work of a similar nature or Work subject to similar processes has been discovered to be Nonconforming Work and the root cause has not yet been established.
- D. Work is in a state prior to reaching final completion condition such that modification would require its destruction or otherwise require unplanned Work to occur to correct the condition to make the Work conform to the requirements of the Agreement or to conform with other design discipline elements. These fixed points include:
  1. Upon transmittal of a Buildable Unit Submittal.
  2. Any other point in time where Work has a distinct transition into a new and subsequent stage, form, or time period. For example, substructure Construction Work is progressing, and superstructure Release for Construction plans are submitted after substructure Construction Work begins.

An NCR or potential NCR shall be initiated with respect to any of the following types of Work:

- A. PMP, including conformance to stated process and procedures.
- B. Design Work at or after the Released for Construction Submittal, including associated Field Design Change, Notice of Design Change, and Shop Drawings and their associated revisions.
- C. Construction Work including maintenance during construction.

Wherever this Section 3.7 refers to Contractor actions and obligations with respect to each NCR, this shall be deemed to include Contractor actions and obligations with respect to each potential NCR, and the same processes and procedures specified herein for NCRs shall be followed for potential NCRs.

### **3.7.3 NCR System Requirements**

The Contractor shall coordinate with the Department to establish NCR process, implementation, and maintenance of the NCR system. The NCR system will identify, communicate, document, report, and track (as required) all instances of Nonconforming Work and document actions to rectify or otherwise address such Nonconforming Work. The Contractor shall maintain in the Department's ECMS, consistent with the workflow process of the ECMS system a complete history of each NCR from initiation to Completion of the Contract.



### 3.7.4 Nonconforming Work Remedy

Where the Department accepts the disposition of an NCR as remove/replace (rework), repair, or accept as-is:

- A. Where the disposition of an NCR is to “repair” or “accept as-is”, the Engineers of Record (EORs) who stamped or sealed the drawings for the Construction Work and the Contractor shall evaluate the effect of the Nonconforming Work on the performance, safety, structural integrity, visual quality, durability, and effect of the long-term maintenance of the Project and the Work affected. The EOR shall issue an associated signed and sealed Notice of Design Change or Field Design Change for the “repair” disposition.
- B. For NCR disposition “rework”, “repair” or “accept as-is,” the provisions of the PDBC shall apply.

Where the disposition of an NCR is set to submit/re-submit for periodic or re-occurring Submittals, the accepted remedy shall have been implemented prior to the next periodic Submittal or subsequent stage of Submittal and in accordance with PDBC [Section 5.9](#) (Unauthorized and Nonconforming Work) and with PDBC [Exhibit F](#) (Noncompliance Points System).

Where the disposition of an NCR is set to “redesign” for a post-RFC Design Work Submittal and the remedy requires the Design Work to be modified prior to construction beginning, the Contractor shall issue the associated Field Design Change or Notice of Design Change.

### 3.7.5 Corrective Action Request

The Department is entitled to issue to the Contractor a CAR notice if any of the following circumstances apply:

- A. NCRs have occurred in similar work types more than four times in any calendar year.
- B. More than two NCRs have occurred in similar work types in any 30-Day period that result from inadequacies in either production processes or quality testing or inspections.
- C. The Contractor has failed to timely submit the required information with respect to NCRs on more than two occasions in a 30-Day period.
- D. The Contractor has failed to act upon and implement an accepted Nonconforming Work remedy on more than two occasions in a 30-Day period.
- E. Nonconforming Work Remedies have failed to address the root cause of Nonconforming Work on more than one occasion in any calendar year.
- F. There is evidence that actions arising from Contractor quality audits are not being implemented.
- G. Quality procedures are systemically not being carried out per the QMP or resolved in a timely fashion.
- H. When the Nonconforming Work relates to public health and safety, third-party property, or Environmental elements.

### 3.7.6 Corrective/Preventative Action Report

Following the Department’s issuance of a CAR notice, the Contractor shall submit a PAR within 15 days of receipt unless otherwise agreed upon in writing. The PAR shall follow the processes and procedures in the QMP including those described in this [Section 3.7](#) (Nonconforming Work). The PAR

shall address whether the performance by personnel responsible for the relevant activities may be a primary or contributing cause of the systemic Nonconforming Work. In such case, remedial action shall include additional training, additional personnel, or the replacement of personnel or Subcontractors from the activity or Project. Where the Department does not accept the PAR, the Contractor shall revise and resubmit the PAR via the ECMS system. Upon the Department acceptance of a PAR, the CAR shall be closed. The Contractor's failure to provide or address the Department's comments shall be handled in accordance with PDBC Section 5.9 (Unauthorized and Nonconforming Work). The Contractor's failure to submit, implement, or comply with the accepted PAR shall result in the issuance of a Noncompliance Event in accordance with PDBC Exhibit F (Noncompliance Points System).

### **3.8 Allocation of Quality Management Responsibilities**

The Contractor will be responsible for the professional quality, technical accuracy, and adherence to the Governing Regulations for all plan submittals required under the Contract Documents.

#### **3.8.1 Contractor Responsibilities**

The Contractor shall:

- A. Perform all functions, including production necessary to meet the quality requirements of the Contract Documents for Professional Services;
- B. Have the authority and the obligation to stop any Work if requirements of the Contract Documents are not being met;
- C. Identify and recommend measures to prevent quality problems or to improve quality;
- D. Provide 24-hour notice of and invite the Department to: over-the-shoulder reviews, and interim/final design reviews;
- E. Provide access to all facilities, offices, and locations on and off-site where Work occurs. To facilitate access to sites where aerial access is necessary, make equipment available for the directed use of the Department personnel;
- F. Allow the Department to copy any books or records, or provide copies, as the Department reasonably deems necessary for purposes of verifying compliance with the Contract Documents;
- G. Build into its Project Schedule sufficient time for reviews, approvals, quality assurance, and for the Contractor's subsequent revisions;
- H. Stop Work when directed and correct conditions that are unsafe for Project personnel or the public or to correct unacceptable design or construction practices;
- I. Have no IDQF responsibilities;
- J. Inspection, sampling and testing for Ohio Work required by C&MS 611;
- K. Provide 24-hour notice for required inspection, sampling and testing by the Department; and
- L. Work collaboratively to integrate the Department's construction engineering and inspection functionality for testing, sampling, and inspection into the DBT's Quality Management Plan.

### 3.8.2 DBT IDQF Responsibilities

The DBT IDQF shall:

- A. Perform all quality assurance functions related to Design Documents ensuring that all Design Work meets applicable requirements of the Contract Documents. Design work may be verified by qualified individuals who are employees of or retained by manufacturers, vendors, or Suppliers, if approved in writing by the Department;
- B. Identify and recommend measures to prevent quality problems or to improve design quality;
- C. In the event the IDQF determines that the Design Work does not meet the requirements of the Contract Documents, promptly notify the DBT Manager with a copy of such Notice to the Department;
- D. Have the authority and requirement to stop any Design Work if requirements of the Contract Documents are not being met;
- E. Approve all design submittals (including Engineered Drawings) prior to delivery to the Department. IDQF approval shall indicate that the IDQF believes the Contractor's quality process has been followed and that the submittal meets requirements of the Contract Documents; and
- F. Have no Contractor Quality Control responsibilities.

### 3.8.3 DBT Lead Independent Companion Bridge Engineer Responsibilities

The DBT Lead Independent Companion Bridge Engineer shall:

- A. Review the Bridge Design Criteria Report and conduct design checks to ensure that the design of the Companion Bridge meets the Bridge Design Criteria Report, including all performance expectations and requirements for the Project and that such design is carried out according to Good Industry Practice (see specific design assessment requirement below);
- B. Undertake supplementary analyses (see specific analytical check requirements below) to independently verify and confirm the design methodologies and assumptions used;
- C. Use bridge analysis and design programs that are different from the bridge analysis and design programs used by the design team. These bridge analysis and design programs shall meet the Project requirements;
- D. Identify deficiencies in the design and analyses, and notify the Contractor and the Department of unresolved deficiencies; and
- E. Assist the Contractor and the Department in resolving any deficiencies.

The independent design check requirement shall be separate from, and in addition to, the Contractor's required quality management procedures. The use of an Independent Bridge Engineer is not required for report submittals unless noted otherwise elsewhere in the Contract Documents.

- A. Design Assessment Requirements: Design assessment shall be the review of general compliance with the requirements of Section 18 (Structures) taking into consideration the proposed method of construction, and shall at a minimum cover the following areas:
  - 1. Loads.
  - 2. Applicable laws and standards.
  - 3. Methods of analysis.

4. Computer software and its validation.
  5. Maintenance requirements.
  6. Materials and material properties.
  7. Durability requirements.
  8. Fatigue performance.
  9. Redundancy requirements.
  10. Requirements and conditions of Permits and other environmental commitments.
- B. Analytical Check Requirements: Provide an independent design check that includes an independent analytical check using separate calculations — and without reference to the Designer's calculations — to establish the structural adequacy and integrity of all Structural Elements. Include, at a minimum, the following in the check:
1. The structural geometry and modeling.
  2. Material properties.
  3. Member properties.
  4. Loading intensities.
  5. Structural boundary conditions.

### **3.8.4 Department Responsibilities**

Department or Consultant Advisors acting on behalf of the Department will provide reviews of design submittals per [Section 2.3](#) (Design Submittals) and provide construction quality control, sampling, and testing in accordance with the Department requirements.

### **3.9 Submittals**

Submit submittals under this [Section 3.9](#), a non-exhaustive list of which is set forth in [Table 3-1](#) (Quality Management Submittals Table), in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated. At a minimum, the Contractor shall submit the following to the Department:

**Table 3-1: Quality Management Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Quality Management System Plan	Approval	N/A	1	Prior to the start of Work, but in no case later than 30 Working Days after NTP	<u>3.2</u>
Design Quality Management Plan	Approval	N/A	1	Prior to the start of Work, but in no case later than 30 Working Days after NTP	<u>3.3</u>
Independent Design Check Certifications and Calculations	Submittal	N/A	1	As per Design Quality Management Plan	<u>3.3</u>
Construction Quality Management Plan	Approval	N/A	1	Not later than 30 Working Days before first Construction Work of Permanent Work	<u>3.6</u>

## 4. CO-LOCATION FACILITIES FOR CONTRACTOR AND DEPARTMENT FORCES

### 4.1 Project Management Office

The Contractor shall co-locate with Department and consultant advisor personnel for the Preconstruction Phase (Sub-Phase 1A and Sub-Phase 1B) and Final Design and Construction Phase (Phase 2) of the Project. The purpose of the PMO is to consolidate and co-locate the DBT's key management, design, construction, quality, and compliance functions and the Department's management, oversight, and compliance staff in order to facilitate the teamwork, communications, and interaction called for by the Contract Documents. The Contractor shall provide ADA-compliant, Class C PMO to accommodate co-located personnel meeting the requirements of this [Section 4.1](#) and ODOT Construction and Materials Specifications Item 619. The office space shall be located in Ohio and be within 2 miles of the intersection of I-75 and the Ohio River or in a location acceptable to the Department.

Although located in the same facility as the Contractor, Department staff and consultant advisor personnel workspaces shall be adjacent to the extent possible. If the facility has multiple floors, the Department and consultant advisor workspaces should be placed together on its own floor while Contractor workspaces shall be located on a separate floor.

The PMO shall be established with a short-term lease (with a maximum initial term of one-year) with the option to extend for the term of the Project on a month-to-month basis. If PDBC [Section 21](#) (Termination for Convenience) is initiated by the Department the short-term lease shall be allowed to expire or shall be terminated.

The following personnel, at a minimum, shall be in the PMO during the Preconstruction Work (Sub-Phase 1A) for weekly progress meetings:

- A. DBT Construction Manager
- B. DBT Design QC Manager
- C. IDQF Manager
- D. Lead Structural Design Engineer
- E. Lead Highway Design Engineer
- F. Lead Independent Companion Bridge Engineer
- G. DBT Diversity and Inclusion Manager

Although considered beneficial by the Department, it is left to the discretion of the Contractor as to whether detailed design production activities of the Project are located at the PMO. If any portion of the Design Work is not accomplished at the PMO, it is expected that the Key Personnel and design discipline leads shall be responsible for all necessary coordination at the PMO.

It is required that all design submittal and review meetings, Contractor's design discipline (subject area) meetings called for by the Contract Documents, and all coordination and other activities requiring Department's consultation be held in the PMO unless otherwise mutually agreed.

The following personnel, at a minimum, shall be co-located in the PMO for Preconstruction Work (Sub-Phase 1B) per percentages/week listed below:

- A. DBT Project Manager (100%)
- B. DBT Design Manager (100%)
- C. IDQF Manager (100%)
- D. Lead Independent Companion Bridge Engineer (20%)
- E. DBT Construction Manager (20%)
- F. Lead Structural Design Engineer (20%)
- G. Lead Highway Design Engineer (20%)
- H. DBT Diversity and Inclusion Manager (20%)
- I. DBT Design QC Manager (20%)

The following personnel, at a minimum, shall be co-located in the PMO for Final Design and Construction Work (Phase 2) per percentages/week listed below:

- A. DBT Project Manager (100%)
- B. DBT Design Manager (100%)
- C. DBT Construction Manager (100%)
- D. DBT Utilities/Rail/City Coordinator (80%)
- E. IDQF Manager (100%)
- F. Public Information Point of Contact (60%)
- G. Lead Bridge Superintendent (100%)
- H. Lead Highway Superintendent (100%)
- I. DBT Diversity and Inclusion Manager (60%)
- J. Lead Independent Companion Bridge Engineer (60% until 100% of the Companion Bridge Released for Construction Plans are accepted)
- K. Lead Structural Design Engineer (20% until 80% of the structural Released for Construction Plans are accepted)
- L. Lead Highway Design Engineer (20% until 80% of the roadway Released for Construction Plans are accepted)
- M. DBT Design QC Manager (20% until 80% of the Released for Construction Plans are accepted)

The Contractor shall coordinate to ensure at a minimum one of the following Key Personnel is in the PMO during the work week during Phase 2: DBT Project Manager, DBT Design Manager, and DBT Construction Manager.

In Phase 2 of the Project, it is anticipated that construction field offices will be necessary in both Ohio and Kentucky. The Ohio construction field office may be separate from or combined with the PMO. Equipment and network requirements for the field office(s) will be coordinated prior to the Phase 2 Change Order.



After the Design Work of the Project is complete, the Contractor may elect to reduce the size of the PMO provided sufficient office space remains for the required Contractor's and Department's managerial, construction, and environmental compliance personnel.

In addition to the requirements of ODOT Construction and Materials Specifications Item 619, within two weeks after NTP, the Contractor shall schedule a meeting with the Department to coordinate plans for the interim and/or permanent PMO and possible construction field office(s), including integration, accommodation, and incorporation of Department's requirements. Contractor shall provide the following items and features for the required office space and facilities for Department forces within 30 days after Notice to Proceed.

The Contractor shall provide maintenance for all items provided by the Contractor for use in the co-location facilities. The Contractor is responsible for determining office requirements to accommodate the Contractor's staff.

A. New Office furniture for the entire office space:

1. Two copier, printer, and scanner systems per the specifications listed below. The Contractor shall provide paper and printing supplies and maintenance for all specified equipment. Contractor shall provide maintenance within 24 hours of Department notification of equipment use disruption.
2. Contractor to provide telephone service for KYTC and Consultant Advisors as required for the PMO to function as a typical design office with minimal delays in service or ability to complete Work.
3. All rooms, cubicles, and conference rooms shall be capable of having network jacks installed for use by the Department.
4. The Contractor will obtain and pay for two separate internet connections for Contractor, KYTC, and Consultant Advisors, each with secure 1Gbps ("Gigabit internet") broadband internet service and wi-fi connectivity, capable of providing simultaneous service to at least 30 staff at a minimum. The Contractor will provide the necessary network equipment and communication circuits to connect the PMO to the Department network. The DBT will install network drops in the office cubicles, conference room, and public meeting room.

B. For Security purposes the Contractor will provide and maintain their own internet connectivity, wired network and Wi-Fi network. The Contractor shall provide a second Wi-Fi network for KYTC and Consultant Advisors.

C. The Contractor shall provide two licensed copies of Primavera (P6) for KYTC and the appropriate contract management software compatible with the Department's project document management system.

D. Office space for the Department's staff that has, at a minimum, the following:

1. 12 offices (100 square feet, each enclosed office space with individual locking door, one desk, office chair, folding table, bookcase, and two side chairs);
2. 18 cubicles (80 square feet each) and an appropriate number of desks, chairs, and filing cabinets;
3. An enclosed conference room (600 square feet) with doors, provided with:
  - a. A computer projector and minimum 7-foot-wide screen;



- b. Folding Office Chairs (10);
  - c. 40 padded conference room chairs;
  - d. Conference room tables for 30 people with additional seating room for up to 10 people; and
  - e. Large conference room high-quality wideband speaker phone with control panel and dial pad and two wired expansion microphones.
4. Break room with sink (150 square feet, with 12 square feet of counter space, microwave oven and a 20-cubic-foot refrigerator);
  5. Lockable filing space (400 square feet) with six four-drawer filing cabinets;
  6. Ten 3-by-5 foot dry-erase boards;
  7. Two 4-by-8 foot dry-erase boards;
  8. Multiple colored dry-erase markers and erasers (for the duration of the Project);
  9. Two lockable closets (25 square feet each);
  10. Hard surfaced (paved) parking, with one space per office and one space per cubicle, plus 10 visitor spaces. The parking area shall be well lit, secured, and maintained, with slopes not exceeding 1 percent in any direction. Parking shall be at no cost to the Department. A separate, fenced, lockable area shall be provided for 10 vehicles within the provided parking area;
  11. 30 wastepaper baskets; and
  12. Include bottled water service, potable hot and cold water. Toilet/washroom facilities must be appropriately sized for the size of office space per Ohio and/or Kentucky building code. Furnish all lavatory and sanitary supplies. Provide daily janitorial service.
- E. Public meeting space for meetings with public officials, key stakeholders, media, and others that has at a minimum:
1. Separate entrance from main hallway or foyer so that Project staff is not disrupted by the meetings;
  2. 800 square feet of space;
  3. Tables and folding chairs for seating up to 40. Contractor to include additional 20 padded conference room chairs;
  4. Six floor-standing easels for Project boards; and
  5. Computer projector and minimum 7-foot-wide screen.
- F. High-quality wideband speaker phone with control panel and dial pad and two wired expansion microphones.
- G. The Contractor shall provide security for the PMO, including protection of the building or space within a building against theft 24 hours per day, and is responsible for loss of property of Department, Consultant Advisors or personal property of employees of the Department housed therein due to fire, theft, or related causes; however, the Contractor is not responsible for non-job-related personal property. Protection shall include a continually monitored security and alarm system.
- H. In addition to the responsibility to maintain all internal PMO spaces and equipment, the Contractor shall be responsible for regular exterior maintenance (either directly or through a

building manager depending on facility arrangements) of the immediate grounds, monthly trash service dumpster (at least 5 cubic yards), landscaping, and the removal of snow and ice, including the supply and application of de-icing or ice melting agents, from parking areas and walks in a timely manner to ensure safe passage to and from the PMO.

## 4.2 Copier, Printer, and Scanning System Specifications

- A. Automatic document feeder with 80-sheet ARF:
1. Equipped to handle paper up to and including 11-by-17 inch (originals and copies) including mixed originals.
  2. Reduction and enlargement features.
  3. Unlimited duplexing for all size originals 8.5-by-11 inch through 11-by-17 inch.
  4. Manual and selectable automatic exposure settings.
  5. Operate on standard voltage with no special or dedicated lines.
  6. Stapler/finisher support with the following features:
    - a. Paper size support for 5.5-by-8.5 inch to 11-by-17 inch/A6 to A3;
    - b. Paper Weight support from 16 to 42 lb. Bond/ 60 to 157g/m<sup>2</sup>;
    - c. Three staple positions (1 staple/2 positions; 2 staples/1 position); and
    - d. Staple capacity: 50 sheets (8.5-by-11 inch); 30 sheets (8.5-by-14 inch or larger).
  7. 1 to 999 sort capacity.
  8. Paper capacity: four trays of 500 sheets each; 50-sheet bypass tray.
  9. Paper weight support: 20- to 28-pound Bond/64 to 105g/m<sup>2</sup> (Trays 1,2,3, & 4) 16- to 44-pound Bond/52 to 163g/m<sup>2</sup> (bypass) 20- to 28-pound Bond/64 to 105g/m<sup>2</sup> (duplex).
  10. Energy Star compliant.
  11. Network printer capability with 10BASET/100BASETx network card.
  12. Printer speed 35 ppm.
  13. Network protocol support for TCP/IP.
  14. Network operating system for Windows 7 Professional (Confirm with the Department).
  15. Client Print driver support for Windows 8 (Both PCL/PS drivers) (Confirm with the Department).
  16. Minimum print resolution of 600 x 600 dpi.
  17. Secure printing with password or pin.
  18. Network scanning that supports the following:
    - a. Scan speed: 52 ipm @200 dpi;
    - b. Scan area: up to 11-by-17 inch;
    - c. Grayscale: 256 levels (Color Required);
    - d. Scanning resolution: 600 dpi;
    - e. Scanning protocol support: TCP/IP, SMTP, SMB, FTP, POP3, NCP;

- f. Scanning support for scan-to-email, HDD, folder, URL, and TWAIN;
  - g. File formats: Single-page TIFF, JPEG, PDF, multi-page TIFF, PDF;
  - h. Address book support for multiple items;
  - i. OCR software that supports TIFF, PDF, multi-page TIFF, and multi-page PDF; and
  - j. OCR software must support batch workflow processing of documents.
19. Minimum shared memory capacity for all options:
- a. 384 MB.
20. Hard disk drive:
- a. 40 GB drive for internal storage and network scanning.
21. Black & white and color capable.

## 5. DIVERSITY, INCLUSION, AND OUTREACH

The Contractor shall identify and employ a Diversity and Inclusion Manager who shall create and actively manage a Department and FHWA approved, project-specific Diversity, Inclusion, and Outreach Plan (DIOP). The Diversity and Inclusion Manager shall be responsible for all aspects of Project outreach and compliance for DBE, EEO, prevailing wage, workforce development, On the Job Training (OJT) activities, including coordination with the Contractor, Department's staff, and Consultant Advisors. The Diversity and Inclusion Manager shall provide regular updates to the Department on implementation of the DIOP. The Diversity & Inclusion Committee and ODOT's Division of Opportunity, Diversity, & Inclusion (ODI) will serve as resources for the Contractor's D&I efforts. The Diversity & Inclusion Manager shall attend, participate, and provide a written summary of activities in all Diversity & Inclusion Outreach Committee meetings. The DBE and OJT participation goals for the Project are defined within the PDBC for Preconstruction Phase (Phase 1 Work) and Final Design and Construction Phase (Phase 2 Work).

The DIOP shall include as a minimum the following components:

- A. DBE Performance Plan;
- B. DBE Goal Attainment and Tracking Plan;
- C. DBE Outreach Plan;
- D. DBE Development Plan;
- E. Compliance Plan;
- F. OJT Performance Plan;
- G. Workforce Development Plan; and
- H. Community Engagement Plan.

### 5.1 DBE Performance Plan

A Phase 1 DBE Performance Plan was submitted with the Proposal in response to the ITO and in accordance with Exhibit L (Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts) of the PDBC. An updated DBE Performance Plan shall be submitted by the Contractor to the Department at the execution of the Contract (Sub-Phase 1A) and each Change Order for Sub-Phase 1B, Early Work Packages, and Phase 2.

DBE firms can be added to the DBE Performance Plan at any time; however, the Contractor shall follow the contract process for termination, reduction, and replacement of a DBE firm as set forth in PDBC Section 8.5 (Substitution of Subcontractors) and Exhibit L (Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts). This process requires pre-approval by the Department. The DBE Performance Plan shall be updated on a rolling basis and submitted monthly to the Department for approval. At a minimum, the following information shall be included in the monthly submittal to the Department:

- A. A comprehensive list of subcontract packages to be set aside or made available for DBE participation. Each subcontract packages shall set forth the type of work available including applicable NAICS codes for the Work, the timeframe the subcontract would be entered into, and

when the subcontract work would be performed. Subcontract packages shall be added or subtracted from the DBE Performance Plan on a rolling basis, as opportunities are identified and/or filled;

- B. A list of DBEs committed on the Project including the following:
  - 1. Names and addresses of certified DBE firms committed;
  - 2. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a North American Industry Classification System (NAICS) code applicable to the kind of work the firm would perform on the contract;
  - 3. Whether the DBE firms being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant, or other capacity;
  - 4. The dollar amount of the participation of each DBE firm used to meet the DBE goal;
  - 5. Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - 6. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
- C. A list of the names, position, and qualifications of each individual on the Contractor' team who will be responsible for DBE utilization and commitments; and
- D. A statement providing Contractor shall make good faith efforts throughout the life of the Project to identify and carve out potential subcontracting packages for DBE participation.

The Contractor shall Submit an updated and revised DBE Performance Plan per PDBC [Section 2](#) (Progressive Design-Build Approach) and PDBC [Section 4](#) (Design Requirements and Submittals) with the Sub-Phase 1B Proposal and Phase 2 Proposal.

## 5.2 DBE Goal Attainment and Tracking Plan

The DBE Goal Attainment and Tracking Plan shall explain the Contractor's methodology for developing and tracking its DBE Performance Plan. The Contractor shall address in its methodology how the Contractor will determine DBE subcontract packages, the types of subcontract packages it plans to consider for DBE participation, the type of tracking software it will utilize to track DBE commitments and utilization, and how it will track communications to DBE firms on available DBE subcontracting opportunities and commercially useful function (CUF).

The Contractor is responsible for ensuring the DBE goal is tracked in real time throughout the life of the Project shall submit a monthly report to the Department outlining goal attainment and commitments to date and maintain a project dashboard with daily updates. The Contractor is responsible for ensuring the DBE firms committed to the Project are properly certified as a DBE in Ohio, Kentucky, or Indiana pursuant to the relevant reciprocity agreements and have received the proper NAICS codes for the work performed in order for the work to count toward meeting a goal. The Department and/or its representatives will have ultimate oversight and responsibility to make decisions with respect to all aspects of DBE compliance. The DBE Goal Attainment and Tracking Plan shall include, at a minimum, the following components:

- A. Explanation of the Contractor's methodology for tracking the Project DBE goal in real time. This tracking should include:

1. Commitments and negotiations with each DBE firm along with a copy of the DBE's quotation for Work;
  2. Payments as they are made to each DBE firm;
  3. Percent completion of each individual DBE contract; and
  4. Overall DBE goal attainment based on:
    - a. Payments made to the Contractor (to date).
    - b. CUF evaluation.
    - c. NAICS codes.
- B. Identification of the type of software the Contractor will utilize to track DBE goal attainment on a rolling basis and in real time;
- C. Identification of the Contractor's methodology to ensure each DBE firm committed to the Project is properly certified and holds the necessary NAICS codes; and
- D. A list of the names, position, qualifications of each individual on the Contractor who will be responsible for DBE goal attainment and tracking.

The Contractor shall submit an updated and revised DBE Goal Attainment and Tracking Plan per PDBC [Section 2](#) (Progressive Design-Build Approach) and PDBC [Section 4](#) (Design Requirements and Submittals) with the Sub-Phase 1A Proposal, Sub-Phase 1B Proposal, and Phase 2 Proposal.

### 5.3 DBE Outreach Plan

The DBE Outreach Plan shall explain in detail the Contractor's outreach and communication plan regarding DBE participation on the Project. Examples of DBE outreach may include but are not limited to networking events, informational events, newsletters, and social media. The DBE Outreach Plan should identify early notification, early involvement, partnership, visible leadership, targeted outreach, and measurable goals. If the Department elects to conduct any outreach and networking events, the Contractor shall attend and participate.

The DBE Outreach Plan shall include creating and maintaining a database of all contacts, inquiries, and identified potential DBE firms. This database shall contain, at a minimum, the company name, date of initial inquiry, date of every inquiry after, how the inquiries were made (phone, email, etc.), nature of potential viable work to be performed, efforts made by the Diversity and Inclusion Manager, contact information, and whether the business is ultimately included in the Project. If a company is not being considered for the Project, the reasons must be documented along with proof that the company was notified of the decision including feedback so the firm can learn for future projects.

The DBE Outreach Plan shall set forth the names, position, and qualifications of each individual on the Contractor who will be responsible for DBE outreach and communication.

The Contractor shall Submit an updated and revised DBE Outreach Plan per PDBC [Section 2](#) (Progressive Design-Build Approach) and PDBC [Section 4](#) (Design Requirements and Submittals) with the Sub-Phase 1A Proposal, Sub-Phase 1B Proposal, and Phase 2 Proposal.

## 5.4 DBE Development Plan

The Contractor shall create a DBE Development plan. The purpose of this plan is for the Contractor to mentor, with the support of the Department, any utilized DBE firms to develop business practices which will enable long term viability for future construction-related projects. A DBE Development Plan may include but not limited to opportunities to assist DBE firms in overcoming challenges to participate on the Project by utilizing small business assistance resources to help with bonding, insurance, loans, access to capital, DBE certification, prequalification, etc, as approved by the Department. The DBE Development Plan may also present strategies to mentor or create opportunities for mentorships with DBE firms.

The DBE Development Plan shall include the Diversity and Inclusion Manager's assistance in the company's ongoing understanding of contracting with the Department. The Contractor shall Submit updated and revised DBE Development Plan per PDBC [Section 2](#) (Progressive Design-Build Approach) and PDBC [Section 4](#) (Design Requirements and Submittals) with the Sub-Phase 1A Proposal, Sub-Phase 1B Proposal, and Phase 2 Proposal.

## 5.5 Compliance Plan

The Contractor shall be responsible for adhering to all State and Federal requirements regarding Prevailing Wage, Prompt Payment, EEO, and the DBE Program. Accordingly, the Contractor shall include in its Compliance Plan how the Contractor will ensure compliance with these requirements. The Compliance Plan shall address the following, at a minimum:

A. Commercially Useful Function (CUF):

1. The Contractor shall set forth its methodology for performing CUF reviews for each DBE participating on the Project. All tiers of subcontractors must be monitored for CUF.
2. The Contractor shall provide a list of the names, position, and qualifications of each individual on the Contractor's team who will be performing CUF reviews.
3. The Contractor shall identify how it will track CUF on the Project, how the Contractor will address CUF violations, and how the Contractor will monitor and track CUF for DBE trucking firms.

B. Prevailing Wage:

1. The Contractor shall set forth its methodology to ensure the correct Prevailing Wages are paid to all individuals on the Project.
2. The Contractor shall provide a list of the names, position, and qualifications of each individual on the Contractor's team who will be monitoring or auditing payrolls for the Project.

C. Equal Employment Opportunity (EEO):

1. The Contractor shall set forth its methodology to ensure EEO requirements are met on the Project in accordance with all State and Federal requirements.
2. The Contractor shall also identify the process for addressing EEO violations, which may include mediation, sanctions and withholding payments.
3. The Contractor shall provide a list of the names, position, and qualifications of each



individual on the Contractor's team who will be monitoring the EEO requirements on the Project.

D. Prompt Payment:

1. The Contractor shall set forth its methodology for ensuring payment is promptly made to each subcontractor working on the Project in accordance with all State and Federal requirements.
2. As part of this methodology, the Contractor shall ensure each subcontractor affirms receipt of payment when received.
3. The Contractor shall identify the method by which it will track and communicate payments and receipt of payments to each subcontractor. All tiers of subcontractors must be monitored for prompt payment and retainage.
4. The Contractor shall also identify the process for addressing prompt payment and retainage violations, which may include mediation, sanctions, and withholding payment.
5. The Contractor shall provide a list of the names, position, and qualifications of each individual on the Contractor's team who will be monitoring prompt payment and retainage.

The DBT shall Submit updated and revised Compliance Plan per PDBC Section 2 (Progressive Design-Build Approach) and PDBC Section 4 (Design Requirements and Submittals) with the Sub-Phase 1A Proposal, Sub-Phase 1B Proposal, and Phase 2 Proposal. The Department and/or its representatives will have ultimate oversight and responsibility to make decisions with respect to all State and Federal requirements regarding Prevailing Wage, Prompt Payment, EEO, and the DBE Program.

## 5.6 On the Job Training Performance Plan

The DBT shall meet a Project specific OJT goal. As part of the Contractor's OJT Performance Plan, the Contractor shall include a plan to meet the requirements of PDBC Exhibits O (Notice of Requirement of Affirmative Action to Ensure Equal Employment Opportunity and Workforce Diversity Requirements on all ODOT Administered Federally Funded Projects) and P (On-the-Job Training Program). If a significant change in workforce has occurred that will substantially affect goal attainment, the Department will request, review, and approve an amended On the Job Training Performance Plan.

The Contractor shall provide a list of the names, position, and qualifications of each individual on the Contractor's team who will be assisting with the OJT Performance Plan.

The Contractor shall Submit updated and revised On the Job Training Performance Plan per PDBC Section 2 (Progressive Design-Build Approach) and PDBC Section 4 (Design Requirements and Submittals) with the Sub-Phase 1B Proposal and Phase 2 Proposal.

## 5.7 Workforce Development Plan

The Contractor shall create a Workforce Development Plan. The purpose of this plan is for the Contractor, with the support of the Department, to assist candidates seeking employment in the transportation industry or related infrastructure projects. A Workforce Development Plan may include but should not be limited to opportunities to engage elementary, middle, and high school students in STEM opportunities or the Project, apprenticeship programs, and veteran employment programs.



The Workforce Development Plan shall include the Diversity and Inclusion Manager's assistance in working on the Project. The Contractor shall Submit updated and revised Workforce Development Plan per PDBC [Section 2](#) (Progressive Design-Build Approach) and PDBC [Section 4](#) (Design Requirements and Submittals) with the Sub-Phase 1B Proposal and Phase 2 Proposal.

## 5.8 Community Engagement Plan

The Contractor shall provide a Community Engagement Plan that sets forth, in detail, how the Contractor will engage and support to the local community affected by the Project, during the life of the Project. At a minimum, the Community Engagement Plan shall include outreach events, community benefits or investments, community ambassadors, newsletters social media, and coordination with the Diversity and Inclusion Outreach Committee for disseminating information related to DBE and workforce development opportunities.

The Contractor shall Submit updated and revised Community Engagement Plan per PDBC [Section 2](#) (Progressive Design-Build Approach) and PDBC [Section 4](#) (Design Requirements and Submittals) with the Sub-Phase 1A Proposal, Sub-Phase 1B Proposal, and Phase 2 Proposal.

## 5.9 Submittals

Submittals under this [Section 5.9](#), a non-exhaustive list of, shall be submitted in electronic format in accordance with the schedule set in [Section 2.1.13](#) (PMP Submittal), [Table 2-1](#) (DBT PMP Component Management Plans). Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

## 6. PUBLIC INFORMATION AND COMMUNICATIONS

Providing clear, consistent, and timely messaging is an essential element to successful Project delivery. The public information role will include responding to public inquiries and complaints; coordination with the media; preparing regular traffic updates, press releases, web updates and photo and video documentation; and coordinating with local jurisdictions, transit providers, emergency service providers, local neighborhoods, communities, and business groups. To support this effort, the Department will share clear, concise, and timely information with the public, elected officials, community leaders, businesses, and the news media.

The Department will be responsible for disseminating all public information and communications.

The Contractor shall work with the Department to achieve the following public information and community relations goals:

- A. Support the successful delivery of the Project by presenting the Project in a positive light to the public.
- B. Provide information to individuals and entities directly affected by construction in a proactive, responsive, and complete manner.
- C. Reinforce positive Department relationships with associated agencies, individuals, and community and business groups.

The Contractor shall support the Department with public outreach and communication as requested. This may include meeting attendance and development of reader-friendly graphics, presentations, or summaries during Preconstruction (Phase 1) and Final Design and Construction (Phase 2).

## 7. ENVIRONMENTAL

An Environmental Assessment (EA) (EN-01, EN-02) was prepared for the BSB Corridor Project, and a Finding of No Significant Impact (FONSI) (EN-03) was approved by FHWA on August 9, 2012. FHWA approved reevaluations of the EA on February 11, 2015 (EN-04) and March 15, 2018 (EN-05). The Department is currently developing a supplemental EA that assesses and documents revised impacts, policy updates, project changes, and coordination that has occurred since the 2012 EA/FONSI. This [Section 7](#) describes the environmental commitments and requirements of the Project in accordance with the 2012 EA/FONSI, reevaluations, and supplemental EA.

### 7.1 Environmental Commitments

Known environmental commitments – including compliance measures, documentation, timing, and responsibilities - are described in EN-28 (Environmental Commitments). Additional commitments may be identified during the development of the supplemental EA and will be added to the RIDs. The Parties will collaborate during the Preconstruction Phase to assign responsibilities for each environmental commitment. The Contractor shall be responsible for fulfilling environmental commitments assigned to the Contractor and shall coordinate with the Department or other parties, as required, to incorporate mitigation activities into the Project Schedule and OPC. The Contractor shall also incorporate plans, details, specifications, notes, and special provisions into the Base Design Submittal, as appropriate, to satisfy the environmental commitments.

### 7.2 Permitting

The Contractor shall coordinate with the Department to determine roles and responsibilities for permitting. The Contractor shall update (add, remove, and refine) the information provided in PC-01 (Project Permitting Requirements) based on permitting needs as the Project progresses. The Contractor shall prepare a Permitting Plan that identifies timelines, required information, and approval/signature cycles for each permit.

The Permitting Plan shall include:

- A. A spreadsheet summarizing the necessary permits to construct the Project and any permit-specific plans that must be approved (e.g., Stormwater Pollution Prevention Plan is a component of the National Pollutant Discharge Elimination System). The spreadsheet shall also include the locations of impact areas covered by each permit;
- B. Known mitigation related to permits, including roles and responsibilities and timeline for implementation;
- C. A summary of coordination activities required before permits are submitted, including roles and responsibilities and timeline;
- D. A permitting schedule outlining coordination activities, submittal dates, permit dependencies (e.g., 408 approval required prior to some 404/401 permits), permit timeframes, permit reviews, and signature dates;
- E. Summary of submittal deadlines; and
- F. Summary of signature deadlines.

Anticipated federal permits include U.S. Army Corps of Engineers (USACE) Section 408, USACE Individual Section 404, USACE Section 10, U.S. Coast Guard (USCG) Section 9, and Federal Emergency Management Agency (FEMA) Conditional Letter of Map Revision (CLOMR)/Letter of Map Revision (LOMR). For the USCG Section 9 permit initial coordination, Contractor shall refer to PC-02 (USCG Coordination and Correspondence) and PC-03 (Brent Spence Bridge Section 9 Project Initiation Request).

Anticipated state and local permits in both Ohio and Kentucky include Section 401 Water Quality, Stream Construction Permit, Floodplain/Floodway, and National Pollutant Discharge Elimination System (NPDES).

If permits other than those described above are required, the Contractor shall include them in the Permitting Plan.

The Contractor shall initiate coordination with permitting agencies in accordance with the approved Permitting Plan.

### **7.3 Mussel Relocation**

The Contractor shall develop and implement a Mussel Relocation Plan in accordance with the *Ohio Mussel Survey Protocol*. The Mussel Relocation Plan shall be coordinated through ODOT. The Contractor shall be responsible for contracting with a qualified malacologist as described in the Ohio Mussel Survey Protocol for the mussel relocation.

### **7.4 Regulated Materials**

Once acquired and plans have advanced to the necessary detail to determine areas of construction and utility disturbances, the Contractor shall complete a Phase II Environmental Site Assessment (ESA) at 666 West 3<sup>rd</sup> Street and 550 Pike Street in Covington, Kentucky as required by the Comprehensive, Environmental Response, Compensation and Liability Act (1980) as amended by the Superfund Amendments and Reauthorization Act (1986). Only areas of construction/utility disturbances of 3 feet or greater in depth shall be assessed.

Regulated Materials or contaminated areas encountered during the Design and Construction Work are the responsibility of the Contractor to identify and take the appropriate steps to coordinate with ODOT and KYTC for disposal in accordance with all applicable laws and regulations. A summary of regulated materials studies and commitments made for the Project is provided in EN-15. Prior Environmental Site Assessment studies conducted for the Project are provided in EN-16 through EN-25.

The Contractor shall prepare a Regulated Materials Management Plan (RMMP) that provides specific guidance for managing, handling, and disposing of regulated materials that may be encountered within the Right-of-Way and for protecting the health and safety of all on-site personnel and the public in accordance with all applicable local, state and federal regulations. The RMMP shall list specific sites and define procedures for managing both known and unknown regulated materials encountered during the design and construction of the Project.

Once properties are acquired and the plans have advanced to the necessary detail, the Contractor shall perform a Regulated Materials inspection on buildings, bridges, and other structures to be demolished by the Contractor. If asbestos containing materials are identified on any bridge or other structures that are proposed to be demolished and/or renovated, the Contractor shall perform asbestos abatement. The Contractor shall follow all applicable local, state, and federal requirements for handling and disposing of Regulated Materials identified during inspections (i.e., lead paint, fluorescent lightbulbs, etc.) The inspection/notification to regulatory agencies/abatement shall be conducted prior to demolition and/or renovation activities.

## **7.5 Cultural Resources**

### **7.5.1 History/Architecture**

Once acquired, the Contractor shall record structures to be demolished within the Lewisburg Historic District in accordance with the Lewisburg Historic District Memorandum of Agreement (MOA).

Once acquired, the Contractor shall coordinate with the Department and the property owner to incorporate mitigation activities at Longworth Hall (EN-12, EN-13, EN-14) into the Project Schedule and OPC.

When the construction plans are advanced to sufficient detail, the Contractor shall coordinate with ODOT to provide the State Historic Preservation Officer and the Section 106 Consulting Parties in Ohio the opportunity to review and comment on the plans.

### **7.5.2 Vibration Monitoring**

The Contractor shall prepare and implement a Vibration Monitoring and Control Plan in consultation with KYTC and in accordance with the Lewisburg Historic District Memorandum of Agreement (MOA). The Contractor shall work through KYTC to coordinate requirements with the Kentucky Heritage Council.

### **7.5.3 Archaeology**

The Contractor shall have the pavement for the parking lots of the Kenton County Administration Offices stripped, and the Department shall perform a Phase I Archaeology Survey.

A Contractor archaeologist or geoarchaeologist shall monitor and/or review soil and geotechnical borings conducted in the Ohio River bottom area for evidence of buried archaeological deposits and/or undisturbed original landforms. If either are determined to be present, the Contractor shall design and implement an archaeological testing strategy for the horizontal and vertical footprint of the bridge supports and construction work limits.

## **7.6 Noise**

In accordance with the KYTC *Noise Analysis and Abatement Policy*, the Contractor shall hold A Noise Abatement Public Meeting and conduct surveys with benefited receptors at each location where noise barriers were identified in the supplemental EA.

## 7.7 Submittals

Submittals under this Section 7.7, a non-exhaustive list of which is set forth in Table 7-1 (Environmental Submittals Table), shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

The Contractor shall review the environmental commitments for the BSB Corridor Project and incorporate additional studies/field work, mitigation, and measures in the Project Schedule.

**Table 7-1: Environmental Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Environmental Commitment Plans, Details, Notes, Specifications, and Special Provisions	Submittal	N/A	1	With Base Design Submittal	<u>7.1</u>
Permitting Plan	Submittal	N/A	1	With Base Design Submittal	<u>7.2</u>
Mussel Relocation Plan	Approval	N/A	1		<u>7.3</u>
Phase II Environmental Site Assessment	Submittal	N/A	1		<u>7.4</u>
Regulated Materials Management Plan	Submittal	N/A	1		<u>7.4</u>
Historic Structures Recordation	Submittal	N/A	1		<u>7.5.1</u>
Vibration Monitoring and Control Plan	Approval	N/A	1		<u>7.5.2</u>
Phase I Archeology Survey	Submittal	N/A	1		<u>7.5.3</u>
Noise Abatement Public Meeting	Submittal	N/A	1		<u>7.6</u>

## 8. PROJECT DATUM, SURVEY CONTROL, AND MAPPING

The following provisions described in this Section 8 are in addition to Section 1.2 (Governing Regulations).

### 8.1 General

Contractor shall provide surveying services for the duration of the Project to support all aspects of design, permitting, mobilization, preconstruction, construction, inspection, commissioning, activation, and closeout. This includes confirming the dimensions, orientations, and locations of property lines, roadways, highways, ramps, bridges, sidewalks, landscaping, curb & gutter, buildings, structures, utilities & infrastructure, interior features, exterior features, topography, paving, striping, signage, street lighting, traffic signals & equipment. Contractor shall reference SU-01 (Project Monumentation Control), SU-02 (KYTC Summary of Project Datum Conversions), SU-03 (KYTC Survey Aerial Triangulation), SU-04 (Survey Report 2046-337 Preliminary), SU-05 (Control Notes), SU-06 (Control Coordinates.xlsx), SU-07 (Control Coordinates), SU-08 (HAM-75-1.15\_PID113361 Survey Report), and SU-09 (HAM-75-0022 Centerline Resolution and Boundary Resolution), and SU-10(116649 Mapping and Survey Quality Control Report), SU-11 (BSB Project Survey and Mapping-Ground), and SU-12 (BSB Project Survey and Mapping-Grid) for prior survey information performed by the Department.

### 8.2 Surveying Responsibilities and Standards

- A. Contractor shall be solely responsible for the performance and accuracy of all surveying necessary to adequately perform site-investigations, design, permitting, preconstruction, construction, commissioning, activation, and closeout, and prepare all associated documentation and modelling in accordance with the Contract Documents.
- B. Contractor shall provide all horizontal Latitude & Longitude and Northing & Easting coordinates based on the North American Datum of 1983 (NAD83 (2011), epoch 2010.00) and Ellipsoid GRS80. Contractor shall confirm this with the new mapping information, NAD83, Ohio State Plane South. All information should be relative to the Primary and Secondary control points provided in Reference Document SU-04 and SU-10.
- C. Contractor shall provide all elevations based on the North American Vertical Datum of 1988 (NAVD88) and Geoid Model 18. All information should be relative to the Primary and Secondary control points provided in Reference Document SU-04. Contractor shall confirm all river elevation information provided by agencies is converted to NAVD88. The existing plans and information for the Ohio river reference multiple datums.
- D. All design surveying, including bathymetric surveys shall be performed by a Surveyor with a current Ohio and/or Kentucky Land Surveyor License. All survey submittals shall be Signed and Sealed by the Licensed Surveyor. Perform construction layout and staking activities under the direction and supervision of a Professional Surveyor registered within the state in which work is performed.
- E. All surveying shall be performed and documented in accordance with ODOT Survey and Mapping Specifications and the KYTC Survey Manuals. Mapping and project design in Ohio and Kentucky shall use Ohio South Zone grid coordinate system.



### 8.3 Existing Survey Information

The Department previously collected survey for the Project. Mapping in Ohio has been projected to ground using the project scale factor and has been converted to Ohio South Zone grid for project to have one coordinate system for design. Mapping Kentucky remains on the Ohio South Zone grid coordinate system. Survey control information including elevations used to develop the aerial and ground mapping used in the development of Concept I-W is available in SU-4 (KYTC Survey Report dated March 2022). The original project datum was converted from KY Single Zone to the current project datum the Ohio State Plane Coordinate System, South Zone NAD83 (2011, epoch 2010.00). The Project datum conversion is available in SU-02 (KYTC Summary of Project Datum Conversions). The aerial mapping accuracy evaluation for the latest (March 2022) survey is available in SU-03 (Survey Aerial Triangulation Report). Updated Ohio mapping has been completed. The mapping and quality control report is provided in Reference Document SU-10, SU-11, and SU-12.

Monuments located Ohio identified in Kentucky survey report (SU-04) will require scaling using the project scale factor for ground projection. The monumentation information listed in SU-04 is Ohio South Zone grid.

The Department will provide the Contractor with the following Survey-Related Data as part of the RIDs:

- A. Survey Baseline Control Data;
- B. Right-of-Way/Highway Boundary Geometry;
- C. Survey/Photogrammetric Base Mapping Planimetrics;
- D. Survey/ Photogrammetric Digital Terrain Model; and
- E. Record Plans.

The Contractor shall document all forms of data verification. If the Contractor identifies any discrepancy, the discrepancy shall be reported in writing to the Department for review. The Department will respond to the discrepancy within 10 Working Days.

### 8.4 Design and Preconstruction Survey

The Contractor shall coordinate the design effort, to the extent necessary with adjacent projects. The coordination shall not be limited and may include exchange of spatial and survey information, coordination of code information and other aspects of the design that fulfills the interdependency needs of the projects involved.

- A. Contractor shall provide surveying services to support all aspects and stages of design, permitting, mobilization, and preconstruction.
- B. Contractor shall provide surveying services in support of subsurface utility investigations, locating, mapping, modelling, etc. See [Section 9](#) (Utilities).
- C. Contractor shall provide surveying services to confirm the locations of all tie-in points between existing including proposed utilities, structures, and surfaces.
- D. Contractor shall prepare and provide to ODOT and KYTC a verification report with coordinates, station and offset, elevations on all found survey monuments. Contractor shall note any differences from provided survey reports.



- E. If the Contractor disturbs monumentation, then it shall be replaced, in-kind by a Registered Surveyor, with current registration recognized by the State Board of Registration for Professional Engineers and Land Surveyors within the state of the damaged monument. Copies of all monumentation changes shall be forwarded to the Department.
- F. After construction, provide a verification report of all monuments (existing and proposed) within the project limits. The report format is to follow ODOT CMS 623 and KYTC Highway Design Manual.

### 8.5 Submittals

Submittals under this Section 8.5, a non-exhaustive list of which is set forth in Table 8-1 (Survey and Mapping Submittals Table) below, shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

**Table 8-1: Survey and Mapping Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Topographical Survey Verification Memorandum and Electronic Data (Per CMS 623 in Ohio)	Submittal	N/A	1	With Base Design Submittal	<u>8.3, 8.4.A, &amp; 8.4.C</u>
Subsurface Utility Memorandum with Data and MicroStation CADD File	Submittal	N/A	1	With Base Design Submittal	<u>8.4.B</u>
Post Construction Verification Report	Submittal	N/A	1	With As-built plans	<u>8.4.F</u>

## 9. UTILITIES

The utilities requirements described in this Section 9 are in addition to requirements within Section 1.2 (Governing Regulations) and Section 153.64 of the Ohio Revised Code and incorporated Kentucky requirements.

### 9.1 General Utilities

The Contractor shall coordinate with all Utility Owners affected by the Project. The resolution of any conflicts between Utilities and the Construction Work shall be the responsibility of the Contractor. The Contractor shall coordinate with the affected Railroad and Utility Owners for utility relocations over, under, or in railroad Right-of-Way.

- A. The Contractor is responsible for preparing all agreements with the Utility Owners impacted by the Project. Some Utility Relocations may be performed by the Utility Owner with its own forces and/or contractors and consultants (“Utility Owner-Managed”); all others shall be performed by the Contractor with its own forces and/or Contractors, Subcontractors and Subconsultants (subject to any approval rights required by the Utility Owner for those working on its facilities) (“Contractor-managed”). The allocation of responsibility for the Utility Relocation Work between the Contractor and the Utility Owners shall be specified by the Contractor in the updated utility matrix. Contractor shall use the UT-04 (Concept I-W Utility Matrix) as a basis for utility relocation coordination. KYTC Utility Agreements will include the allocation of responsibility for the Utility Relocation Work as shown in the utility matrix. (The Department will provide an example of the Memorandum of Understanding format during the Design Progress Meetings. KYTC may choose to allow Utility Agreements to be executed between the Contractor and the Utility Company.
- B. The Department has initiated coordination efforts with Utility Owners having known conflicts and Utilities desiring to construct new facilities within the Project Limits. UT-01 through UT-09 shall be reviewed by the Contractor as a basis of utility coordination and relocation design. The Contractor is responsible for coordination with the privately owned Utility Owners as described within this Section 9.
- C. Unless otherwise noted in the Contract Documents the Contractor is responsible for all coordination and determining schedule risk for all Utility Relocations. The Contractor shall address mitigation of schedule risk associated with Utility Relocations in the DBT PMP. The Contractor shall clearly demonstrate in the Project Schedule how the Utility Relocation work is to be accomplished consistent with the Project Schedule requirements in Section 2 (Project Management).
- D. The Contractor shall submit a listing of all Utility Relocation Work as part of the Base Design submittal.

The Department will make all determinations of compensable rights related to utility facility design, relocation, modification, and construction during Sub-Phase 1B.

Any Utility Relocation Work (including protection work) shall be consistent with the Utility’s reasonable, written specifications, standards of practice, and construction methods, as well as any applicable Department and City permit requirements. Details regarding the Contractor’s plan for utility coordination and relocations shall be addressed in the PMP Utilities Plan prepared by the Contractor for the Project.

## 9.2 Administrative Requirements

### 9.2.1 Standards

The Contractor shall perform all utility activities in accordance with the Contract Requirements, the applicable Standards, Codes, and Manuals in Section 1.2 (Governing Regulations) and the standards required by various utility companies affected by the Work.

### 9.2.2 Utility Meetings

The Contractor shall initiate any utility meetings needed to ensure that the concerns are addressed on the Plans involving Utilities. The Contractor shall notify the Department at least two Working Days in advance of any utility meeting with a Utility Owner. A Department representative shall attend all utility meetings. The Contractor shall participate in regularly scheduled meetings with the District Utility Coordinators or designee as deemed appropriate by the Department to facilitate the progress on the Project.

Contractor and Department shall meet with Duke Energy to review west end substation site and the previous remediation work complete by Duke Energy (See UT-10 (Duke Energy West End Existing Conditions)). Contractor shall anticipate separate utility meeting with Duke Energy for Sub-Phase 1A.

Contractor shall prepare utility meeting agendas and provide copies of the meeting minutes to the Department for the Project files within one week following the respective meeting.

### 9.2.3 General Utility Coordination

The Contractor shall coordinate all existing Utilities with the Construction Work. The Contractor shall coordinate with all public and private Utility Owners within the Project Limits, as identified in LD-04 (BSB Smart PDF), RW-01 (KYTC Right of Way Plans), and RW-02 (ODOT Final Right of Way Tracings). Refer to PDBC Section 7.1 (Utilities) for the Contractor's responsibility to mitigate impacts to the Project Schedule that may arise from Utility Relocations. The Contractor shall copy the Department on all correspondence or phone calls between the Contractor and each Utility. This shall include the submittal of plans to each Utility.

The Contractor is responsible for maintaining and updating the Utilities Impacts Matrix to reflect the project design and construction. The Utility Impact Matrix shall be updated by the Contractor as necessary during the course of plan development. The Contractor shall make its updated matrix available to affected utility owners and the Department.

A meeting at or near the time of the Base Design review shall be held between the Contractor, the Department and the Utility Owners to determine if any significant Utility Relocations can be eliminated or mitigated. Notify the Department five Working Days in advance of the meeting.

Only those Utilities immediately affected by the Construction Work shall be subject to Utility Relocation, unless directed otherwise by the Department. If the Contractor desires the temporary or permanent adjustment of any Utility for its sole benefit, the Contractor shall provide a Standards Deviation (See Section 1.3 (Standards Deviation Submittal Requirements)) request itemizing differences from the Utility Relocations identified in the Conceptual Design for Department review.

The Contractor should follow recommendations of the Duke Energy Allowable Utility Loading requirements within the proposed Project Limits. The Contractor is directed to UT-05 (Duke Energy Allowable Utility Loading Memo) for further information. The Contractor shall provide horizontal offsets within the Design Submittals to define the allowable distance for equipment to be placed and construction activities adjacent to Duke Energy. The Contractor shall maintain access to all Duke Energy facilities for maintenance of operations.

### **9.3 Contractor Responsibilities in Ohio**

This section shall apply to Work within Ohio's Jurisdictional Design & Maintenance (JDM).

#### **9.3.1 Utility Contacts**

The Department, in concurrence with the registered Underground Utility Protection Service (OUPS), Oil and Gas Producers Underground Protection Service (OGPUPS), and other Utility Owners that are nonmembers of any Utility protection services, has established a contacts list of certain Utilities located in the Project area, contacts are provided in UT-04 (Concept I-W Utility Matrix).

#### **9.3.2 Ohio Utility Coordination**

The following flowcharts in [Figure 9-1](#) through [Figure 9-3](#) provide guidance on Ohio new and relocated utility facilities processes:

Figure 9-1: Utility Flowchart – New and Relocated Facilities

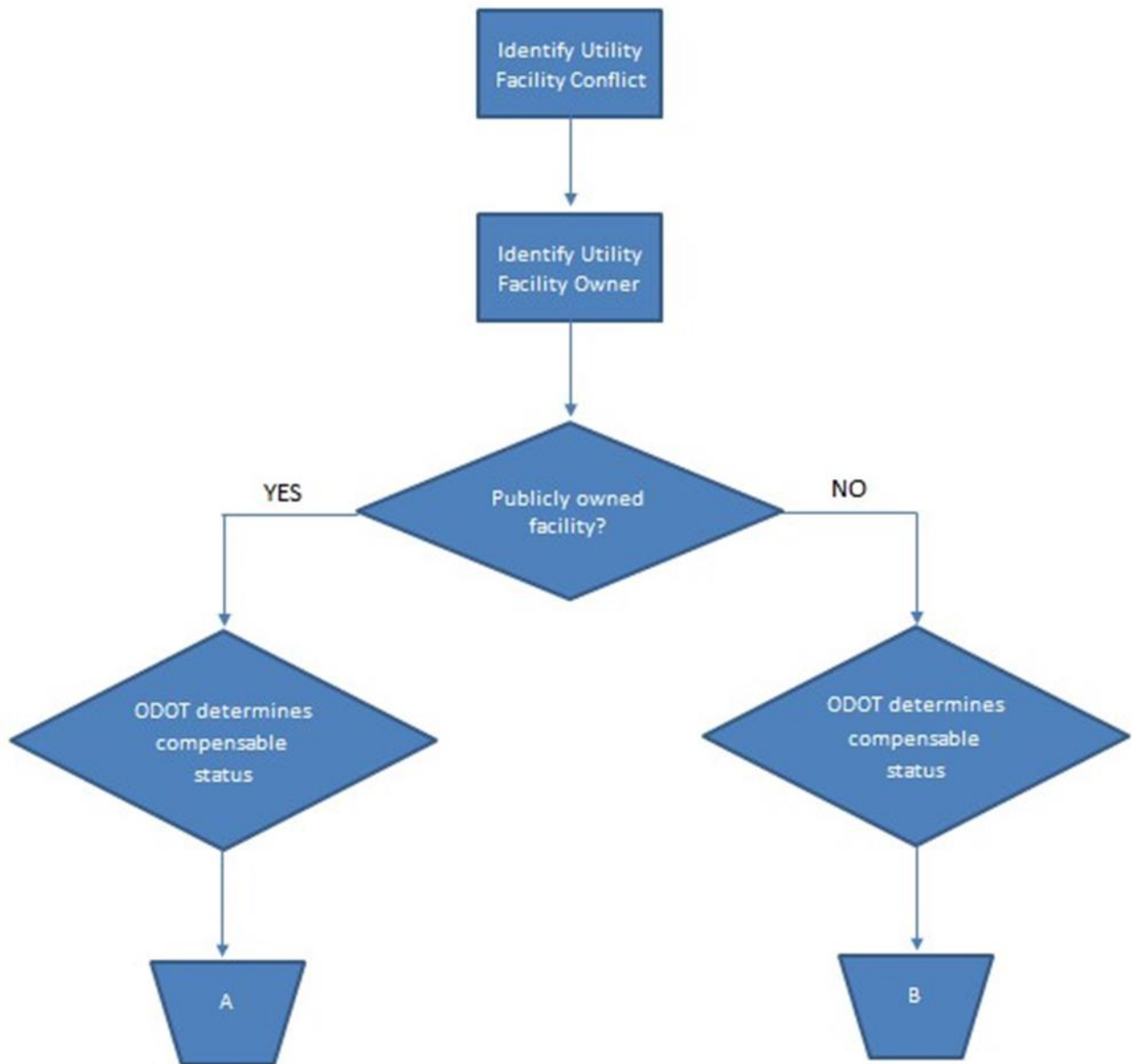


Figure 9-2: Utility Flowchart – New and Relocated Public Facilities

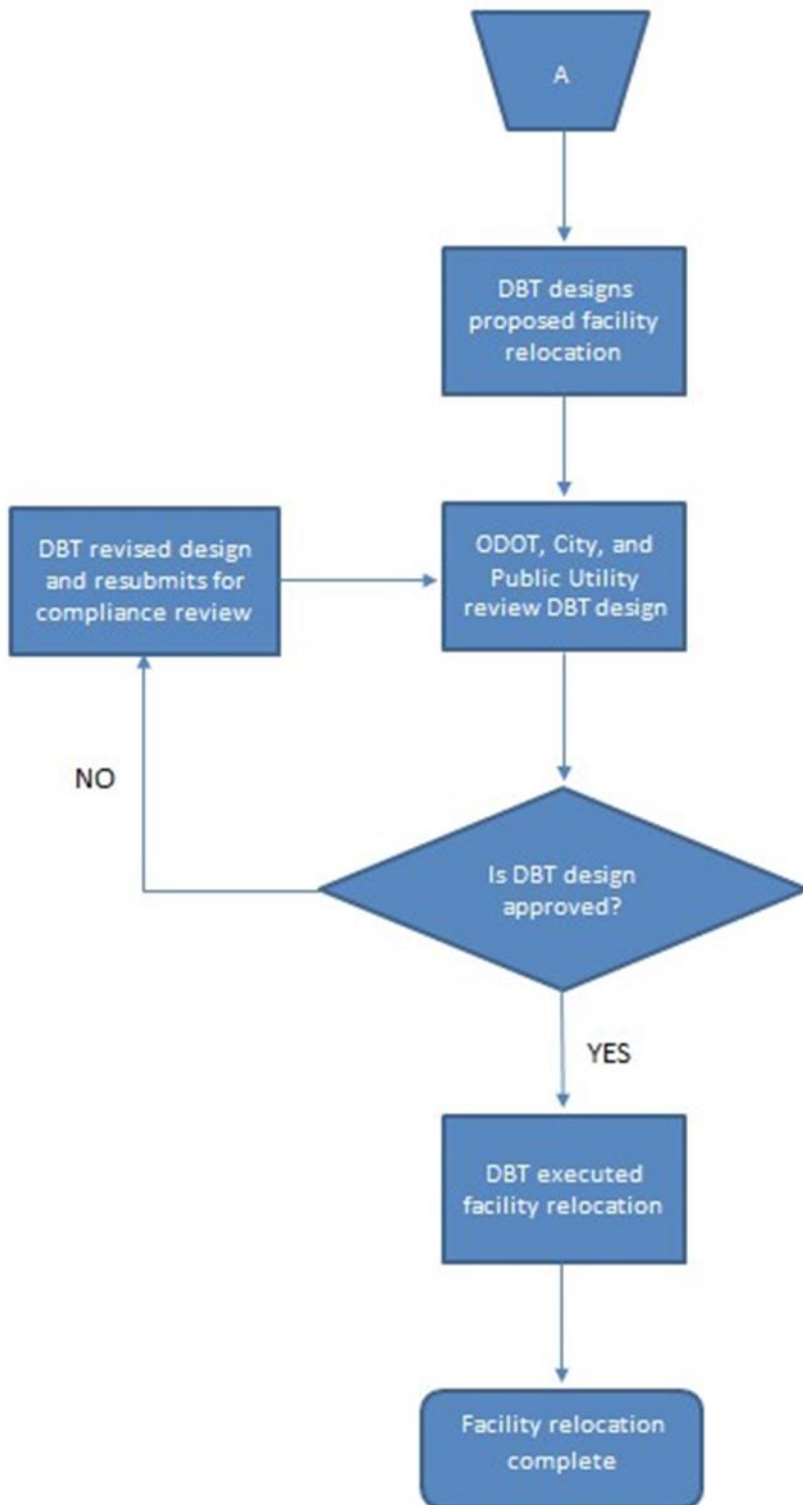
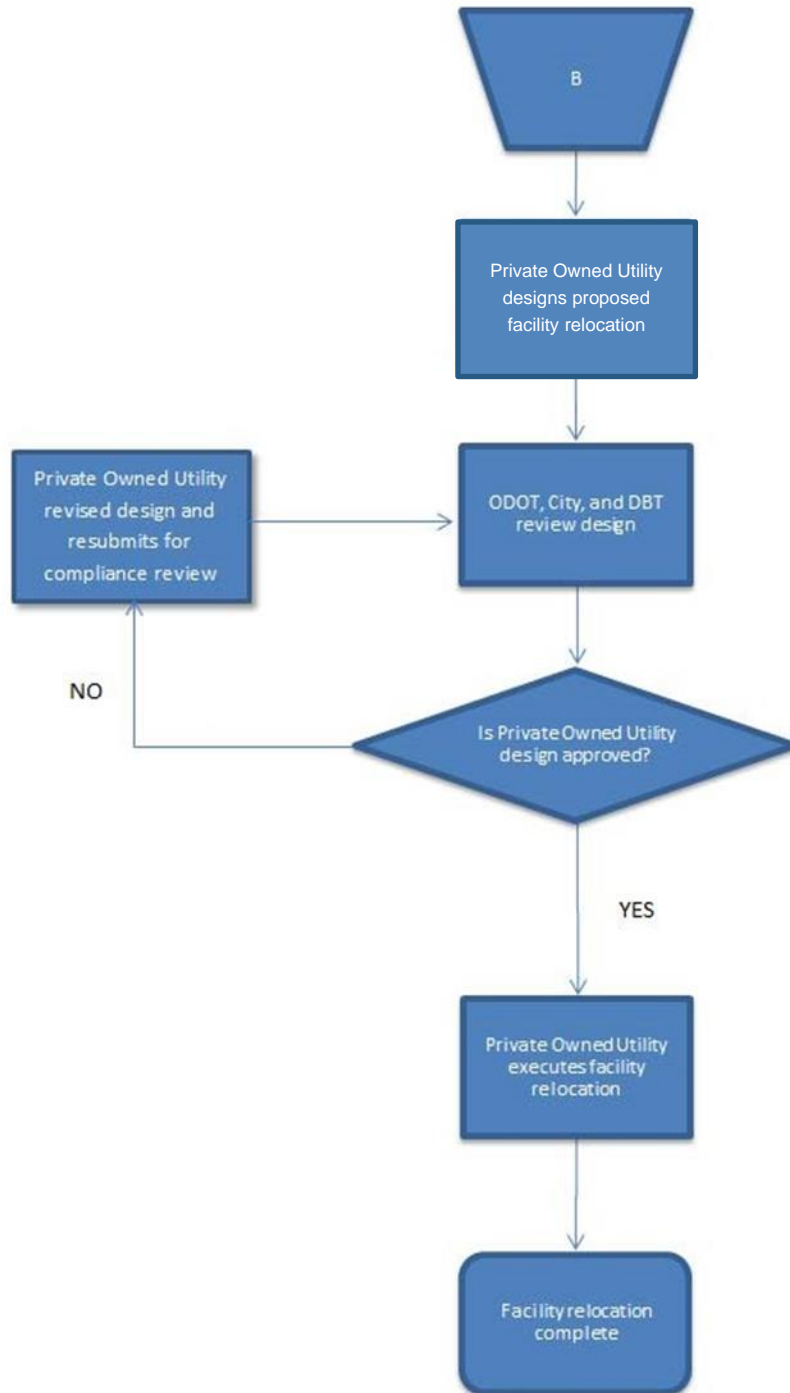


Figure 9-3: Utility Flowchart – New and Relocated Private Facilities



### 9.3.3 Utility Work Notification

According to ORC 153.64 and at least two Days prior to commencing construction operations in an area that may affect underground Utilities, the Contractor shall notify the Department, the registered utility protection service, and the Utility Owners that are not members of the registered utility protection service.

### 9.3.4 Utility Owner's Right to Inspect

The utility owner may perform inspections of construction of any utility work that is performed by the Contractor on their facility. The Contractor shall notify the Department of any such inspections. The Contractor shall provide the Department with written documentation of all utility comments and their resolution. The Contractor shall provide safe access and any necessary traffic control for any utility work inspections performed by the utility owner.

### 9.3.5 Utility Betterments

If the Utility Owner proposes to include enhancements, all costs associated with the betterment are the responsibility of the Utility Owner and shall not be included in the Project cost. If the Utility Owner requests the Contractor to design and/or construct a Betterment, see PDBC Section 7.2 (Utility Betterments).

### 9.3.6 Abandonment and Removal

Existing utility facilities to be abandoned, including but not limited to service connections for buildings to be demolished as part of the project, must be disconnected and removed or abandoned to ground (abandoned in place). Utility conduits 10 inches in diameter or larger which are being abandoned in place must be filled with C&MS Item 613 (Low Strength Mortar Backfill) so that, after settlement, at least 90 percent of the cross-sectional area of the conduit, for the entire length is filled. Wooden poles shall be removed in their entirety. Utility removal trenches shall be backfilled within pavement limits, with the exception of underdrains. Trenches shall be backfilled to the top of the trench or bottom of subgrade, whichever is lower with low strength mortar backfill. Use of fly ash, spent foundry sand or core sand is strictly prohibited. All trenches in pavement areas shall be backfilled by the Contractor to the intended travel surface using temporary pavements and/or permanent pavements. Temporary pavements are only permitted in areas that will be replaced with full depth pavement or resurfaced by the Contractor with this project after the trench is opened. The depth of temporary pavement in resurfacing areas shall be limited to 3 inches below the existing surface. Pavement below this depth shall conform to the requirements for permanent pavements.

### 9.3.7 Utility Design

#### 9.3.7.1 Utility Relocation Plans Prepared by Contractor

The plans developed by the Contractor for the design of the Utility Relocation Work shall show at the minimum the following information: existing topography, Right-of-Way, lanes of travel, and the three-dimensional location of the Utilities. When the Contractor develops Utility Relocation Plans, these plans shall be subject to review by the Department, the Cities, and the involved utility, as applicable. The utility owner will review and approve/reject the design prepared by the Contractor no later than 20 Working Days after its submission to the utility owner, unless a different time-period is agreed to by



both parties. If a utility owner rejects any design work, the Contractor shall immediately notify the Department, in writing, of the grounds for rejection and suggestions for correcting the problem. The Contractor shall correct the design and resubmit to the utility owner for review. This compliance review shall take no more than 10 Working Days. The Contractor shall be responsible for discovering and addressing additional utility conflicts that arise as a result of chosen substructure unit locations; retaining wall construction; building demolition; roadway and pavement construction; excavation and embankment limits; Contractor selected construction means and methods; and other construction.

### **9.3.7.2 Utility Relocation Plans Prepared by the Utility Owner**

When the utility owner prepares a utility facility relocation plan, the Department and the Contractor will review the design and/or permit application to ensure that the relocation does not interfere with other proposed construction activities, including relocations of other utility facilities. This review shall be completed no later than 10 Working Days after its submission, unless a different time-period is expressly agreed to by both parties. The Contractor shall compile and provide written review comments to the Department and the utility owner. The Contractor shall be responsible for coordination with the Utility Owner to ensure that all Department comments to the Utility Owner are adequately addressed in the design and construction of the Project, including, any modification, re-approval by the Utility Owner and re-submittal to the Department as necessary to obtain approval.

### **9.3.7.3 Design Documents**

Each proposed Utility Relocation shall be shown in the Base Design Documents, regardless of whether the Utility Relocation plans are prepared by the Contractor or by the Utility Owner. Contractor shall provide casing as specified in accordance with the Ohio Real Estate Manual on the Project, where applicable. Contractor shall review Utility relocation plans meet the casing requirement.

### **9.3.7.4 Certain Requirements for Underground Utilities**

#### **9.3.7.4.1 Duke Energy Work**

- A. Work in vicinity of Duke Energy buried gas lines for Parcel 2 (RW-02 denotes the parcel as 2), for locations refer to UT-05 (Duke Energy Allowable Utility Loading Memo).
- B. Gas Regulating Station:
  1. Stay-in-Place deck forms shall be used to construct the bridge deck in this area.
  2. All temporary personnel walkways to access the construction area shall have a solid face using:
    - a. Plywood.
    - b. Portable Concrete Barrier (PCB) shall be placed around the above ground facility.
    - c. Bottom of all new bridge beams shall be at least 6 feet above the top of the existing gas structure.
    - d. Drilled foundations and/or shoring shall be used on Ramp A (northbound CD Road to northbound 71) around the existing gas facility and gas main.
- C. Temporary or permanent fill not allowed in the vicinity of Duke Energy buried gas and electric lines for Parcel 2 and Parcel 4. Contractor to refer to RW-02 (ODOT Final Right-of-Way Tracings) for parcel locations.

- D. Work in vicinity of Duke Energy buried gas lines located in Parcel 2, maximum allowable construction loads shall be based on American Petroleum Institute 1102 Steel Pipelines Crossing Railroads and Highways. Duke Energy will not allow stresses from loading to exceed 60% Specified Minimum Yield Strength (SMYS) of the steel pipe. The Contractor will need to coordinate equipment loading and crossing locations with Duke Energy. Based on loading calculations, mitigation strategies such as timber matting or air bridging may be required.
- E. Work in vicinity of Duke Energy buried 138k transmission Parcel 4, maximum allowable construction loads shall be based on API 1102 Steel Pipelines Crossing and Highways. Duke Energy will not allow stresses from loading to exceed 60% Specified Minimum Yield Strength (SMYS) of the steel pipe. The Contractor will need to coordinate equipment loading and crossing locations with Duke Energy. Based on loading calculations, mitigation strategies such as timber matting or air bridging may be required.
- F. The minimum offset of construction and vehicle loads from the precast vault structure on August St. shall be in accordance with the following:
  - 1. Live loads and construction loads on or immediately adjacent to the vault are not to exceed HS20.
  - 2. For construction loads exceeding HS20, the 1V:1H zone of influence method shall be used to determine allowable placement. Based on this method, construction and live loads exceeding HS20 shall be restricted to a minimum of 10-feet-8-inches from the outer limits of the precast vault structure.

### 9.3.8 Changes to the Utility Work

Once Utility Relocation Work has begun, the Contractor shall not make any changes to the Project design, which would necessitate an additional Utility Relocation. Contractor shall refer to PDBC [Section 7](#) (Utilities and Railroads).

### 9.3.9 Continuity of Utility Service

The Contractor shall ensure that all utilities remain operational during all phases of Project construction to the greatest extent practicable. Necessary interruptions of service, including proposals for shutdowns and temporary diversions of affected utilities, shall be approved by the involved utility. The Contractor is directed to UT-01 (Alternative I Utility Impacts), UT-02 (Alternative I Utility Tracking), UT-03 (Ohio SUE), UT-04 (Concept I-W Utility Matrix) for notification requirements of disruptions in service.

Where the Contractor is responsible for the performance of utility work, in order to maintain the service continuity of the Utility Owner's facilities to the extent practicable during that performance of work, the Contractor, at its cost, shall:

- A. Keep the Utility Owner fully informed of schedules, including coordinating with the Utility Owner regarding their design, construction and inspection of utility work performed by the Contractor;
- B. Keep the Utility Owner fully informed of changes that affect their facilities; and
- C. Keep the Utility Owner involved in making the decisions that affect their facilities, so the Utility Owner can provide uninterrupted service to its customers or be subject to the least interruption practicable.

All the Utility Owner's facilities shall remain fully operational during all phases of Project construction, except as specifically allowed and approved by the Utility Owner. The Contractor is responsible for

maintaining public utility facilities throughout construction, which includes all necessary temporary bypass provisions.

The Contractor shall ensure that all utilities remain operational during all phases of Project construction to the greatest extent practicable.

## **9.4 Contractor Responsibilities in Kentucky**

This section shall apply to Work within Kentucky's JDM.

### **9.4.1 Utility Owner's Right to Inspect**

The Utility Owner has the right to inspect the Utility Relocation Work that is performed by a third party (such as the Contractor) on the Utility Owner's facilities. The Contractor shall comply with the inspection and notification requirements included in each Utility Agreement.

### **9.4.2 Utility Betterments**

If the Utility Owner proposes to include enhancements, all costs associated with the betterment are the responsibility of the Utility Owner and shall not be included in the Project cost. If the Utility Owner requests the Contractor to design and/or construct a Betterment, see PDBC Section 7.2 (Utility Betterments).

### **9.4.3 Abandonment and Removal**

As applicable, the Contractor shall make all arrangements and perform all work necessary to complete each abandonment or removal (and disposal) of a Utility in accordance with the approved Utility Agreement. The Contractor shall obtain Government Approvals and consent from the affected Utility Owner and any affected landowner(s) or shall confirm that the Utility Owner has completed these tasks.

### **9.4.4 Utility Design**

#### **9.4.4.1 Utility Relocation Plans Prepared by Contractor**

The plans developed by the Contractor for the design of the Utility Relocation Work shall show at the minimum the following information: existing topography, Right-of-Way, lanes of travel, and the three-dimensional location of the Utilities. When the Contractor develops Utility Relocation Plans, these plans shall be subject to review by the Department, the Cities, and the involved utility, as applicable. The Contractor shall be responsible for discovering and addressing additional utility conflicts that arise as a result of chosen substructure unit locations; retaining wall construction; building demolition; roadway and pavement construction; excavation and embankment limits; Contractor selected construction means and methods; and other construction.

#### **9.4.4.2 Utility Relocation Plans Prepared by the Utility Owner**

For all Utility Relocation Plans to be furnished by a Utility Owner, the Contractor shall coordinate with the Utility Owner as necessary to confirm compliance with the Project plans, including possible changes being proposed by the Contractor. Those Utility Relocation Plans shall be attached to the applicable Utility Agreement and estimate, which shall serve as the appropriate Encroachment Permit for KYTC approval. The Contractor shall be responsible for coordination with the Utility Owner to ensure that all

KYTC comments to the Utility Owner are adequately addressed in the design and construction of the Project, including, any modification, re-approval by the Utility Owner and re-submittal to KYTC as necessary to obtain approval.

#### **9.4.4.3 Design Documents**

Each proposed Utility Relocation shall be shown in the Base Design Documents, regardless of whether the Utility Relocation plans are prepared by the Contractor or by the Utility Owner. Contractor shall provide casing as specified in accordance with the KYTC Utilities and Rails Guidance Manual on the Project, where applicable. Contractor shall review Utility relocation plans meet the casing requirement.

#### **9.4.4.4 Kentucky Utility Agreement Submittals**

Each Utility Relocation shall be addressed in a Utility Agreement prepared jointly by KYTC and Contractor and the Utility Owner. The Utility Agreement will be developed per KYTC Utility coordination process. The Contractor shall coordinate with the Utility Owner to prepare all components of each Utility Agreement. Completion of the review and approval process for the applicable Utility Agreement, as well as issuance of any required KYTC approvals, shall be required before the start of construction for the affected Utility Relocation Work.

The Department has the authority to approve the placement of Utilities within Project Right-of-Way. As detailed in the Report, Utility Relocation concepts consistent with Utility Owner and Project Goals and objectives for the Project have been explored. Further, it has been determined that each respective Utility Relocation can be accommodated in an acceptable manner to said companies and agencies. It shall be the responsibility of the Contractor to work with the Utility Owner to prepare all required documentation to be included with each subsequent Utility Agreement submittal.

The Contractor's obligations regarding reimbursement to Utility Owners in Kentucky for all costs of Utility Relocation Work shall be as set forth in the Utility Agreements prepared for the Project by the Contractor and in conformance with KYTC's Utility Guidance Manual and Kentucky State Statutes.

The Contractor shall arrange for the Utility Owner to execute each Utility Agreement and subsequent encroachment permit required to do the work on the Project. All Utility Relocations covered by the same initial Utility Agreement may be addressed in a single Encroachment Permit. Please refer to the KYTC Encroachment Permit Manual for additional information. In general, the Utility Agreement package required for each Utility Relocation shall include:

- A. Encroachment Permit Application (KYTC, and/or local government agency);
- B. Utility Agreement (executed between the Contractor or Department and the Utility Owner);
- C. Utility Relocation Plans and Specifications as referenced in the Utility Agreement;
- D. Roadway Plans and Profile and/or Structure Plans and cross-sections clearly indicating existing and proposed Utility location. For Utilities deemed acceptable to remain in place by the Utility Owner and the Contractor, the location of the Utility, both horizontally and vertically, along with any special construction requirements or protection needed to prevent damage to the facility during construction of the Project, must be clearly defined;
- E. Utility Relocation cost estimate as defined in the Utility Agreement including definition and separation of any betterment proposed; and

- F. Complete Utility Agreement packages as described herein or as directed by KYTC. Once review and comment is complete, copies shall be returned to the Contractor and Utility Owner for their use. The number of Utility Agreement packages will be defined by the Utility Coordination process.

#### **9.4.4.5 Certain Requirements for Underground Utilities**

### **9.4.5 Changes to the Utility Work**

Once Utility Relocation Work has begun, the Contractor shall not make any changes to the Project design, which would necessitate an additional Utility Relocation. Contractor shall refer to PDBC Section 7 (Utilities and Railroads).

### **9.4.6 Continuity of Utility Service**

The Contractor shall ensure that all utilities remain operational during all phases of Project construction to the greatest extent practicable. Necessary interruptions of service, including proposals for shutdowns and temporary diversions of affected utilities, shall be approved by the involved utility. The Contractor is directed to UT-01 (Alternative I Utility Impacts), UT-02 (Alternative I Utility Tracking), UT-04 (Concept I-W Utility Matrix), UT-06 (KYTC SUE) for notification requirements of disruptions in service.

Where the Contractor is responsible for the performance of utility work, in order to maintain the service continuity of the Utility Owner's facilities to the extent practicable during that performance of work, the Contractor, at its cost, shall:

- A. Keep the Utility Owner fully informed of schedules, including coordinating with the Utility Owner regarding their design, construction and inspection of utility work performed by the Contractor;
- B. Keep the Utility Owner fully informed of changes that affect their facilities; and
- C. Keep the Utility Owner involved in making the decisions that affect their facilities, so the Utility Owner can provide uninterrupted service to its customers or be subject to the least interruption practicable.

All the Utility Owner's facilities shall remain fully operational during all phases of Project construction, except as specifically allowed and approved by the Utility Owner. The Contractor is responsible for maintaining public utility facilities throughout construction, which includes all necessary temporary bypass provisions.

The Contractor shall ensure that all utilities remain operational during all phases of Project construction to the greatest extent practicable.

## **9.5 Utility Adjustment and Relocation Team**

The Contractor shall provide a Utility adjustment and relocation team with appropriate qualifications and experience for the Utility Relocation Work required for this Project. The Contractor shall provide the names and contact details, titles, job roles, and specific experience of the team members. Specifically, the Contractor shall provide a Utility Manager (UM) and a Utility Design Coordinator (UDC) as described in Section 2.1.2 (Key Personnel).

## 9.6 Protection of Utilities

The Contractor shall coordinate Construction Work with Utility Relocations and take all necessary precautions to prevent disturbance to Utilities.

The Contractor shall perform work in a manner that will cause the least reasonable inconvenience to the Utility Owner and those being served by the Utility Owner. Existing, adjusted, or new utility facilities that are to remain within the Right-of-Way of the Project shall be properly protected by the Contractor to prevent disturbance or damage resulting from Project construction operations. If the Contractor encounters a previously unknown utility that requires adjustment, they shall not interfere with the utility but shall take the proper precautions to protect the facility or take appropriate actions, per the PDBC, to coordinate the adjustment of the facilities.

### 9.6.1 Existing Utility Facilities that Cannot Be Impacted by the Proposed Work

Several existing utility facilities have been identified by their respective owners as unable to be relocated or modified in any fashion as a result of the proposed construction. Currently known facilities falling into this category are identified in UT-04 (Concept I-W Utility Matrix).

## 9.7 Acquisition of Replacement Utility Property Interests

### 9.7.1 Ohio Requirements

This section shall apply to Work within Ohio's Jurisdictional Design & Maintenance (JDM). In Ohio, the utilities should be able to relocate in the Project permanent and temporary Right-of-Way limits shown in RW-02 (ODOT final Right-of-Way Tracings). Any privately owned utility or Contractor utility adjustments/relocations performed outside of the proposed permanent and temporary Right-of-Way limits shown in RW-02 will need a permit from the City of Cincinnati.

### 9.7.2 Kentucky Requirements

This section shall apply to Work within Kentucky's JDM.

In Kentucky, the Contractor shall be responsible for working with each Utility Owner for acquiring any Replacement Utility Property Interests that are necessary for its Utility Relocations. The Contractor shall have the following responsibilities for each acquisition:

- A. The Contractor shall coordinate with and provide all Project information needed to each Utility Owner as necessary for the Utility Owner to identify any Replacement Utility Property Interests required for its Utility Relocations.
- B. If the Contractor and/or Contractor subcontractors assists a Utility Owner in acquiring a Replacement Utility Property Interest, the Contractor shall ensure that the following requirements are met:
  1. The files and records must be kept separate and apart from all acquisition files and records for the Project Right-of-Way; and
  2. The items used in acquisition of Replacement Utility Property Interests (e.g., appraisals, written evaluations, and owner contact reports) must be separate from the purchase of the Project Right-of-Way.



## 9.8 Submittals

Submittals under this Section 9.8, a non-exhaustive list of which is set forth in Table 9-1 (Utilities Submittals Table), shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

**Table 9-1: Utilities Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Utility Plans – Relocations, Adjustments, Protections	Submittal	As needed	1	As Defined in the DBT Design Submittal Plan	<u>9.3.7.1</u>
Kentucky Utility Agreement Submittals per Utility Owner	Submittal		1	As Defined in the DBT Design Submittal Plan and Utility Coordination Meetings	<u>9.4</u>

## 10. RAILROADS

This Section 10 defines the criteria required for the Project to accommodate Railroads crossing the Project Right-of-Way. Contractor is responsible for coordination with all Railroads that may be impacted by the Work. The following provisions described in this Section 10 are in addition to the Section 1.2 (Governing Regulations) of this document. The Department proposes to remove and replace the existing I-71/I-75/US-50 grade separation with new grade separation structures. The Department does not contemplate nor anticipate that any such proposed and anticipated Work will involve the elimination of any current or existing grade railroad crossing.

CSX Transportation, Inc. (CSXT) owns the existing tracks that cross the Project Right-of-Way under I-71/I-75 between West 3rd Street and West Pete Rose Way. Where the Project crosses or affects Railroad Right-of-Way, operations, or facilities, the Contractor shall coordinate the Work with the Railroad, and Department, as appropriate. The Department will provide railroad contact information to Contractor.

ODOT is acquiring an aerial and temporary easement over the out of service railroad track property owned by the Central Railroad Company of Indiana that crosses the Project Right-of Way under I-71/I-75 between West 3<sup>rd</sup> Street and West Pete Rose Way. A Railroad agreement will be required for work within the Railroad right-of-way. Where the Project crosses or affects Railroad Right-of-Way, operations, or facilities, the Contractor shall coordinate the Work with the Railroad, and Department, as appropriate. The Department will provide railroad contact information to Contractor.

Details regarding the Contractor's plan for railroad coordination shall be addressed in a Railroad Coordination and Management Plan prepared by the Contractor for the Project. The plan shall include plan submittal requirements, Contractor approach to meeting the Railroad agreement requirements, railroad communication plan, and reporting procedures.

### 10.1 Railroad Design Standards

Details regarding the Contractor's plan for railroad coordination shall be addressed in the Railroad Coordination and Management Plan prepared by the Contractor for the Project. At a minimum the Railroad Coordination and Management Plan shall address how the Contractor understands and is organized to manage railroad coordination, comply with their requirements, anticipated right of entry needs, and the tools that will be implemented to provide seamless interaction with the various stakeholders for the construction of a quality Project.

Contractor shall design the Work affecting Railroads following Good Industry Practice, such as FHWA Railroad-Highway Grade Crossing Handbook, AREMA, and MUTCD, and incorporating the usual and customary design standards and operating requirements of Railroad(s) that has an agreement with the Department. However, for purposes of this Section, wherever a conflict arises between any details in the design standards and operating requirements, the criteria as required by the Railroad shall govern.

Construction details and specifications shall conform to the Standard Specifications and the rules, regulations, and requirements of the Railroads, including those related to safety, fall protection, and protective equipment. Contractor will develop Unique Special Provisions for the Protection of Railway



Interest. Contractor shall coordinate with Railroads to finalize the Unique Special Provisions and comply with the finalized special provisions.

## 10.2 Railroad Agreement

The Department has initiated railroad coordination efforts (see RR-01 BSB Railroad Coordination Summary) impacted by the Project and has executed the RR-02 Railroad PE Agreement. Contractor shall comply with all requirements contained in the Railroad PE Agreement, which compliance is included as part of the Work. Contractor shall coordinate with ODOT, Railroads, and develop Base Design to finalize the Railroad Construction Agreement prior to Early Work and Phase 2 Work. Contractor shall include railroad coordination and railroad construction agreement as activities within the project schedule. See PDBC Exhibit T (Critical Path Method Progress Schedule).

## 10.3 Design Criteria in Railroad Right-of-Way

- A. The design of all Railroad facilities shall conform to the requirements of the Railroad specifications and the provisions set forth by the Railroad PE Agreement.
- B. All Railroad tracks and other Railroad Right-of-Way shall be protected from damage during the Work.
- C. During construction, all bridges over Railroad facilities shall at least maintain existing minimum vertical clearance over Railroad facilities. Contractor shall verify the existing minimum vertical clearance over the Railroad facilities prior to commencing Work. Contractor shall match the existing minimum vertical clearance unless otherwise agreed to by the Railroad for the Contractor to be permitted to lower the vertical clearance.
- D. All horizontal clearances shall conform to the Railroad specifications. Crash walls shall be provided as required by the Railroad specifications. Contractor shall measure the existing minimum horizontal clearances for all Railroad facilities prior to commencing work. The measurements shall be provided to the Department.
- E. All substructure elements within 25 feet of the centerline of tracks shall be designed and constructed with a crash wall per AREMA requirements, unless otherwise specified by the relevant Railroad Agreement, other approvals, or other Railroad specifications.
- F. Provide track monitoring plan for all foundation construction processes.
- G. Construction equipment or material shall not be stored within the Railroad Right-of-Way.
- H. If excavation for pier foundations impact the live load influence line, sheeting and shoring will be required. Theoretical live load influence zones shall be detailed on the final Plans.
- I. All drainage from the bridge and roadway crossing over any Railroad Right-of-Way shall be collected and directed away from the Railroad Right-of-Way and shall be detailed on the final Plans.
- J. Detail existing culverts located adjacent to the Railroad tracks in the final Plans and indicate directional flow.
- K. Indicate on final Plans the distance from the intersection of centerline of roadway and centerline of track to the nearest Railroad milepost.

### 10.3.1 Design and Construction CSXT Requirements

The Contractor shall adhere to CSXT requirements for design and construction at the time of contract execution including Submittals:

- A. CSXT Public Project Manual – The Contractor should be aware the sections on Construction Submittal Criteria, Drainage Criteria, and various safety requirements are all requirements during construction of this Project;
- B. CSXT Design and Construction Standard Specifications for Pipeline Occupancies – This document is referenced in the CSXT Drainage Criteria in the CSXT Public Project Manual and includes design requirements for pipe materials for any proposed under track drainage;
- C. CSXT Standard Clearance Matrix and CSXT Clearance Diagram – This document includes clearance considerations for the temporary platform and any other proposed temporary features; and
- D. Specification Section 34 11 26.13 – Ballast - Ballast used for track owned or operated by CSXT shall be provided from an approved CSXT ballast supplier and meet CSXT ballast material requirements.

### 10.3.2 CSXT Coordination Requirement

The Coordination requirements for working with CSXT are as follows:

- A. It is anticipated that more complex submittals and those requiring coordination or input from CSXT field staff will require multiple weeks of review. CSXT and their representatives will make every effort to work with the Contractor to meet the proposed schedule. The Contractor shall develop a submittal schedule for CSXT review and approval per Section 10.4.2 (Railroad Project Schedule) to assist in planning for and accommodating this Project's schedule.
- B. The Contractor shall prepare site-specific work plans for review and approval by CSXT before commencing work when any part of the equipment used in conducting the work is within 25 feet of the live tracks.
- C. The Contractor shall submit site-specific work plans covering all work that is within 25 feet of any track or work that has the potential to foul the track. The potential to foul is as any work having the possibility of impacting CSXT property or operations and defined as one or more of the following:
  - 1. Any activity where access onto CSXT property is required.
  - 2. Any activity where work is being performed on CSXT Right-of-Way.
  - 3. Any excavation work adjacent to tracks or facilities, within the Theoretical Railroad Live Load Influence Zone, or where the active earth pressure zone extends within the railroad operational right-of-way.
  - 4. The use of any equipment where, if tipped and laid flat in any direction (360 degrees) about its center pin, can encroach within 25 feet of the nearest track centerline. This is based upon the proposed location of the equipment during use and may be a function of the equipment boom length. Hoisting equipment with the potential to foul the track must satisfy the 150 percent factor of safety requirement for lifting capacities.
  - 5. Any work where the scatter of debris, or other materials has the potential to encroach within 25 feet of the nearest track centerline.

6. Any work where significant vibration forces may be induced upon the track structure or existing structures located under, over, or adjacent to the track structure.
7. Any other work which poses the potential to disrupt rail operations, threaten the safety of railroad employees, or otherwise negatively impact the railroad operational right-of-way, as determined by CSXT.

#### D. Railroad Flagging

1. It is anticipated the cost of the Railroad Flagging provided by CSXT will be included in a separate agreement between CSXT and the Department.
2. Contractor shall arrange with the Railroad for railroad flagging as required in accordance with the Railroad Agreement and PDBC. Contractor shall provide at a minimum monthly report to Department on usage of a railroad flagman and field construction inspectors (FCI).
3. It should be anticipated that Railroad Flaggers will not be available between November 15th to January 15th of any calendar year.

#### E. Contractor shall perform ongoing coordination of their design and construction with the railroad throughout the Project. The Contractor shall provide a current schedule on a monthly basis including anticipated dates of the following items:

1. Construction Submittals requiring railroad review and approval prior to beginning construction (per the Railroad PE and Construction Agreements).
2. Construction start and end dates for work that may create an impact to the rail facility/operations.
3. Anticipated dates and duration for flaggers.
4. Anticipated dates and duration for potential outage request.
5. Any other milestones that may impact railroad facilities or operations.

## 10.4 Coordinating Design and Project Work Affecting Railroad Operations

Contractor shall coordinate the Project design with the Railroad. This coordination shall include meetings, Plan submittals, Contractor means and methods submittals, resolution of pertinent commentary provided by the Railroad, and any other obligation under the relevant Railroad Agreement. The Department proposes to remove and replace the existing I-71/I-75/US-50 grade separation with new grade separation structures. No exiting railroad grade crossing will be eliminated as part of the anticipated scope of the Work. Contractor will develop the Base Design Submittal to support the Railroad Agreement.

The Contractor shall initiate any railroad coordination meetings needed to ensure that the technical design and physical construction concerns are addressed on plans involving the railroad(s). The Contractor shall notify the Department at least two Working Days in advance of any meeting with the railroad(s). A Department representative will attempt to attend all railroad coordination meetings. The Contractor shall maintain railroad meeting notes and promptly distribute to all meeting attendees, the Department's Project Engineer, and the State and/or District Railroad Coordinator. The Contractor shall proactively keep the Department's Project Engineer and the State and/or District Railroad Coordinator aware of all railroad coordination information and/or issues through regular status reports.

Contractor shall complete Final Plans for the Railroad protection, grade separation structures, and compliance with the terms and conditions of the Railroad Agreement. The Plans shall contain points labelling the location of the minimum horizontal and vertical clearance between the bridge and the adjacent Railroad tracks. The Plans shall also include details providing the bottom of footing and top of rail elevation and distance from centerline of track to nearest footing.

#### **10.4.1 Design Costs**

During design coordination, Contractor shall provide Department with an estimate of all anticipated costs for Work related to Railroads at Department's request.

#### **10.4.2 Railroad Project Schedule**

Contractor shall be responsible for obtaining Department approvals and other approvals required for any Railroad or any Railroad-related Work. Contractor shall be responsible for including and incorporating all Railroad-related items into the Project Schedule. Contractor shall include 60 working days for railroad review duration in the Project Schedule. This review duration anticipates coordination time to address comments with the railroad. Railroad agreement will indicate railroad review time is 30 days.

Contractor to Submit a separate detailed railroad construction lookahead schedule for the duration of the Project clearly indicating the time periods while Contractor will be working on and around CSX right-of-way. As the work progresses, this schedule shall be updated monthly and resubmitted as necessary to reflect changes in work sequence, duration, and method.

#### **10.4.3 Railroad Site Specific Workplan Submittals**

The Contractor shall develop a detailed submission indicating the progression of work with specific times when tasks will be performed for work activities that are on or in the vicinity of the CSXT property. This submission may require a walkthrough at which time CSXT and/or the representative will be present. Work will not be permitted to commence until the Contractor has provided CSXT with a satisfactory plan that the Project will be undertaken without scheduling, performance, or safety related issues. Provide a listing of the anticipated equipment to be used, the location of all equipment to be used and ensure a contingency plan of action is in place should a primary piece of equipment malfunction. All work in the vicinity of CSXT property that has the potential of affecting CSXT train operations must be submitted and approved by CSXT prior to work being performed. This submission will also include a detailed narrative discussing the coordination of project safety issues between Contractor, CSXT and the representative. The narrative shall address project level coordination and day to day, specific work operations including crane and equipment operations, erection plans and temporary works.

#### **10.4.4 Records during Design and Construction**

Contractor shall maintain records of all coordination during Design development with the Railroad. Copies of these records shall be provided to Department as they are completed. Specific documents required include correspondence, meeting minutes, negotiations, force account estimates from the Railroad for its Work, design comments, and agreements.

## 10.5 Submittals

Submittals under this Section 10.5, a non-exhaustive list of which is set forth in Table 10-1 (Railroads Submittals Table) below, shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

**Table 10-1: Railroads Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Track Monitoring Plan	Approval		1	With Base Design Submittal	<u>10.3</u>
Flagging Plan	Approval		1	With Early Work and/or Sub-Phase 1B Design Submittal and Phase 2 Proposal Submittal	<u>10.3</u>
Railroad Base Design Submittal	Approval		1	With Base Design Submittal	<u>10.4</u>
Estimate	Submittal		1	With Base Design Submittal, Sub-Phase 1B Design Submittal, and Phase 2 Proposal Submittal	<u>10.4.1</u>
Records during Railroad Coordination	Submittal		1	As completed	<u>10.4.4</u>

## 11. RIGHT-OF-WAY

### 11.1 General Right-of-Way

The Department will acquire all temporary and permanent Project Right-of-Way to encompass the proposed Project Limits shown in RW-01 (KYTC Right of Way Plans) and RW-02 (ODOT Final Right-of-Way Plan Tracings). RW-01 and RW-02 indicates the existing Project Right-of-Way lines and any permanent and/or temporary easements being acquired by ODOT and KYTC for the Project.

#### 11.1.1 Ohio Requirements

Right of possession of all Department, CSXT, Central Indiana Railroad Right-of-Way and improvements made thereon by the Contractor shall remain at all times with the Department. The Contractor's right to entry and use of this Right-of-Way arises solely from permission granted by the Department and CSXT. All permanent infrastructure and drainage features shall be located within the proposed permanent Right-of-Way or other permanent easement and not within the temporary Right-of-Way. Temporary or permanent use of properties outside the Right-of-Way is prohibited except with the approval of the Department and property owner.

The Right-of-Way access date is indicated in RW-06 (Right-of-Way Availability Table), which the Contractor shall include in the Progress Schedule. The Department will provide written notification to the Contractor when each required parcel is available and of any applicable access restrictions. The Contractor shall not access any parcel until such written notification is provided.

Through the right-of-way acquisition process, the Department has or intends to make site specific commitments to property owners. A draft of these commitments and Contractor requirements are included in GN-03 (Project Commitments). GN-03 commitment includes requirement for the Contractor to prepare Right-of-Way plans for the final location of the bridge piers on parcel 9.

If the Contractor determines during the Preconstruction Phase (Phase 1) that additional Right-of-Way is required in order to deliver the Project, the Contractor shall prepare Preliminary and Final Right-of-Way plans for use by the Department to acquire any necessary additional property (see [Section 11.2](#) (Additional Property Request Requirements) herein).

Temporary easements being acquired by the Department for the Project are to be used in project construction activities, as described in RW-02 (ODOT Final Right-of-Way Plan Tracings). Contractor will be provided access to each temporary easement for a 36-month duration, beginning on the date on which physical Work commences within the temporary easement site. Physical Work does not include survey or soil boring activities. All Work that necessitates the use of the temporary easements shall be completed within the temporary easement access duration. The Contractor will not be granted access to the temporary easement sites after the temporary easement access duration. Under no circumstances are temporary easements to be used for storage of material or equipment by the Contractor.



### 11.1.2 Kentucky Requirements

All permanent infrastructure and drainage features shall be located within the proposed permanent Right-of-Way or other permanent easement and not within the temporary Right-of-Way. Temporary or permanent use of properties outside the Right-of-Way is prohibited except with the approval of the Department and property owner.

The Contractor will be provided access to each parcel identified in RW-05 (KYTC Acquisition Status Report) as the parcel title is cleared. The access date is indicated in RW-06 (Right-of-Way Availability Table), which the Contractor shall include in the Progress Schedule. The Right-of-Way Availability Table will continue to be updated during Phase 1 with a goal of having all parcels cleared prior to the start of Phase 2. If all parcels are not cleared, the Contractor's schedule with submission of the Phase 2 Proposal shall recognize the clearance dates shown in RW-06 (Right-of-Way Availability Table) at that point in time. The Department will provide written notification to the Contractor when each required parcel is available and of any applicable access restrictions. The Contractor shall not access any parcel until such written notification is provided.

The Department will acquire all Right-of-Way and easements as shown on the KYTC Final Right-of-Way Plans (RW-01) by the dates shown in RW-05 (Right-of-Way Acquisition Status Report). The Project has sufficient Right-of-Way to perpetually maintain the permanent features of the Project as shown on the Final Right-of-Way Plans. See [Section 13](#) (Building Demolition and Reconstruction) for additional information. The Department will provide commitments to property owners that must be incorporated in design and construction. Contractor requirements will be included in RW-07 (Communicating All Promises Report (CAP)).

Availability will be dependent on Department Right-of-Way Certification and Clearance.

If the Contractor determines additional Right-of-Way is required during Phase I (Preconstruction), the Contractor shall prepare Preliminary and Final Right-of-Way plans for use by the Department to acquire any necessary property.

## 11.2 Additional Property Request Requirements

The following sections outline the Contractors responsibilities if the need for additional Right-of-Way or temporary easement access is identified during the Preconstruction Phase. The additional Work identified by the Contractor will be included in a Change Order per the PDBC.

### 11.2.1 Ohio Requirements

This section shall apply to Work within Ohio's JDM.

The Contractor shall follow ODOT's Real Estate Manual. Contractor to prepare Preliminary and Final Right-of-Way Plans for Department approval prior to Acquisition beginning. The Final Right-of-Way Plans will include legal descriptions, closure calculations, and Final Right of Way plans. ODOT will provide acquisition services and provide acquisition status reports to the Contractor. After ODOT approval of the Final Right-of- Way Plans, the Department and Contractor shall coordinate and agree

upon clearance dates listed in RW-03 (ODOT Right-of-Way Action Plan) and RW-06 (Right-of-Way Availability Table).

### 11.2.2 Kentucky Requirements

This section shall apply to Work within Kentucky’s JDM.

The Contractor shall follow KYTC Highway Design and Right-of-Way Manual requirements to prepare Preliminary and Final Right-of-Way Plans for Department approval prior to acquisition beginning. The Final Right-of-Way Plans shall include plan sheets, profiles, cross sections, Right-of-Way Summary, Strip Map, and legal descriptions. KYTC will provide acquisition services and provide acquisition status reports to the Contractor. After KYTC approval of the Final Right-of-Way Plans, the Department and Contractor shall coordinate and agree upon clearance dates listed in RW-05 (KYTC Acquisition Status Report) and RW-06 (Right-of-Way Availability Table).

### 11.3 ODOT Software Requirements for Right-of-Way by the Contractor

Contractor to follow general standards listed in Section 1.2 (Governing Regulations) this document.

### 11.4 KYTC Software Requirements for Right-of-Way by the Contractor

Contractor to follow general standards listed in Section 1.2 (Governing Regulations) this document.

### 11.5 Submittals

Submittals under this Section 11.5, a non-exhaustive list of which is set forth in Table 11-1 (Right of Way Submittals Table) below, shall be submitted in electronic format. Acceptable electronic formats include PDF, current versions of Microsoft Word, or Microsoft Excel files, unless otherwise indicated. At a minimum, the Contractor shall submit the following to the Department:

**Table 11-1: Right of Way Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Preliminary Right-of-Way Plans	Submittal	0	1	Ten Working Days prior to Review Meeting	<u>11.2.1</u> & <u>11.2.2</u>
Final Right of Way Plans	Submittal	0	1	Ten Working Days prior to Review Meeting	<u>11.2.1</u> & <u>11.2.2</u>
Existing and Proposed Deed / Legal Descriptions	Submittal	0	1	Ten Working Days prior to Review Meeting	<u>11.2.1</u> & <u>11.2.2</u>
Closure Calculations	Submittal	0	1	Ten Working Days prior to Review Meeting	<u>11.2.1</u> & <u>11.2.2</u>
Temporary Easement Exhibits	Submittal	0	1	Ten Working Days prior to Review Meeting	<u>11.2.1</u> & <u>11.2.2</u>



## 12. GEOTECHNICAL

### 12.1 General

This Section 12 describes the requirements for geotechnical investigations, analysis, and design. Significant geotechnical data exists within the project limits. Incorporate the existing geotechnical information into the development of final geotechnical studies for Sub-Phase 1A and Sub-Phase 1B development. In some instances, the existing borehole and laboratory testing information may be sufficient to complete design activities. The Department and Contractor will work cooperatively to utilize existing information as much as practical.

Draft geotechnical reports are to be submitted as part of the Sub-Phase 1A development. The Department will review the reports and provide comments as part of the Sub-Phase 1A review.

### 12.2 Administrative Requirements

#### 12.2.1 Mandatory Standards

Provide design in accordance with AASHTO Load Resistance Factor Design (LRFD) Bridge Design Specifications, edition as defined in Section 1.2 (Governing Regulations), except where overridden by state design standards below. Use LRFD methods (for both permanent and temporary work) except where such methods are not provided for in the AASHTO design manual, or these requirements. Where state standards recommend Allowable Stress Design (ASD) design methods, equivalent LRFD methods shall be used. Specific approval to use non-LRFD methods is required prior to starting design activities.

Notify the Department in the event of a conflict between the standards set forth in Section 1.2 (Governing Regulations) relating to geotechnical analysis and design. Provide the reason for the conflict and recommend for Department approval which standard should govern and why per Section 1.3 (Standards Deviation Submittal Requirements).

##### 12.2.1.1 Ohio Standards

This section shall apply to Work within Ohio's JDM.

Complete and submit all geotechnical design and geotechnical explorations performed by the Contractor to Department in accordance with the LRFD method.

Prepare Geotechnical Exploration Reports, including foundation reports, as defined in the ODOT Bridge Design Manual (BDM) and the ODOT Specifications for Geotechnical Exploration (SGE) for each structure. Perform geotechnical design methodology as outlined in the Geotechnical Design Manual. Geotechnical reports must include all engineering analyses and design recommendations for each structure, wall, or roadway as appropriate.

##### 12.2.1.2 Kentucky Standards

This section shall apply to Work within Kentucky's JDM.

Complete and submit all geotechnical design and geotechnical explorations performed by the Contractor to Department in accordance with the KYTC Geotechnical Guidance Manual and current Transmittal Memoranda.

Produce and submit a Foundation Analysis and Design Report for each structure and Roadway Geotechnical Report(s) that include all engineering analyses and design recommendations.

### 12.2.2 Meetings

Schedule and facilitate meetings related to geotechnical Project Work prior to commencement of field exploration activities. The following meetings are required:

- A. Geotechnical investigation plan review meeting: Schedule and facilitate a meeting with Department to review the Contractor's proposed subsurface investigation plan for geotechnical borings. Schedule this meeting after reviewing the geotechnical information provided, but at least one week prior to Contractor requesting approval to commence with geotechnical exploration operations. These meetings may be held for various sections of the Project. A meeting may be waived with prior approval of the Department but at a minimum the Contractor's proposed subsurface investigation plan for supplemental geotechnical data must be submitted for review and approval. Comments must be resolved one week prior to Contractor requesting approval to commence with geotechnical exploration operations.
- B. River crossing foundation concepts meeting: Schedule and facilitate a meeting with the Department to review the Contractor's proposed river bridge foundation design and proposed pre-design load testing (if used). Discuss potential or intended means and methods for foundation construction and their impact on the foundation design.
- C. Meeting to discuss the subsurface investigation plan submittal schedule and expectations.

### 12.2.3 Permits/Authorizations Related to Geotechnical Investigation and Materials

Obtain all necessary permits and/or authorizations required to perform geotechnical site investigations or other geotechnical services for the Project, including Utility clearance, property access, and roadway safety and traffic control.

Perform necessary notifications and obtain all necessary approvals and Deviations needed for installation of environmental wells as defined by the Standards.

For other permit requirements, refer to [Section 7](#) (Environmental).

### 12.2.4 Lead DBT's Geotechnical Engineer

Employ a full time Lead DBT Geotechnical Engineer responsible for performing all required geotechnical engineering for the Project. The Contractor may elect to employ multiple engineers or engineering firms; however, the Contractor shall clearly designate which engineer or engineering firm is responsible for implementing the geotechnical design requirements for a particular section or structure.

The DBT's geotechnical personnel responsible for the installation and monitoring of instrumentation such as inclinometers, piezometers, settlement indicating devices, standard penetration testing, etc. must have a minimum of two years of experience with the specific type of instrumentation they will be operating.

### 12.2.4.1 Approval

Replace any Geotechnical Engineer that does not meet the qualification or registration requirements in [Section 2.1.2.3](#) (Other DBT Lead Personnel Requirements).

## 12.3 Geotechnical Design Requirements

### 12.3.1 General

Provide geotechnical analysis and concept design for all structures and improvements, including bridges, retaining walls, subgrades, embankments, reinforced soil slopes, noise walls, sign structures, lighting structures, culverts, ground improvement systems, temporary shoring, protection of existing utilities and ponds.

Information provided below takes precedence over similar design requirements in AASHTO LRFD. Where no information is provided, refer to the ODOT and KYTC geotechnical guidelines, KYTC special notes, and then to AASHTO LRFD.

Project development timelines may place obtaining geotechnical information on the critical path for plan development. Thus, to aid in expedited geotechnical delivery, develop detailed design memos for each wall, bridge, noise wall and roadway as appropriate in a Buildable Unit rather than developing one large geotechnical report.

### 12.3.2 Subsurface Investigations

Prior subsurface exploration data is provided for this Project and is located in GE-01 (Kentucky Retaining Wall Justification Study Draft Report). Additionally, there are previous subsurface investigations for other historical projects that are available for reference in GE-02 (Ohio Alternative I Retaining Wall Justification Study), GE-03 (Existing Boring Matrix), and GE-04 (Existing Boring Locations). This information provided is not thorough and complete for the purposes of the Contractor. The Contractor is responsible for reviewing available information and geotechnical reports. Contractor may perform subsurface explorations to properly design and construct the work in accordance with the requirements this [Section 12](#). Department may perform subsurface explorations during Sub-Phase 1A in coordination with the Contractor. Department will provide subsurface investigations to Contractor. Contractor shall perform geotechnical laboratory testing and analysis for the subsurface explorations.

Selectively locate subsurface explorations on the basis of field observations, and design considerations. Location of explorations shall be as topography, site conditions, soil conditions, and design factors dictate.

Thoroughly review all available existing geotechnical information prior to developing the subsurface exploration program for the Project or portion of the Project. Provide test borings, laboratory testing and geotechnical analyses as necessary to supplement the archive geotechnical data for the new proposed work to meet the requirements of the ODOT Specifications for Geotechnical Exploration, the ODOT Geotechnical Design Manual, all ODOT Geotechnical Bulletins as well as the Kentucky Geotechnical Guidance Manual and current Transmittal Memoranda. Incorporate archive geotechnical borings as well as newly obtained geotechnical information available into the final design, individual geotechnical reports, and geotechnical drawing submittals. Obtain Department acceptance of the boring and

laboratory program prior to commencement of each. Contractor to convert archive boring locations to current project stationing.

During planning of the geotechnical program, provide the Department a subsurface investigation plan in PDF and KML format, complying with ODOT and/or KYTC requirements as appropriate. Illustrate archive borings on the proposed subsurface investigation plans in addition to the proposed borings. Field work can begin following Department acceptance of the boring program. The boring program can be specific to a portion of the Project.

### **12.3.3 Existing Materials**

Recommendations presented in previous reports are specific to the structure locations and types proposed at the time of the report. All exploration information is representative of site conditions at the time and location of the exploration. Contractor shall perform geotechnical subsurface exploration work by prequalified firms from the state's list of approved geotechnical drilling consultants or Department can provide subsurface exploration services, upon Contractor request. The Contractor's geotechnical engineer shall make appropriate recommendations for the Work as proposed by the Contractor.

Soil and geotechnical borings conducted during the design phase in the Ohio River bottom area shall be monitored and/or reviewed by an archaeologist or geoarchaeologist for evidence of buried archaeological deposits and/or undisturbed original landforms. If either are determined to be present, the DBT shall notify and coordinate with the Department to design and implement an archaeological testing strategy for the horizontal and vertical footprint of the bridge supports and construction work limits.

Soil and groundwater conditions are only known at the exploration locations at the time of the explorations.

It is the responsibility of the Contractor to perform soil surveys, soil borings, geotechnical investigations, and appropriate analysis, including global stability, to produce a feasible concept for the Project.

### **12.3.4 Geotechnical Instrumentation and Construction Vibration Monitoring Plan**

The Contractor shall develop, implement, and maintain a geotechnical instrumentation and construction vibration monitoring plan to monitor vibrations, accelerations, vertical settlement, and lateral movement of temporary support structures and adjacent ground, and existing structures, and infrastructure during construction including the existing bridge, the new Companion bridge, ancillary structures, and infrastructure within the zone of influence of construction in accordance with Section 7 (Environmental) and as required and defined by the Department in Sub-Phase 1A and prior to the Early Work Change Order and/or Phase 2 Change Order.

Wherever vibration-producing activities could affect a structure, building, sewer, or utility, the Contractor shall prepare a Vibration Monitoring and Control Plan to address the potential impacts to nearby receptors due to construction or demolition activities associated with this Project. The term "receptor" includes buildings, structures, utilities, utility service connections, occupants, and sensitive

operations/processes for which construction impacts or Work above recommended vibration limits may be detrimental. The plan shall include ground vibration threshold limits.

The monitoring plan shall address how the Contractor intends to complete vibration-related activities and meet the following minimum requirements:

- A. Develop a list of all anticipated vibration producing activities and where and when they are expected to occur;
- B. Develop a list of all potentially impacted receptors from these activities;
- C. Provide a vibration susceptibility analysis for each identified receptor, and establish a vibration control limit to preclude damage, including threshold damage, to each of the identified receptors and include in a susceptibility study;
- D. Provide a plan for notifying the public of potential vibration impacts, responsible Project personnel, receptors requiring precondition surveys, and vibration monitoring activities;
- E. Monitor construction related ground movement and vibrations at the nearest and most critical receptor(s), and notify Department in writing through the ECMS system immediately if established vibration limits are exceeded;
- F. Provide instrumentation locations, monitoring procedures, and a description of the monitoring devices and/or manufacturers' brochures in the submitted Sub-Phase 1A and Sub-Phase 1B plan set;
- G. Access any sensitive community or business operations that may be affected by ground movements and vibrations per Section 7 (Environmental);
- H. Provide recommendations for vibration-limiting methods to meet the established maximum safe vibration levels;
- I. Develop Sewer Condition Reports;
- J. Develop Structures and Pavement Reports; and
- K. Develop Building Condition Reports.

List of receptors shall include:

- A. Existing Bridge foundation elements
- B. Utilities, including storm and sanitary sewers
- C. Storage tanks
- D. Buildings
- E. Newly constructed elements
- F. Existing structures within zone of influence of vibration producing activities

The Contractor construction monitoring plan shall detail the proposed program of instrumentation and monitoring, set monitoring frequency, assess the impacts to existing structures and utilities, establish threshold values of the monitored parameters, and describe the response plan that will be implemented when threshold parameters are exceeded. Construction monitoring of the Bridge shall include vertical, horizontal, and tilt movements and vibration of bridge piers in sufficient locations as to determine adequate performance and safety of the Bridge and its foundations during construction.

The Contractor shall ensure that the instrumentation can be read remotely, and that data shall be uploaded to a website provided by the Contractor, and which shall be accessible remotely by both the Contractor and the Department. Remote-access functionality shall include the ability to extract data and to isolate an individual monitoring point or multiple points. The presentation system shall include the functionality to modify the extents and scale of data plotting such that arbitrary views are available.

The Contractor shall provide weekly construction instrumentation monitoring reports to the Department. Monitoring reports shall be interpretive in nature, and shall enumerate any corrections applied to the data including, but not limited to any notification measures taken regarding data. The weekly reports shall include clear and explicit statements of exceedances of any pre-determined threshold values. The Contractor shall maintain the instrumentation and monitor the measurements during and after construction up to Completion of the Contract.

#### **12.3.4.1 Vibration Susceptibility Study**

Contractor shall prepare a Susceptibility Study to assess each building, structure, Utility, Utility Service Line, and other receptors with sensitive operations/processes and occupants in the survey area defined below and determine its susceptibility to disruption by vibration-producing Work. "Disruption" includes both cosmetic cracking (threshold damage) and impacts on sensitive equipment and its operation. Categorize the susceptibility of each building to cracking during Work as high, moderate, or low as defined below. Susceptibility to cracking is the threshold of cosmetic cracking, which is:

- A. Threshold damage (e.g., opening of old cracks and formation of new plaster cracks, dislodging of loose structural particles such as loose bricks from chimneys)
- B. Architectural or minor damage that is superficial and does not affect the strength of the structure (e.g., broken windows, loose or fallen plaster, hairline cracks in masonry)

The categories of building susceptibility to vibration are:

- A. High susceptibility: An identified receptor has high susceptibility if it has already experienced a significant amount of degradation of its primary structural or non-structural system, and additional vibrations may further degrade these elements and possibly result in injuries to persons in the building. Identified receptors with loose or unstable elements (such as loose bricks or structurally cracked terra-cotta cornices) are in this category.
- B. Moderate susceptibility: An identified receptor has moderate susceptibility if, although some building deterioration has occurred prior to construction activities, it has not yet experienced a significant degradation of its primary structure or its non-structural systems that would lead to further building degradation due to construction vibrations. This category includes identified receptors with bricks that may be loose (as determined by visual inspection) and identified receptors with small to moderate quantities of fragile, potentially unstable contents that may be damaged by construction vibrations.
- C. Low susceptibility: An identified receptor has low susceptibility if it is not expected to experience cosmetic cracking when subject to moderate levels of vibrations (such as those permitted by the U.S. Bureau of Mines, Office of Surface Mining (OSM) vibration criteria) and if its contents will not be damaged by moderate vibration levels.

As part of the Susceptibility Study, determine whether there are sensitive operations or equipment nearby, such as hospitals, computerized industries or banks, and industrial machinery. Include a list of buildings with sensitive equipment or procedures in the Susceptibility Study. The Susceptibility Study



will include the three items listed below, which will be provided to Department as part of the Vibration Monitoring and Control Plan.

#### **12.3.4.1.1 Anticipated Vibration-producing Activities**

Identify locations where moderate to heavy construction activities will occur that are capable of producing vibrations that may cause damage, interference, or annoyance to receptors. Heavy activities include operations such as blasting, pile-driving, dynamic compaction, and percussive demolition. Moderate construction activities include operations such as vibratory compaction and heavy equipment operation. Present locations on a plan sheet or map that shows in-place topography, including nearby structures and buildings.

#### **12.3.4.2 Potentially Impacted Receptors**

Produce a map that includes the potential receptors established. Identify receptors by type of construction, size, material, address (if applicable), and owner. Identify all receptors in the survey area and categorize them as high, medium, or low susceptibility. The survey area is defined as the area including:

- A. All buildings and structures within a distance at which vibrations of 0.1 inch per second or greater will occur from construction activities and/or contributing structures within historic districts or individually listed properties listed in or eligible for the National Register of Historic Places within 140 feet of proposed construction work.
- B. Any building that has sensitive operations or Utility that may be affected by vibration-producing activities.

#### **12.3.4.3 Establish Vibration Limits**

Establish safe vibration levels that preclude damage to structures. Use these safe vibration levels as vibration limits for the Contract. Set separate levels for each receptor, if desired, but the limits may not be less stringent than those set forth in the OSM Alternative Blasting Level Criteria (Modified from Figure B1, RI 8507U.S. Bureau of Mines). Express the vibration criteria in peak particle velocity (PPV) with units of inches per second (ips).

### **12.3.5 Condition Surveys**

#### **12.3.5.1 Pre-Construction Condition Survey**

The Contractor shall conduct a pre-construction inspection and survey of the existing condition of all structures and properties for the purposes of generating photographic and video documentation of existing damage, leaks, and cracks of each receptor defined in accordance with Section 12.3.4 (Geotechnical Instrumentation and Construction Vibration Monitoring Plan) prior to beginning any Work that produces perceptible ground vibrations. The pre-construction condition survey shall form the basis against which all new cracks, existing progressive cracks, or damage will be measured. The spatial extent of the pre-construction survey shall encompass the Project Limits plus certain areas beyond the Project Limits, as detailed herein. The Contractor and Department will further coordinate receptor locations prior to the Early Work Change Order and/or Phase 2 Change Order.

The Contractor will coordinate with the Department to notify each household, institutional operator, Utility Owner, structure owners, and business establishment identified as receptors in accordance with

Section 12.3.4 (Geotechnical Instrumentation and Construction Vibration Monitoring Plan). Notify each contact via a registered letter at least three weeks prior to the survey. Obtain confirmation of receipt of notification letter. Include the following at a minimum in the letter:

- A. Explanation of the potential for producing vibrations;
- B. Steps the Contractor will take to avoid potential damage from those vibrations;
- C. Name and telephone number of a contact person to respond to any questions or concerns;
- D. Description of the pre-construction survey, including probable dates that the survey will be conducted. Provide at least two dates;
- E. Description of Vibration Monitoring Plan; and
- F. Meeting Invitation to receptors to educate about the pre-construction survey process prior to commencing surveys.

The full spatial extent of the Contractor pre-construction condition survey necessarily depends upon the Contractor's design and proposed means and methods of construction. In its preparation for the pre-construction survey, the Contractor shall be responsible for predicting anticipated vibration and settlement effects at various offset distances from the Project Limits, and for ensuring that the pre-construction condition survey encompasses at a minimum all properties within areas that are identified by the Contractor to be potentially prone to: (i) ground vibration levels, expressed as resultant peak particle velocity, in excess of 0.10 inches per second or greater; and (ii) predicted ground settlements of greater than 0.25 inches. In addition, the spatial extent of the pre-construction condition survey shall be integrated with the Contractor's implementation of its strategy for conformance with the Environmental Commitments related to the protection of cultural resources (see Section 7 (Environmental)). This strategy shall include properties within designated historic districts.

The Contractor shall submit to the Department the records and photographic and video documentation of the pre-construction condition survey, which shall be signed and stamped by a Professional Engineer registered in the State of Ohio and Commonwealth of Kentucky. Submit the records prior to commencement of construction with the affected area.

#### **12.3.5.2 Post-Construction Condition Survey**

The Contractor shall conduct a post-construction condition survey of the zone and properties covered by the pre-construction conditions survey (see Section 12.3.5.1 (Pre-Construction Condition Survey) herein). The post-construction condition survey shall be performed by the Contractor at Substantial Completion, and it shall compare the post-construction conditions with the conditions recorded in the pre-construction condition survey. The location and scope of the post-construction condition survey shall match those of the pre-construction condition survey. The survey shall provide information on whether the specific receptors have been damaged due to Construction Work and shall detail the extent of damage to each impacted receptor.

The complete documentation of the post-construction survey, describing the comparison with the preconstruction conditions and signed by a Professional Engineer registered in the State of Ohio and Commonwealth of Kentucky, shall be submitted to the Department.



Damage identified in the Post-Construction Condition Survey that was not present in the Pre-Construction Survey shall be repaired by the Contractor to a condition approved by the Department.

### **12.3.6 Ohio Design Requirements**

The following sections shall apply to Work within Ohio's JDM.

#### **12.3.6.1 Subsurface Exploration and Existing Information**

Per Ohio Revised Code 163.03, the Contractor will be able to obtain soil borings prior to a parcel being available for construction. Prepare property owner letter(s) (which will require the Department's signature and letterhead). Notice (said letter) of such proposed entry shall be given to the owner or the person in possession by such means as are reasonably available not less than 48 hours or more than 30 Days prior to the date of such entry.

Provide final boring plans in electronic format for incorporation into the ODOT Geotechnical Data Management System (GeoMS). All new boring data obtained for the project is to be compliant with the Data Interchange for Geotechnical and Geoenvironmental Specialists (DIGGS) standard as outlined in Section 701 of the Specifications for Geotechnical Exploration.

#### **12.3.6.2 Geotechnical Exploration Reports**

All geotechnical design and explorations performed by the Contractor shall be completed and submitted to ODOT in a Geotechnical Exploration Report(s) following the guidelines of Section 700 of the SGE. The Contractor shall combine all new geotechnical exploration and historical information in accordance with the SGE. In lieu of one large report for the project, geotechnical reports can be submitted per structure (wall or bridge) or Buildable Unit.

#### **12.3.6.3 Subgrade Stabilization**

Use the geotechnical information gathered by the Contractor, and applicable existing geotechnical information provided to design and construct subgrades below pavements per the Standards.

#### **12.3.6.4 Soil Slope Stabilization**

Use the geotechnical information gathered by the Contractor, and applicable existing geotechnical information provided to design and construct embankments and slope stabilizations per the ODOT Standards.

### **12.3.7 Kentucky Design Requirements**

The following sections shall apply to Work within Kentucky's JDM.

#### **12.3.7.1 Subsurface Exploration and Existing Information**

The Contractor shall provide all subsurface exploration plans and explorations to KYTC in accordance with the KYTC Geotechnical Manual and Transmittal Memoranda.

Provide conventional drilling, laboratory testing, or engineering analyses conducted by a firm prequalified in the applicable category in Kentucky to conduct the work. Specialty work not covered in the KYTC Prequalification's for Geotechnical Drilling, Engineering Laboratory Testing, or Geotechnical

Engineering may be conducted by a firm not pre-qualified in Kentucky; however, that work shall be under the supervision of a prequalified Geotechnical firm.

Perform all subsurface explorations, including sampling and laboratory testing, in accordance with the latest KYTC Geotechnical Manual and Transmittal Memoranda, AASHTO standards, and ASTM standards. Perform all laboratory testing at a KYTC pre-qualified geotechnical testing laboratory per KYTC methods.

For all subsurface explorations performed by the Contractor, the Contractor shall secure an access permit from the appropriate agency, if required, which may require the preparation of an equipment access plan, description of equipment types, a plan of the test locations, etc. The Contractor shall adhere to all traffic control requirements when taking samples on existing roadways. A traffic control plan may be required. The Contractor shall not enter any private property without permission from the private property owner. The selected Contractor may enter any State of Kentucky property in the Project Limits at any time, however, parcels not yet purchased by the State of Kentucky or Contractor for this Project may not be accessible without specific permission from the property owner.

#### **12.3.7.2 Geotechnical Exploration Reports**

Submit a Geotechnical Report (or reports), prepared by the DBT's Geotechnical Engineer of Record, presenting the results of all investigations, design recommendations and analyses calculations. The DBT's Geotechnical Engineer of Record shall review the applicability of the available geotechnical information provided by the Department to the Contractor's design. The review shall be documented in the Geotechnical Report(s). Subsurface explorations refer to geotechnical borings, cone penetration tests, geophysical methods, and other in-situ testing methods; and laboratory tests conducted to support the analysis and design of subgrades, embankments, fills, bridges, walls, and culverts.

#### **12.3.7.3 Subgrade Stabilization**

Use the geotechnical information gathered by the Contractor, and applicable existing geotechnical information provided to design and construct subgrades below pavements per the Standards and directives provided by KYTC during the Sub-Phase 1A design development.

#### **12.3.7.4 Soil Slope Stabilization**

Use the geotechnical information gathered by the Contractor, and applicable existing geotechnical information provided to design and construct embankments and slope stabilizations per the KYTC Standards.

The Contractor is responsible for analysis and design of soil slopes. Reinforce slopes steeper than two to one (2:1). Slopes two to one (2H:1V) or flatter may require stabilization improvements such as rock embankment, shear keys, reinforcement, or other measures depending on soil conditions and shall follow KYTC manuals, standard specifications, and special notes.

#### **12.3.8 Rock Cut Slopes**

Use the geotechnical information gathered by the Contractor and any applicable existing geotechnical information provided, to design and construct rock cut slopes per the Standards.

The Contractor is responsible for analysis and design of cut slopes. A rockfall analysis along with assumed parameters may be required for review by the Department, depending on conditions. If required, the analysis shall follow KYTC manuals, Standard Specifications, and Special Notes.

### 12.4 Submittals

Submit submittals under this Section 12.4, a non-exhaustive list of which is set forth in Table 12-1 (Geotechnical Submittals Table), in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated. At a minimum, the Contractor shall submit the following to the Department:

**Table 12-1: Geotechnical Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Geotechnical Instrumentation and Construction Vibration Monitoring Plan	Submittal	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>7.5.2, 12.3.4</u>
Vibration Susceptibility Study	Submittal	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>12.3.4.1</u>
Geotechnical Exploration Report(s) - Ohio	Submittal	N/A	1	Submit each report in accordance to discussions at the Submittal Meeting per <u>Section 12.2.2</u> (Meetings)	<u>12.3.6.2</u>
Geotechnical Report(s) - Kentucky	Submittal	N/A	1	Submit each report in accordance to discussions at the Submittal Meeting per <u>Section 12.2.2</u> (Meetings)	<u>12.3.7.2</u>

## 13. BUILDING DEMOLITION AND RECONSTRUCTION

When designated, the Contractor shall demolish and remove the existing buildings, ancillary structures, and temporary structures and facilities within the Project Limits and established Right-of-Way as indicated in RW-01 (KYTC Right of Way Plans), RW-02 (ODOT Final Right-of-Way Tracings), and RW-09 (Building Demolition Matrix) in a safe and environmentally acceptable manner. Construction, demolition, and/or asbestos abatement operations shall comply with all the applicable codes, rules, and regulations governing these activities in Cincinnati, Covington, State of Ohio, and Commonwealth of Kentucky, including, and not limited to provisions of the City and State Fire Codes. Contractor shall follow 40 CFR 61 Subpart M demolition regulations (NESHAP), KYTC – Division of Right of Way & Utilities Specification for Removal of Improvements (TC 62-16), and for ODOT follow demolition requirements in ODOT Construction and Material Specifications 202, except as modified in this Section 13.

All existing features encountered on the building removal parcels within permanent and temporary easement limits not otherwise designated in the Contract Documents as to remain for salvage or for reuse shall be removed and disposed of, except as directed by the Department, including but not limited to pavements, sidewalks, driveways, minor structures and obstructions, fencing, pipes, drainage structures, railing steps, debris, vehicles, Regulated Materials, and underground storage tanks. The Contractor shall ensure that all improvements associated with each demolished building/property are removed including all abandoned personal property found within or outside the building, and that only a bare grass lot remains, unless otherwise specified in the Contract Documents. The burning of buildings/building material is forbidden. The use of explosives is forbidden.

Backfill all cavities created from building demolition with structural backfill conforming to ODOT and/or KYTC standards.

### 13.1 Building Demolition and Removal Plan

The Contractor shall develop Building Demolition and Removal Plans for buildings to be demolished as identified in RW-01 (KYTC Right of Way Plans), RW-02 (ODOT Final Right-of-Way Tracings), and RW-09 (Building Demolition Matrix) for Department review. Building Demolition and Removal Plans shall include additional information as specified in Section 13.2 (Demolition Requirements) and will be used by the Contractor to develop an OPC during Sub-Phase 1A and be incorporated into the Base Design Submittal.

Building Demolition and Removal Plans shall be signed by a Professional Engineer registered in the State of Ohio or Commonwealth of Kentucky and submitted to the Department for review and written comment.

### 13.2 Demolition Requirements

The Contractor shall review the Conceptual Design and develop demolition approach to the existing buildings.

### **13.2.1 ARTIMIS**

The Contractor shall demolish the existing ARTIMIS building following relocation and connection of all ITS infrastructure in accordance with Section 20.5 (Intelligent Transportation System (ITS)). In addition to requirements within this Section 13, the Contractor shall remove all pavement and fencing on the property.

### **13.2.2 Extent of Demolition**

Buildings shall be demolished to 2 feet below final grade and all slabs including basement slabs that are below 2 feet shall be broken. Below grade areas that are not filled with new bridge foundations shall be backfilled with structural backfill conforming to ODOT and/or KYTC standards. Additional demolition shall be required for construction and new substructure at the location of the existing buildings.

### **13.2.3 Regulated Materials**

The Contractor may need to perform regulated materials inspections of buildings to be removed. See Section 7 (Environmental) for testing requirements.

### **13.2.4 Asbestos Compliance**

See Section 7 (Environmental) and RIDs for prior Department Asbestos inspection and laboratory results.

### **13.2.5 Protection of Materials and Structures**

Contractor shall design demolition to protect materials that are to remain in place, or that are to remain the property of the Department. This includes property on adjoining parcels.

### **13.2.6 Environmental Protection**

The Contractor shall prepare a soil erosion and sediment control plan during Sub-Phase 1A for use in developing an OPC. Contractor performing demolition is anticipated to prepare separate stormwater pollution prevention plan (SWPPP) Submittals for individual sites for Department and/or KYTC approval.

### **13.2.7 Public Safety**

The Contractor shall secure the Project Site with fencing during demolition activities.

### **13.2.8 Demolition Staging**

Contractor shall include demolition staging within the Building Demolition and Removal Plans as will be further detailed and agreed between the Parties as part of the Sub-Phase 1A Project Scope.

### **13.2.9 Utilities**

Building Demolition and Removal Plans shall address any service utility connections that will be required to be capped or removed due to demolition. The discontinued and capped utilities shall be in accordance with the requirements of the utility companies or the Department. The Contractor shall

coordinate the removal of all utility services and pay all utility disconnect fees. For additional information, see [Section 9 \(Utilities\)](#).

### 13.3 Longworth Hall Demolition and Reconstruction

The Contractor shall prepare plans and perform the demolition and reconstruction of Longworth Hall, identified as Parcel 1 in RW-02 (ODOT Final Right-of-Way Tracings). The limits of demolition will generally be in accordance with the RW-10 (Longworth Hall Impact Analysis Report: Concept Plans). The reconstruction by the Contractor will be in accordance with RW-10 and consist of all work necessary to reconstruct the building for use. Work will include construction of the structural shell, necessary interior supporting structures, and all interior and exterior work. In addition, construction shall include all work necessary to maintain occupancy of the building during and after completion of the Contractor's work. This will include maintaining, relocating and/or constructing interior life-safety features.

#### 13.3.1 Environmental Mitigation

Restoration of the east wall, to an approximation of its original appearance, will include material salvaged during the demolition in accordance with the Secretary of the Interior's Standards.

- A. Plans will be developed for review and comment by the building owner, Cincinnati Preservation Association, and Ohio State Historic Preservation Officer.
- B. Windows, removed to accommodate the new roadway construction, will be restored and used in the east wall reconstruction.
- C. Windows, removed and not used in the east wall reconstruction, will be restored and returned to the owner.
- D. A cornerstone, commemorating the date of construction (1904) on one side, and the date of renovation on the other side, will be included in the east wall reconstruction design.
- E. The Secretary of the Interior's Standards for the Treatment of Historic Properties: Reconstruction as a Treatment and Standards for Reconstruction  
<https://www.nps.gov/articles/000/treatment-standards-reconstruction.htm>
- F. The Secretary of the Interior's Standards for the Treatment of Historic Properties  
<https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>

#### 13.3.2 Historic Façade Modifications

The Work entails demolition of approximately 200 feet of the east end of the building while salvaging the historic masonry and reinstalling it on a newly configured east-facing exterior wall. The newly reconfigured wall should occur at a pilaster like the west end of the building so that the detailing and corner pilaster can be recreated.

The critical historic elements that should be salvaged and recreated on the newly reconfigured east façade, include the historic brick, coping stones, limestone window sills, limestone and brick pilaster elements and rusticated blocks. Key decorative architectural elements such as the brick pilasters, pilaster capitals, arches and roof-line corbelling, window eyebrows and limestone pilaster bases should be documented, catalogued, and carefully salvaged and cleaned for reinstallation on the reconfigured

façade. Façade elements should be stored in a manner to prevent exposure to the weather and extreme temperature.

The original brick coursing is a running bond with interlocking header courses which should be recreated. The new wall should be laid up as a monolithic fully parged masonry wall like the original and not be installed as a brick veneer. If possible, the backup masonry should be the same or similar in density and size to the original to maintain the historic structural and thermal/moisture behavior of the existing wall. Some areas of the existing walls to remain near the new wall on the south and north sides will need to be rebuilt in order to fully integrate the new masonry wall.

Based on the age of the structure, the mortar is likely lime-based mortar with no portland cement. The new mortar should be as close to the original as possible in make up with no portland cement. The existing historic mortar should be tested per ASTM C1324 Standard Test Method for Examination and Analysis of Hardened Masonry Mortar to assist in the selection of replacement and pointing mortar for the sections of the wall to remain.

Chemical analysis of the historic mortar should be performed to determine the mortar make up of lime aggregate and sand. The goal is to recreate the structural strength and vapor permeability of the original wall to prevent freeze-thaw damage.

### **13.3.3 Architect, Engineer, and Contractor Qualifications**

Design professionals and contractors experienced in historic repair and preservation shall prepare the Design Documents and perform the Work. When used with an entity or individual, "experienced" unless otherwise further described means having successfully completed a minimum of five previous projects similar in nature, size, and extent to this specific Work; being familiar with special requirements indicated; and having complied with requirements of authorities having jurisdiction.

- A. Professional architects and engineers shall have experience in the following areas of work related to this building type:
  1. temporary bracing and shoring of masonry structures
  2. sequential and partial demolition of structure
  3. removal and preparation / restoration of materials to be re-used on the project including brick masonry, window systems and historic ceiling systems
  4. adaptive reuse of materials to be used on the project in a function other than their current usage
- B. A professional engineer who is legally qualified to practice in jurisdiction where Project is located and who is experienced in providing engineering services of the kind indicated. Engineering services are defined as those performed for installations of the system, assembly, or product that are similar in material, design, and extent to those indicated for this Project.
- C. Contractor's Statement of Responsibility: When required by authorities having jurisdiction, submit copy of written statement of responsibility submitted to authorities having jurisdiction before starting work on the following systems:
  1. Seismic-force-resisting system, designated seismic system, or component listed in the Statement of Special Inspections.



2. Main wind-force-resisting system or a wind-resisting component listed in the Statement of Special Inspections.

The Contractor shall utilize the resources available through the Ohio State Historic Preservation Office (SHPO) website <https://www.ohiohistory.org/preserving-ohio/state-historic-preservation-office/services-fees/> that provides listings of companies which have met federal professional qualification requirements and the following services:

- A. Archaeology Consultants List
- B. History / Architecture Consultants List
- C. Choosing an Archaeology Consultant
- D. Choosing a History / Architecture Consultant

### 13.3.4 Additional Qualifications

In completion of the Work, the Contractor shall meet the following requirements unless authorities having jurisdiction supersede requirements of specialists:

- A. Manufacturer Qualifications: A firm experienced in manufacturing products or systems similar to those indicated for this Work and with a record of successful in-service performance, as well as sufficient production capacity to produce required units. As applicable, procure products from manufacturers able to meet qualification requirements, warranty requirements, and technical or factory-authorized service representative requirements.
- B. Fabricator Qualifications: A firm experienced in producing products similar to those indicated for this Work and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- C. Installer Qualifications: A firm or individual experienced in installing, erecting, applying, or assembling work similar in material, design, and extent to that indicated for this Work, whose work has resulted in construction with a record of successful in-service performance.
- D. Specialists: Certain Specification Sections require that specific construction activities be performed by entities who are recognized experts in those operations. Specialists will satisfy qualification requirements indicated and engage in the activities indicated.

### 13.3.5 Design Development

The Contractor shall perform a detailed field investigation of the exterior and interior of the building in coordination with the owner and prepare a report summarizing the findings which will be used as a basis of design.

As part of Sub-Phase 1A, the Contractor will develop drawings to 50% completion for the Longworth Hall Work required within this Section 13.3 (Longworth Hall Demotion and Reconstruction), develop necessary specifications, and estimate costs to complete the work as part the Project's Opinion of Probable Costs.

During Sub-Phase 1B, the Contractor will develop final plans to 100% completion for the Longworth Hall Work within this Section 13.3, prepare a list of necessary permits to be obtained, and include costs as part of the development of the Early Work Package or Phase 2 Proposal.



Longworth Hall Work will include the necessary permitting, demolition, and reconstruction required.

### 13.4 Submittals

Submittals under this Section 13.4, a non-exhaustive list of which is set forth in Table 13-1 (Building Demolition and Reconstruction Submittals Table), shall be submitted in both hardcopy and electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated. At a minimum, the Contractor shall submit the following to the Department:

**Table 13-1: Building Demolition and Reconstruction Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Building Demolition and Removal Plan	Submittal	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>13.1</u>
Longworth Hall Field Investigation Report	Submittal	4	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>13.3.5</u>
Longworth Hall 50% Design Drawings and Specifications	Submittal	4	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>13.3.5</u>
Longworth Hall 100% Design Drawings and Permitting List	Approval	4	1	As Defined in the DBT Design Submittal Plan and Sub-Phase 1B Submittal	<u>13.3.5</u>

## 14. PAVEMENTS

The Contractor shall construct, maintain, and rehabilitate roadway pavements within the Project Limits in accordance with Section 1.2 (Governing Regulations) and using Good Industry Practices.

Additional Project specific design criteria and pavement types will be coordinated and communicated during the Sub-Phase 1A Scope Meeting per Section 2 (Project Management).

### 14.1 Ohio Pavement Requirements

This section shall apply to Work within Ohio's JDM.

Ohio has completed the subsurface exploration and has designed the pavements including subgrade treatment. Completed final pavement designs are shown in the RIDs PA-01 (Ohio Pavement Type Selection), PA-02 (Ohio Pavement Section), and PA-03 (Ohio Pavement Requirements). Contractor shall follow PA-01 (Ohio Pavement Type Selection), PA-02 (Ohio Pavement Section), and PA-03 (Ohio Pavement Requirements). The Department will not accept modifications to the Ohio pavement type selection.

Requirements for smoothness and temporary pavement design can be found in Section 1.2 (Governing Regulations).

### 14.2 Kentucky Pavement Requirements

This section shall apply to Work within Kentucky's JDM.

KYTC, prior to contract award, will provide base pavement designs for both asphalt and concrete pavements based on an assumed CBR.

During the Proof-of-Concept Phase, the Contractor shall validate the assumed soil conditions and coordinate with the Department on any adjustments needed to the base pavement designs including subgrade treatments. The Contractor may also submit modified equivalent pavement designs to KYTC for consideration. Modified equivalent pavement designs shall be in accordance with Section 1.2 (Governing Regulations) and supported by documentation of cost and/or time savings. All interstate and ramp shoulders shall match the mainline driving lane thickness for any modified equivalent pavement design proposed by the Contractor. The determination of final pavement design(s) will be at the sole discretion of the Department. Once the Department directs the final pavement designs, the Contractor shall prepare a Pavement Design Memorandum for KYTC documenting this decision.

Pavement smoothness requirements are per KYTC Standard Specification Section 410 (Asphalt Pavement Ride Quality Category A) and Section 501 (Portland Cement Concrete Pavement Category A). Pavement smoothness requirements shall apply to all pavement structure transition areas between asphalt, concrete, approach slabs and structures for this project.

Special pavement performance aspects or appropriate treatments for reaches of the Project may be required as part of the environmental commitments for the project or identified through ATC development.

### 14.3 Private Parking Areas and Driveways

The Contractor shall replace any private parking areas or driveways damaged during construction in like kind. New driveways shall be in accordance with Section 1.2 (Governing Regulations).

## 15. ROADWAY

The Contractor shall design and construct all roadways and associated roadway items including earthwork, pavements, curbs, pedestrian facilities, driveways, barriers, fence, incidentals, and other roadside items in accordance with Section 1.2 (Governing Regulations), Table 1-2 (Design Designation, Design Criteria and Maintaining Agencies), and Design Year forecasted certified traffic volumes which will be provided by the Department, and requirements within this Section 15.

The Contractor shall develop a Base Design that meets the intent of Concept I-W provided in LD-07 (Concept I-W Corridor Exhibit). The Department has coordinated with local communities and provided many new active transportation connections in the project limits, many of which cross at or near ramp terminals. The Contractor shall implement traffic calming measures at locations where drivers are transitioning from a free flow facility to the local street network, with increased emphasis at active transportation facility crossings. Additional geometric modifications that meet Project Goals can be evaluated during Sub-Phase 1A. Additional information is provided for the Contractor to establish Base Design Plans:

- A. LD-01 (Concept I-W\_Final Design Summary Report)
- B. LD-02 (Kentucky\_PAVR Alternative I)
- C. LD-03 (Ohio\_PAVR Alternative I)
- D. LD-04 (BSB Smart PDF)
- E. LD-05 (BSB IMS)
- F. LD-06 (BSB Addendum)
- G. LD-07 (Concept I-W Corridor Exhibit)
- H. LD-08 (Concept I-W Multimodal Exhibit)
- I. LD-09 (Concept I-W Design and Legal Speeds Exhibit (from 12th Street to north end of Project))
- J. LD-10 (Draft Design Exceptions)
- K. LD-11 (BSB IMS Addendum 2 (Concept I-W) – to be provided)

The Contractor shall identify and develop design exceptions in accordance with Section 1.2 (Governing Regulations). A draft design exceptions listing is provided in LD-10. The Department's approval of a Contractor request for a design exception does not guarantee FHWA approval. If the Department agrees that the design exception is appropriate and necessary, the Department will coordinate with FHWA. Previously submitted design exceptions are subject to reevaluation if additional information becomes available that was not known at the time of initial submittal or conditions change that were used in the analysis of the original design exception and, in either case, if such additional information or changed conditions materially affect the premise on which the original design exception at issue was based. Contractor shall include local street repair plans based on the local detours and haul routes coordinated with Department and local agencies to be further detailed and agreed between the Parties as part of the Sub-Phase 1A Project Scope. Additional Project specific design criteria will be coordinated and established during the Post Award Scope Meeting per Section 2 (Project Management).

## 15.1 Submittals

The Contractor shall submit detailed Base Design plans per ODOT and KYTC requirements and supporting calculations for review. See Section 2 (Project Management) for Base, Interim, and Final Design submittal requirements.

## 16. DRAINAGE

### 16.1 General

The Contractor shall conduct all work necessary to design and document design criteria for the stormwater management facilities for the Project. Elements of work shall include the following:

- A. Prepare a Hydraulic Report for the Project in accordance with the Section 1.2 (Governing Regulations).
- B. Pavement drainage systems for both the permanent Project facilities and the temporary construction conditions. This includes existing detention facilities.
- C. Temporary sedimentation and erosion control measures.
- D. Runoff treatment and or detention facilities as required to meet Section 1.2 (Governing Regulations) and the permit commitments for the Project.
- E. Maintenance of existing off-site flows that pass through the Project area.
- F. New Subsurface drainage systems or Underdrains shall be designed, and design coordinated with the storm sewer design.
- G. Hold meetings and coordinate the design as required with the ODOT and KYTC hydraulics, maintenance, and environmental staff, the Cincinnati Metropolitan Sewer District (MSD), Sanitary District No. 1 (SD1), and local public agency (LPA) staff.
- H. Compliance with local drainage ordinances.

### 16.2 Performance Requirements

#### 16.2.1 General

The stormwater drainage system (consisting of runoff collection systems, conveyance systems, flow control facilities, runoff treatment facilities, and outfalls for the Project) shall meet the requirements of this Section 16, Section 1.2 (Governing Regulations), and the Project permits. The Contractor shall maintain and provide facilities for handling other runoff from flows originating from off-site and cross-drainage as required.

#### 16.2.2 Preliminary Hydraulics

There are several RIDs that provide conceptual stormwater management information for the Project. See DR-01 through DR-05.

The stormwater system along the interstate in Ohio will be completely replaced with this Project. ODOT has committed that the new stormwater system will be removed from the existing MSD combined sewer system. See Section 17 (Sanitary and Combined Sewers) for additional technical requirements and information.

The existing stormwater system along the interstate in Kentucky utilizes the Willow Run Combined Sanitary/Stormwater system through Covington. KYTC has committed that the new stormwater system will be removed from the existing Willow Run system with the new construction and create an

independent system and outfall. See [Section 17](#) (Sanitary and Combined Sewers) for additional technical requirements for the Willow Run Combined Sanitary/ Sewer System.

## 16.3 Design Requirements

### 16.3.1 Stormwater Design Criteria

The Contractor shall use [Section 1.2](#) (Governing Regulations), Conceptual Design Documents in LD-01 through LD-11 Environmental RIDs EN-01 through EN-27, Project Permit requirements, the environmental commitments described in EN-28 (Environmental Commitments), and the design criteria described in this [Section 16](#) to develop the design of the Project.

The design of drainage systems shall include reconfiguration of the existing drainage systems within the Project Limits, and design of new and reconfigured storm drainage systems as required by the performance requirements as defined in this [Section 16](#). The existing storm sewer systems will be completely replaced unless approved by the Department based on condition assessment completed by the Contractor. Contractor shall prepare existing asset condition surveys for stormwater, culverts, and cross drains as part of the Sub-Phase 1A Work. If Contractor, proposes to re-use existing storm sewer systems and additional fill is placed, the Contractor shall prepare storm drain joint deflection calculations and evaluation of safety using [Section 12](#) (Geotechnical), “Buried Structures and Tunnel Liners” of the AASTO LRFD Bridge Design Specifications for Department review. Contractor shall design in accordance with ODOT SS 837 and SS 899 for Pipe Liner and KYTC Specification 701.03.

The Contractor shall provide facilities compatible with existing drainage systems and all applicable municipal drainage plans or systems in adjacent properties. The Contractor shall preserve existing drainage patterns wherever possible, other than the separation of the interstate stormwater and Willow Run Sanitary as stated above.

The Contractor shall coordinate this work with Utility and Railroad Owners to design and construct drainage conveyance utility crossings to meet the respective requirements.

### 16.3.2 Cincinnati Metropolitan Sewer District (MSD)

Cincinnati Stormwater Utility in cooperation with MSD is the local stormwater authority for the Project within the City of Cincinnati. MSD owns and maintains an extensive network of storm and combined sewer systems within the Project. The Contractor shall not increase stormwater runoff to the individual existing MSD sewer inlets or pipes that currently receive stormwater from the roadways as a result of the work on the Project. The Contractor needs to be aware that MSD has an old system of conduits and are concerned with increased flows as well as the structural integrity of their system if additional fill, live load, or static load will be added in the vicinity of their pipes. The Contractor shall be required to adequately demonstrate minimization of any impacts to existing system to MSD and ODOT for approval. If the Contractor’s design adequately addresses this provision, it is not anticipated that any further analysis of MSD’s combined sewer network will be required. However, if the Contractor’s design does increase stormwater runoff to an inlet or pipe or increases live load or static load or if the Contractor wishes to make a new connection to MSD’s storm sewer or combined sewer network, the Contractor shall be responsible for addressing any necessary analysis requirements and upgrades to

the system needed to meet hydraulic capacity requirements per MSD and ODOT Governing Regulations.

### 16.3.3 Kentucky Stormwater Management

Sanitary District No. 1 (SD1) is the local stormwater authority for the Project within Kentucky except within the city limits of Covington. The City of Covington is responsible for stormwater management within their city limits. SD1 and the City of Covington owns and maintains an extensive network of storm and combined sewer systems within the Project. As stated above, the new interstate stormwater will be separated from the existing system. See [Section 17](#) (Sanitary and Combined Sewers) for further information.

### 16.4 Culverts

The Contractor shall be responsible for video inspecting all culverts and cross-drain pipes within the limits of the Project. The Contractor shall note within the Base Design plans to retain, modify, protect ends with headwalls, or abandon the existing cross-drains and culverts as required to match revised roadway sections.

All proposed modifications to cross-drains and culverts in the Project area shall be checked and/or sized for capacity, and the results shall be included in the Contractor's design calculations in the Base Design Submittal. All culvert designs and capacity checks shall be performed in accordance with the [Section 1.2](#) (Governing Regulations).

### 16.5 Detention Facilities

If detention facilities are necessary, the Contractor shall coordinate with the Department, MSD, SD1 and City of Covington as appropriate to develop existing flow rates and applicable design storm sizing/release requirements for specific outfall points. All detention facilities, if required, shall be located within the proposed permanent Right-of-Way. Detention facilities shall be designed to avoid conflicts with other underground utilities. The facility layout, methodology and physical properties of the facility including type of system, materials, outlet structure and access points shall be approved by the Department, MSD, SD1, and other stakeholders prior to ordering and installation. Mechanically operated detention facilities shall not be permitted.

### 16.6 Ohio General BMP Requirements

This section shall apply to Work within Ohio's JDM.

As stated in L&D Volume 2, Sections 1112 and 1115, post-construction BMPs are not required if all runoff is collected in a combined sewer provided design flow to the combined sewer meet the requirements of maintaining agency. Drainage areas contributory to combined sewers shall not be credited toward Project treatment percentages for quantity or quality.

The ODOT drainage will require Quality BMP. The Contractor will need to maximize the vegetated BMP (biofilter and filter stripes) and then offsite mitigation will be required. Contractor will need to coordinate with OEPA. Coordination has already started with OEPA to get preapproval.



## 16.7 Kentucky General BMP Requirements

This section shall apply to Work within Kentucky's JDM.

For Kentucky side of the Project BMP design requirements will follow the Section 1.2 (Governing Regulations), unless directed by KYTC where special considerations may be needed.

## 16.8 Utilities

The stormwater design must accommodate existing utilities.

## 16.9 Temporary Erosion and Sediment Control

Temporary erosion and sediment control is required and the Contractor will be required to prepare any necessary plans in accordance with the Section 1.2 (Governing Regulations). The Contractor will be required to submit necessary plans for each permitting agency. The Contractor will also be required to use SWPPP Track in accordance with ODOT SS832 to handle the inspection and tracking of temporary erosion and sediment controls per their Storm Water Pollution Prevention Plan for the entire Project.

### 16.9.1 Ohio Requirements

This section shall apply to Work within Ohio's JDM.

Cincinnati MSD is the local stormwater authority for Ohio with responsibility for managing and implementing the local erosion control protection and sediment control ordinance and floodplain ordinance.

### 16.9.2 Kentucky Requirements

This section shall apply to Work within Kentucky's JDM.

SD1 is the local stormwater authority for temporary erosion control measures which shall be in accordance with KYTC Drainage Manual, Project permits, and applicable Specifications.

## 16.10 Abandonment and Removal of Existing Drainage Structures

Abandonment and/or removal of existing drainage structures and pipes shall be in accordance with Section 1.2 (Governing Regulations). Any existing pipe or other structure that shall be abandoned and remain under any traffic pavement shall be filled using methods and materials that assure the pipe or structure is completely filled in a supported, non-void condition. Prior to filling or plugging structures, video inspection shall be performed to ensure unknown connections are not impacted. The Contractor shall include the abandonment details, including any abandon-in-place filling methods and materials with the drainage structure and pipe drawings.

## 16.11 Bridge Deck Drainage

Runoff from bridge decks shall be collected and conveyed in a closed system down substructure units into an open or closed storm sewer system unless drains can be located outside of travelled ways. In the case that runoff can be discharged outside of travelled ways, discharge shall be allowed to freefall

from through deck drains or bridge scuppers. The roadway drainage design shall include the bridge approach drains to intercept gutter flow at each end of the bridge. Stormwater flowing toward the bridge shall be intercepted upstream from the approach slab. Bridge drainage shall be collected at the gutter lines (toe of parapet) by scuppers. Over-the-side drainage is not permitted. The Contractor will be required to perform all necessary hydraulic calculations per [Section 1.2](#) (Governing Regulations).

### **16.11.1 Existing Brent Spence Bridge**

The existing BSB shall be reconfigured as proposed in the Conceptual Design Documents LD-01 (Concept I-W Final Design Summary Report), LD-04 (BSB Smart PDF), LD-07 (Concept I-W Corridor Exhibit), LD-08 (Concept I-W Multimodal Exhibit). The existing BSB deck shall also be replaced. The Contractor shall provide new grate deck drains, scuppers, and downspouts, and the design shall be per the KYTC Drainage Manual. Water intercepted by grate deck drains may be dropped vertically through the deck into the Ohio River as approved by the Department. The Contractor shall design stormwater conveyance systems into a storm sewer system for the deck drainage areas outside the approved free fall sections as indicated in the above. Additional requirements are provided in [Section 18](#) (Structures).

## **16.12 Flood Protection Systems**

The existing Covington downtown area is protected from flooding by a flood protection system consisting of an existing levee. It is not anticipated that the existing levee will need to be altered or disturbed other than improvements to existing pump stations (see [Section 17](#) (Sanitary and Combined Sewers)). Also, other flood protection systems that may be impacted by the Project shall be addressed by the Contractor such that the current flood protection systems/flood walls in place are not compromised and the same level of performance is maintained. Contractor shall provide flood protection design and criteria and as required in [Section 7.2](#) (Permitting) and per [Section 1.2](#) (Governing Regulations).

## **16.13 Drainage Areas**

The Project drainage area is defined as follows: All area within the construction limits and any additional area draining to the construction limits of the Project as determined by the Contractor's work and agreed to by the Department. This includes areas outside the Project Right-of-Way, including local streets.

## **16.14 Downstream Analysis**

The Contractor shall perform downstream analysis for individual storm water facilities with the exception of MSD facilities as set out in MSD section above. This analysis shall include a review of the regional (city or county) storm water pipes receiving runoff. The Contractor shall include this information in the highway runoff design. Project improvements shall not increase the potential for flooding downstream of the Project.

## **16.15 Maintenance Access**

All new storm water structures shall be situated and/or provided with separate access such that routine maintenance and inspections can be easily achieved. Catch basins, inlets, and manholes for storm

drains shall be located at the outer edges of shoulders, or in medians or gore areas. Culverts and cross-drains isolated from convenient maintenance and inspection access shall be provided with achievable maintenance and inspection access at one end of the pipe.

Maintenance access adjacent to the sedimentation pools of ponds and vaults shall include a working area suitable for the loading and maneuvering of sediment disposal equipment and trucks. Maintenance access roads shall be designed to be compatible with maintenance equipment.

## 16.16 Bridge Hydraulics

Hydraulic reports will need to be prepared for the new double decker Companion Bridge. The preliminary report shall evaluate the 100-year flood water surface elevations, and 100-year and 500-year theoretical scour depths caused by the proposed bridge geometry.

The United States Army Corps of Engineers (ACOE) HEC-RAS Water Surface Profile Program should be used for performing the hydraulic analyses for the river crossing bridge. Hydraulic and scour analyses shall also be required. Scour analysis shall be completed for both the existing Brent Spence Bridge and the new Ohio River bridge.

Hydraulic analysis shall be required for temporary construction conditions creating a scenario worse than the model developed for permitting. Scour analysis shall also be completed for the temporary construction condition.

The Cincinnati Metropolitan Sewer District and the Kentucky Sanitary District No. 1 have both identified the potential need for the development of a Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR). The Contractor will be responsible for performing the CLOMR and LOMR as part of the permitting process (See [Section 7.2](#) (Permitting)).

## 16.17 Drainage Report

The Contractor shall prepare Base Drainage Reports and plans to address all applicable items in [Section 1.2](#) (Governing Regulations), including all applicable storm sewer, BMPs, and other drainage items and requirements of the Cities, MSD, and SD1. At a minimum the reports shall include:

- A. Separate map/drawing for each drainage area, clearly showing the details within each drainage area;
- B. Maps showing the local water collection system to identify drainage boundaries, longest flow path, and point of inlet. Separate maps shall be provided for existing and proposed conditions;
- C. Location of all detention facilities, if required, including points of inlet and outlet for these;
- D. Detailed drainage computations supporting net decreases in flow to existing combined sewers in the Project areas; and
- E. Detailed drainage computations supporting attainment of water quality and water quantity requirements for all outlets to existing storm sewers.

## 16.18 Drainage Submittals

Submittals under this Section 16.18, a non-exhaustive list of which is set forth in Table 16-1 (Drainage Submittals Table), shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated. For drainage computations, submit electronically in their source format such as HY-8, ODOT CDSS, HEC-HMS, HEC-15, KTDID, or Drainage Program approved by the Department. The Drainage Folder organization shall follow the Department standards Section 1.2 (Governing Regulations). The Contractor shall provide updated drainage computations with each submittal cited in Section 2 (Project Management). At a minimum, the Contractor shall submit the following to the Department:

**Table 16-1: Drainage Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Ohio Base Design Drainage Report	Acceptance	0	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>16.17</u>
Kentucky Base Design Drainage Report	Acceptance	0	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>16.17</u>

## 17. SANITARY AND COMBINED SEWERS

### 17.1 Sanitary & Combined Sewers

Cincinnati Metropolitan Sewer District (MSD), Sanitary District No. 1 (SD1) and the City of Covington has significant sewer and combined sewer facilities in the Project Limits. The Contractor shall coordinate with the owner to obtain pre-condition CCTV inspection of all sewers within the Project Limits. The Contractor will work with MSD and SD1 to determine the pre-existing condition of the sewers to the satisfaction of MSD and SD1 prior to beginning any construction in the area. Several MSD and SD1 sewers and combined sewers are in the limits of the Project and may need to be relocated. Contractor will develop during Base Design for the relocation of sewers and combined sewers in accordance with ODOT, KYTC, MSD, SD1 and City of Covington design standards and construction specifications, as applicable. See [Section 1.2](#) (Governing Regulations).

Contractor shall develop the Base Design plans for separation of sanitary and storm sewers within the Project Limits to develop an OPC.

### 17.2 Willow Run Combined Sanitary/Storm Sewer

Interstate 71/75 between the Kyles Lanes Interchange and the Ohio River traverses the Willow Run Watershed. This watershed is served by a combined sanitary/stormwater system with low flow diversions to treatment plant(s). During storm events the combined system bypasses the low flow diversions and empties directly into the Ohio River just west of the Companion Bridge. Just upstream of the outfall is a pump station that is designed to operate when the Ohio River is at flood stage. KYTC has committed to SD1 and the City of Covington to separate all interstate runoff and additional areas as depicted in SS-04 (Willow Run Storm Water Separation Study). KYTC has further committed to upsize this separate system downstream of potential future projects the City of Covington may take on to redirect stormwater runoff in this watershed to this new system. During Sub-Phase 1A, the Contractor will need to develop a layout of this separate system and continue coordination with KYTC and the City of Covington to understand any future projects in the area to incorporate into the design. This new system may tie into the existing pump station downstream of the last low flow diversion.

Interstate 71/75 currently crosses a portion of this existing combined sanitary/stormwater sewer between 9<sup>th</sup> Street and 4<sup>th</sup> Street in Covington. The Contractor may design to avoid relocation of this system in this area as was done with the original interstate construction and subsequent highway improvements. During Sub-Phase 1A, the Contractor will however need to evaluate whether it is more cost effective to relocate through this area. A potential concept to relocate is shown in SS-04 (Willow Run Storm Water Separation Study).

KYTC has further committed to SD1 and the City of Covington to reconstruct and upsize the existing sanitary/combined sewer system to 120 inches between St. Anthony Elizabeth Hospital and 9<sup>th</sup> Street.

### 17.3 Base Design

As part of the Base Design, the Contractor shall prepare a drainage design report and calculations showing the reduction of flow to the combined sewers outfall locations in Ohio and Kentucky, layout

plans, and details for coordination with ODOT, KYTC, MSD, and SD1. The drainage design report shall contain the drainage design criteria for the Project. The proposed drainage systems shall not introduce new connections to the existing combined sewer pipes nor increase the flow to the existing CSO drainage networks. Where drainage patterns will or must be changed from existing patterns, the Contractor shall be responsible for coordinating existing drainage patterns with the sewer districts during Sub-Phase 1A.

## 17.4 KYTC Pump Station

Contractor's Base Design will include pump station rehabilitation plans for the existing pump station in Kentucky. SS-01 (Willow Run Detail Sheets) contains information on existing pump station. The Kentucky pump station will need to be resized due to the impacts of the existing ponding areas in Goebel Park (see SS-02 Flood Protection Covington) and any increased discharge to the pump station. Contractor will work with ACOE to determine sizing requirements. Pump Station As built plans are provided in SS-01 (Willow Run Detail Sheets). The Contractor shall improve the entire pump station. Every discipline has major improvements including process mechanical, HVAC mechanical, plumbing mechanical, electrical, I&C, architectural, structural, and site/civil. Improvements include but are not limited to the following:

- A. Replace existing gates, valves, and actuators;
- B. Replace increaser pipes with welded steel pipe and flow meters;
- C. Replace electrical equipment in the pump station; and
- D. Replace I&C equipment including new pump health monitoring system and revised control room space.

Design requirements for the proposed pump station shall be coordinated with ACOE and SD1 and will need included in the 408 permit. The Contractor shall obtain approval for final design from these two agencies along with Department concurrence.

## 17.5 Submittals

Submittals under this Section 17.5, a non-exhaustive list of which is set forth in Table 17-1 (Sanitary and Combined Sewers Submittals Table), shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

**Table 17-1: Sanitary and Combined Sewers Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Ohio Drainage Design Report	Submittal	3	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>17.3</u>
Kentucky Drainage Design Report	Submittal	3	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>17.3</u>
Kentucky Pump Station Rehabilitation Plan	Submittal	3	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>17.4</u>

## 18. STRUCTURES

### 18.1 General

This Section 18 describes overall requirements for temporary and permanent Structures required of this Project. Applicable requirements for each individual Structure shall be determined and implemented based on whether the Structure is:

- A. Owned or will be owned by KYTC;
- B. Owned or will be owned by ODOT; or
- C. A specific structure as described in this Section 18, including the Companion Bridge and the existing Brent Spence Bridge.

The Contractor shall provide structural analysis and design, and develop and produce structural plans, calculations, specifications, and Submittals for each Structure in accordance with and to a level of completion required by this Section 18, government regulations, and the Contract Documents.

The Contractor shall coordinate with the Department and Department's Consultants on a Structural Health Monitoring System on the Companion Bridge. Department's Consultants will design and provide installation of the system. The system design, supply, and installation Work will be further coordinated with the Contractor in Sub-Phase 1A.

### 18.2 Administrative Requirements

#### 18.2.1 Standards

For all Structures, provide design and analysis in accordance with the requirements stated in Section 1.3 (Standards Deviation Submittal Requirements) and Section 2 (Project Management).

For structural components not addressed by the standards listed in Section 1.2 (Governing Regulations), submit for Department Approval other guidelines or specifications that reflect currently accepted industry practice prior to use.

#### 18.2.2 Meetings

Schedule and facilitate meetings related to structural Project Work. The following meetings are required:

##### 18.2.2.1 Structure Type Study Base Design Concept Meetings

Group and combine Structures into Buildable Units as acceptable to the Department. Schedule and facilitate a minimum of one meeting per Buildable Unit with the Department to discuss proposed structure type design concepts for each Structure in the package. Discuss alternatives reviewed by the Contractor (Refer to Section 2.3.2 (Base Design Submittal)), Contractor preferred alternative, and reasons for preferred alternative. See Section 18.3.2 (Structure Type Base Design Submittal) for additional structure type Base Design requirements.

Lead Independent Companion Bridge Engineer and the ICBE designated staff shall be invited to participate in all meetings discussing the Companion Bridge.



### 18.2.2.2 Structure Type Study Base Design Meetings

Upon Structure Type Study Base Design Concept Package Approval, schedule and facilitate recurring bi-weekly Base Design meetings with the Department to discuss Contractor's Work and status for each Structure in the Base Design Submittal.

### 18.2.3 Permits/Authorizations Related Site Investigations

Obtain all necessary permits and authorizations required to perform site investigations including property access and traffic control. Site investigations include Regulated Materials assessment and investigations, data collecting, photograph and survey collection. Refer to Section 7 (Environmental) for other environmental permitting requirements. See Section 18.3.2 (Structure Type Base Design Submittal) for additional Structure Type Base Design Submittal.

## 18.3 Design Requirements

### 18.3.1 General

Provide structural analysis and design, calculations, specifications, and plan development for each temporary and permanent Structure. In addition, for the Companion bridge provide a technical memo signed and sealed from Lead Independent Companion Bridge Engineer (ICBE) registered Professional Engineer in both OH and KY attesting to the adequacy of design as presented in the Contract documents.

Provide the following Structure Type Study Base Design information:

- A. Structure type:
  - 1. Superstructure type
  - 2. Substructure type
  - 3. Foundation type
  - 4. Pile type
  - 5. Wall type (retaining walls and noise walls)
  - 6. Major component materials
  - 7. Other (lighting, sidewalks, special use paths, railings)
- B. Structure geometry:
  - 1. Lengths
  - 2. Widths
- C. Location:
  - 1. Vertical alignment
  - 2. Horizontal alignment
  - 3. Skew
  - 4. Minimum vertical clearance(s)
  - 5. Minimum lateral clearances

- D. Hydraulic information:
  - 1. Design flood years and stage elevations
  - 2. Minimum freeboard at applicable flood stages
  - 3. Backwater at applicable flood stages
  - 4. Relevant flood insurance studies
  - 5. Other agency requirements including DNR, Coast Guard, Corps of Engineers as applicable
- E. Risk:
  - 1. Risk items
  - 2. Risk level
  - 3. Risk mitigation strategies
- F. ROW/easements:
  - 1. Existing ROW and easements
  - 2. ROW needs
  - 3. Temporary easement needs
  - 4. Permanent easement needs
- G. Design and construction costs
- H. Bridge Phasing Plan and Maintenance of traffic/traffic control
- I. Existing structures:
  - 1. Status during construction staging (full or partial demolition)
  - 2. Anticipated demolition methods

### **18.3.2 Structure Type Base Design Submittal**

Complete Structure Type Base Design for all structures to a minimum level defined in the Sub-Phase 1A Scope Meeting and Sub-Phase 1A Work.

### **18.3.3 Bridge Structure Type and Limitations - Ohio**

This Section 18.3.3 applies to all Structures owned by Ohio or located in the State of Ohio and shall apply to Work within Ohio's JDM except the Companion Bridge. See Section 18.3.5 (Companion Bridge Requirements) for Companion Bridge Requirements.

#### **18.3.3.1 General – All Bridges**

- A. Metal stay-in-place deck forms are only permitted over span that contains the railroad line, except as noted in Section 18.3.5.15 (Use of Stay-in-Place Deck Forms). Traditional forming is to be used elsewhere.
- B. Precast approach slabs shall not be permitted.
- C. Concrete barrier shall include empty conduit with junction boxes.
- D. Any post tensioning shall follow the post tensioning SS 855.

- E. For all steel splices, 50 percent of the splice bolts need to be installed prior to unhooking girder from crane unless designed by the EOR for less and included in the plans.
- F. Straddle Bents:
  - 1. Minimum of three independent steel girder I-Beams;
  - 2. Shall be redundant;
  - 3. Post-tensioning is not preferred;
  - 4. Each steel girder to be supported on pier with a bearing; and
  - 5. Annual/bi-annual in-service condition inspection access shall be considered in design. See Section 18.3.3.1.N (General – All Bridges).
- G. Concrete Deck and Vertical Concrete Bridge Railing Reinforcement:
  - 1. Mainline interstate bridges and system to system ramp bridges:
    - a. Stainless Steel.
    - b. Chromium Type CS.
  - 2. Local street bridges:
    - a. Galvanized.
- H. Concrete Substructure Reinforcement:
  - 1. Concrete straddle bents:
    - a. Chromium Type CS.
    - b. Stainless Steel.
  - 2. Other:
    - a. Galvanized.
- I. Concrete mix design (refer to ST-07 and ST-08):
  - 1. Include macro-synthetic fibers (1-inch minimum to 2.5-inch maximum) at a dosage rate of 4-pounds per cubic yard.
  - 2. Approved corrosion inhibitor.
- J. A minimum vertical clearance as published by the affected railroads shall be maintained over railroad lines at all times.
- K. Bridge mounted PCB attached to new bridge decks is not preferred.
- L. Holes will not be permitted to be drilled into the face of the substructure units to support the structure during jacking operations.
- M. All concrete sealing shall be epoxy-urethane and limits shall be per the BDM sections 306.1.2 and 309.2.1.
- N. Annual/bi-annual in-service condition inspection access shall be accommodated, and a plan for inspection shall be provided for each structure by the Contractor.
- O. Bridge Load Ratings for each structure shall be per BDM section 900.
- P. Provide lifting locations to accommodate jacking and temporary support at all bearing locations.

- Q. Design all superstructures to accommodate a future deck replacement while maintaining traffic for the number of lanes agreed upon during Sub-Phase 1A.
- R. Elastomeric troughs are to be placed under all bridge deck expansion joints.

**18.3.3.2 Structure Type Limitations**

- A. Fracture Critical Elements in the substructure and/or superstructure shall not be allowed in their final condition.
- B. Prestressed concrete box beams are not permitted.
- C. Post tensioned I-beams are not permitted.
- D. Segmental construction is not preferred.
- E. Prestressed concrete girders shall be ODOT standards (Std Dwg PSID-1-19) or have a minimum web thickness of 8 inches.
- F. Truss type bridges are not permitted.
- G. Non-redundant designs are not permitted in the final configuration.
- H. 3-Sided structures used as tunnels traffic conduits for traffic purposes are not allowed.

**18.3.3.3 Local Bridge Commitments**

Contractor shall refer to Section 19 (Aesthetics and Enhancements), AE-01 (Aesthetic Design Guidelines), AE-04 (Aesthetic Design Checklist PID 116649) and ST-06 (BSB Local Street Bridge Cross Sections).

Form Liner shall be used on both sides of the bridge railings when sidewalks and/or shared use path is adjacent to the bridge railing.

**18.3.3.4 Existing Structure Identification**

The following existing bridges shown in Table 18-1 (Existing Ohio Bridges) are located within the anticipated project limits. These structures may or may not require modification or replacement as part of the Work, depending upon the requirements of the Base Design as developed by the Contractor. All dimensions are approximate. Contractor is responsible for field measuring critical bridge dimensions. Existing plans are available.

**Table 18-1: Existing Ohio Bridges**

<i>SFN</i>	<i>Facility Carried by Structure</i>	<i>Feature Intersected</i>	<i>Year Built</i>	<i>Structure Length</i>	<i>Deck Width</i>
3107787	IR 71	OHIO RIVER BRENT SPENCE	1963	1736.5	94
3105946	SB IR 71	USR 42	1963	2683	40.1
3105970	NB IR 71	3RR; USR 27; IR 75; USR 42	1963	3042.8	47.8
3103269	3RD ST. TO S.B.71	USR 42	2000	823.5	37.6
3106020	2ND STREET	CENTRAL AVENUE	2001	823	61.3
3108791	SB IR 75	THIRD STREET; CSRR	1963	428.3	56

<i>SFN</i>	<i>Facility Carried by Structure</i>	<i>Feature Intersected</i>	<i>Year Built</i>	<i>Structure Length</i>	<i>Deck Width</i>
3108805	NB IR 75	2RR; TH ST E; US42D; US50E	1963	1187	36
3108872	IR75 RAMP TO SR264	USR50EB; US50EB TO 2ND ST	1998	264.6	32.8
3103234	US 50 RAMP B	USR 42	2000	643.8	44.3
3108821	IR75 off Rmp CLOSD	CLOSED-CENTRAL AVENUE	2000	161.3	32.8
3111679	SR 264	I75N;RAMP=I75N-US50W	1963	171	44
3111644	SR 264	I75S;USR-IR RAMP;US50E	1963	516.3	41.8
3111733	RMP-US50W-I75N	RMP=US50W,FI ST W-I75N	1963	204	42.4
3103188	US50 EB	I75S	1963	182	42.9
3108945	SEVENTH STREET	I75&RAMPS	1963	630	63
3103153	US50 WB	I75;RAMP=I75S-US50E	1963	524	81
3109003	NINTH ST RAMP	I75;RAMP=US50W-I75N	1963	283	33.2
3109038	NINTH ST	GEST STREET;I75&RAMPS	1963	535	42.1
3109062	I-75 7TH ST.	GEST ST WITHIN IR R/W	1963	245	35.2
3103293	U.S. 50	US 42	2000	916.9	44.7
3103226	US 50 RAMP F	US 42	1999	758.3	34.3
3111709	SR 264	US50W;I75N RAMP	1963	192	75.5

### 18.3.3.5 Proposed Structure Identification

The proposed bridges in [Table 18-2](#) (Proposed Ohio Bridges) have been preliminarily identified (See ST-02 Concept I-W Structure List Plan).

**Table 18-2: Proposed Ohio Bridges**

Structure Designation	Route Name	Alignment	Begin Station	End Station	Crossing	Length	Width
20	I-71/I-75	OH-75-N	3+16.97	7+68.82	I-71/I-75 SB	451.85	110
21	I-75 NB	OH-75-N	7+68.82	24+24.78	3rd St, US 50 EB, RR	1655.96	59
22	I-71/I-75	OH-75-S	3+16.97	10+96.99	Pete Rose Way	780.02	110
23	I-75 SB	OH-75-S	10+96.99	24+09.17	3rd St, US 50 EB, RR	1312.18	59
24	I-71 NB	OH-71-N	7+69.90	17+99.26	I-71 SB, RR	1029.36	45
25	I-71 NB	OH-71-N	17+99.26	22+90.22	Ramp to 2nd St	490.96	54
26	I-71 NB	OH-71-N	22+90.22	28+81.58	Central Ave	591.36	98
27	I-71 SB	OH-71-S	10+53.79	27+21.63	US 50 WB, RR	1667.84	43
28	I-71 SB	OH-71-S	27+21.63	30+19.44	Central Ave	297.81	72
29	Northbound CD	OH-CD-NB-75-5thExit	1+84.00	5+70.50	Pete Rose Way	386.5	50
30	Northbound CD to I-71	OH-CD-NB-71	5+70.50	16+95.71	RR, Clay Wade Bailey	1125.21	41
31	Ramp - NB Exit to 2nd St	OH-CD-NB-2ndEx	17+88.35	26+99.89	Ramp to 2nd St	911.54	29
32	Northbound CD to I-75	OH-CD-NB-75-5thExit	5+70.50	22+93.25	I-71 NB/SB, RR	1722.75	51
33	Northbound CD to I-75	OH-CD-NB-75	39+29.72	41+75.73	3rd St to NB CD	246.01	37
34	Ramp - NB Exit to 5th St	OH-CD-NB-75-5thExit	22+93.25	23+62.15	3rd St to NB CD	68.9	37
35	Southbound CD from I-75	OH-CD-SB-75	1+84.00	9+48.06	Northbound CD	764.06	66
36	Southbound CD from I-75	OH-CD-SB-75	9+48.06	22+60.89	I-75 NB/SB, RR	1312.83	60
37	Southbound CD from I-75	OH-CD-SB-75	22+60.89	24+33.66	3rd Street	172.77	47
38	US 50 EB to Southbound CD	OH-CD-SB-75-50E	10+47.03	12+18.00	3rd Street	170.97	29
39	Southbound CD from I-71	OH-71-S-L	9+48.69	23+45.50	Northbound CD, RR	1396.81	65
40	Southbound CD from I-71	OH-71-S-L	23+45.50	25+76.01	3rd Street	230.51	75
41	Southbound CD from I-71	OH-71-S-L	25+76.01	27+84.57	Central Ave	208.56	32
42	Ramp - 3rd St to CD	OH-CD-SB-71-3rdEN	1+39.91	6+42.21	3rd Street	502.3	37
43	Ramp - 3rd St to NB 75	OH-3rdNBCD	4+19.60	6+47.66	John Street	228.06	28
44	US 50 EB	OH-I5BLPU050E	106+45.14	111+85.82	Southbound CD	540.68	41
45	Ramp - I-75 SB to I-71 NB	OH-I5BLP75S71N	120+00.00	129+48.26	3rd Street	948.26	44
46	US 50 EB to 2nd St.	OH-I5PR0502nd	120+50.00	130+37.75	3rd Street	987.75	43
47	US 50 WB	OH-I5BLPU050W	108+32.10	114+01.44	I-75	569.34	43
48	US 50 WB	OH-I5BLPU050W	126+00.00	128+58.81	3rd Street	258.81	29
49	US 50 WB	OH-I5BLPU050W	128+58.81	134+31.95	3rd Street	573.14	37
50	US 50 WB to Northbound CD I-75	OH-US50WBNBCD	5+11.23	7+05.00	3rd Street	193.77	29
51	US 50 EB to 5th	OH-50E_5th	208+52.68	217+66.12	I-75	913.44	39
52	Northbound CD I-75 to US 50 WB	OH-CD-NB-50WB	42+85.20	46+92.85	I-75	407.65	29
53	6th St to US 50 WB	OH-I5BLPSIXT	206+59.13	208+69.40	Northbound CD	210.27	130
54	6th St to US 50 WB	OH-I5BLPSIXT	208+69.34	211+80.48	I-75	311.14	79
55	6th St to US 50 WB	OH-I5BLPSIXT	211+80.48	212+26.44	I-75	45.96	57
56	6th St to US 50 WB	OH-I5BLPSIXT	212+26.44	214+71.85	Southbound CD	245.41	80
57	Ramp - 6th St to Northbound I-75	OH-CD-NB-6th	5+47.73	6+41.37	US 50 WB to NB CD	93.64	29
58	7th Street	OH-IBLPSEVE	110+22.20	112+12.64	Gest St.	190.44	31
59	7th Street	OH-IBLPSEVE	116+33.80	120+90.91	I-75	457.11	57
60	7th Street	OH-IBLPSEVE	120+90.91	124+93.11	I-75	402.2	79
61	Ramp - Southbound CD to 7th St	OH-I5BLPCDS7TH	38+90.54	42+14.45	I-75	323.91	38
62	9th Street	OH-IBLPNINT	109+56.13	117+12.65	I-75	756.52	68

### 18.3.3.6 Temporary Structures

Temporary structure shall meet the requirements of BDM Section 500.

### 18.3.3.7 Retaining Walls-Ohio

This Section 18.3.3.7 applies to all retaining walls owned by Ohio or located in the State of Ohio and Work within Ohio's JDM.

#### 18.3.3.7.1 General Retaining Walls Criteria

In addition to the retaining wall types outlined in the BDM, Section 204.6, the Department will consider the following wall types. The design of each wall type shall be performed per AASHTO LRFD guidelines.

The Department will consider precast concrete cantilevered retaining walls supported on cast-in-place or deep foundations as appropriate, for this Project. The structural thickness of any precast concrete retaining wall stems shall be a minimum of 10 inches. The reinforcement clearance on all precast elements utilized in cantilevered retaining walls shall be 2 inches to each face of the element. The minimum reinforcement clearance does not include the aesthetic treatment thickness.

All retaining walls, whether temporary or permanent, shall be designed to limit the top of wall deflection to be less than 1 percent of the exposed wall height, excepted as noted further in these Technical Requirements. Walls supporting structures, utilities, and pavement, shall be designed to limit top of wall movement as to prevent damage to the adjacent structure or pavement (applies to both the permanent and temporary condition). The Contractor will be responsible for repairs to adjacent facilities that occurs due to excess wall deflection.

Prefabricated modular retaining walls (gravity or reinforced) may be utilized on local streets but cannot be incorporated on the ODOT interstate mainline or ramps. Local street segmental walls shall use wet-cast retaining wall blocks. The Contractor shall coordinate the pattern and color of the blocks comprising any segmental wall with the City of Cincinnati prior to selection of the wall. Design and construction of all segmental block walls shall follow the most current version Supplemental Specification 870. Prequalification of the proposed modular block system(s) as outlined in SS870 is a contract requirement for use on the project.

Retaining walls have been identified as required in several locations for project geometry. Refer to ST-04 (Concept I-W Retaining Wall List Plan). All retaining walls shall receive aesthetic treatment. See Section 19 (Aesthetics and Enhancements). In addition, the top of all walls shall receive a smooth coping in the same manner as that outlined in SS 840 for MSE walls. The coping shall extend beyond the aesthetic surface treatment a minimum of 1 inch. The aesthetic treatment shall include a relief of at least 1.5 inches beyond the structural thickness.

Retaining walls supporting bridge abutments are considered retaining walls and shall receive the same aesthetic treatment as walls away from the bridge structures. Wing walls for bridges and culverts shall also receive aesthetic treatment. Walls adjacent to each other but of different type (i.e., CIP next to MSE) shall use the same coping thickness and aesthetic treatment such that the walls visually appear to be the same type. The use of self-consolidating concrete will be considered by the Department.



Provide aesthetic treatment for the retaining walls with a minimum relief of 1.5 inches beyond the required structural thickness of the wall. The environmental commitments for the project will determine the general aesthetic pattern to be incorporated. A single aesthetic pattern (same form liner manufacturer and product specification) shall be utilized for all walls on the project, regardless of the wall type. Mixing of form liner patterns, while still providing the same general appearance, is prohibited. This does not apply to prefabricated modular block walls.

Provide permanent graffiti protection for permanent retaining walls. Epoxy seal all walls from 1 foot below the permanent ground line in front of the wall, the entire wall facing and 6 inches below the coping/cap on the back side of the retaining wall. Seal the wall with 17778 Light Neutral sealer, unless otherwise noted in the environmental commitments. Apply permanent graffiti protection from 1 foot below the groundline in front of the wall to the top of the wall coping/cap.

Retaining walls shall be designed so that no additional loading from the wall is applied to existing storm or sanitary conduits crossing.

#### **18.3.3.7.2 Soldier Pile and Lagging Walls (cantilevered and anchored)**

Design of cantilevered soldier pile and lagging retaining walls shall follow the guidelines outlined in Specification for Design of Cantilever Soldier Pile Walls as provided by on the Office of Geotechnical Engineering web site. The wall design shall be analysed using a p-y method (L-pile) of analyses. Provide the design calculations, along with all appropriate models, in the geotechnical report.

All retaining wall components (including ground anchors, reinforcing straps, porous backfill, etc.) shall remain within the permanent public R/W or permanent underground easement. All ground anchors and reinforcing straps shall be a minimum of 5 feet below subgrade.

Design, construct, and test temporary and permanent ground anchors per Supplemental Specification 866. Provide double corrosion protection for all permanent ground anchors.

Perform at least two extended creep tests for each design factored design load (FDL) and at each wall location utilizing permanent ground anchors. Performance test the first production anchor at each wall location. Additional performance testing is required for each FDL and wall location. All anchor testing shall utilize a load cell in conjunction with hydraulic jack, hydraulic pump and pressure gauges needed to accurately. Provide all testing equipment per SS 866.

Incorporate a permanent cast-in-place facing for any permanent soldier pile and lagging (SPL) wall. The structural thickness of the cast-in-place facing thickness shall be at least 10 inches. Include the fractured fin aesthetic treatment on the cast-in-place facing as well as a coping. Horizontal construction joints are prohibited for all cast-in-place facings.

Temporary hardwood lagging for all soldier pile walls shall be installed in a top-down manner such that no more than 3 feet of unsupported exposed at any given time. Excavation for placement of the temporary wood lagging shall be performed in such a manner that the lagging has full-contact with the excavated face. Any voids behind the lagging shall be backfilled with No. 57 crushed carbonate stone as directed by the Engineer. Reduce the unsupported height of the excavation as necessary to prevent



caving and sloughing of the soil between the soldier piles. Provide a 0.25 to 0.875 inch horizontal gap between adjacent lagging boards to permit drainage.

Cover the entire surface of the hardwood lagging with geocomposite drainage board. The geocomposite drainage board shall meet the requirements of Item 518 Prefabricated Geocomposite Drain.

Incorporate a permanent cast-in-place facing for any permanent soldier pile and lagging (SPL) wall. The structural thickness of the cast-in-place facing thickness shall be at least 10 inches. Include the fractured fin aesthetic treatment on the cast-in-place facing as well as a coping. Horizontal construction joints are prohibited for all cast-in-place facings.

Soldier piles can be installed using continuous flight auger methods. The Department will consider construction of the drilled shafts for the installation of the soldier piles utilizing continuous flight auger (CFA) methods. Use of CFA methods is considered an alternative to Item 524 - Drilled Shafts, for soldier pile installation. The Contractor shall submit the CFA installation plan in lieu of the drilled shaft installation. The CFA installation plan shall include the provisions outlined in Item 524. With the use of CFA methods, the entire drilled shaft excavation from the design tip elevation to the ground elevation at the time if drilling is to be backfilled with LSM/grout. The continuous flight augers must be hollow, and continuous to induce placement of the LSM/grout under pressure at the bottom of the drilled excavation. Once the design shaft tip elevation is reached, place the LSM/grout to the elevations shown in the project plans by pumping. A minimum 10 feet of pressure head must be maintained during casting of the shaft. Provide a calibrated, automated inline monitoring system to document the quantity of grout/LSM placed in the drilled excavation. Submit the flowmeter documentation for each drilled shaft to the Engineer the day after shaft casting. Immediately re-drill any shaft (do not place soldier beam) in which the amount of LSM utilized is less than the theoretical volume.

Provide proof of inline flowmeter calibration with the CFA installation plan. The inline flow meter must have been calibrated by an independent third party within 12 months of the CFA construction date. The cost of the inline monitoring system is incidental to the cost of the drilled shaft. No additional compensation will be permitted for shafts re-drilled when the inline flowmeter indicates the initial LSM volume was less than the theoretical volume.

When utilizing a CFA installation method, provide testing of the LSM/grout mix samples by an independent testing lab. Quality control cubes or 3-by-6-inch (or larger) cylinders are acceptable. The Department will obtain 3-by-6-inch cylinders for every fifth set of cubes or cylinders as quality assurance samples. The cost for providing cube samples and testing is incidental to the drilled shaft cost.

The Contractor proposing to utilize CFA methods of drilled shaft installation must be ODOT prequalified and have demonstrated five previous projects in which continuous flight augers were successfully utilized for soldier pile installation. Include the previous project information, location, year, and reference contact with the CFA installation plan.

### 18.3.3.7.3 MSE Walls

In addition to the requirements of SS 840 and the Bridge Design Manual, design, and construction of any MSE wall shall include the following:

- A. MSE walls with upper surfaces sloping towards the top of the MSE shall include a paved gutter at the top of the wall to collect drainage. Utilize a standard paved gutter meeting the requirements of SCD.
- B. Utilities, including but not limited to water lines, sewer lines, storm drainage conduits, electric lines, and fiber optic lines, shall be routed a distance of at least 5 feet from the MSE wall select granular backfill zone and wall face. Existing utility lines shall be relocated to meet these guidelines. The Department may consider the placement of a utility line below a MSE wall on a case-by-case basis. The Contractor shall provide steel casing of any utility permitted to remain in the MSE wall reinforced zone. The casing shall have a minimum wall thickness of 0.75 inches and shall extend at least 10 feet beyond the MSE wall facing or select granular backfill zone. The casing diameter shall be at least 6 inches greater than the utility diameter or as required by the Utility Owner, whichever is greater.
- C. If a settlement waiting period is incorporated at bridge abutments supported by MSE walls, the waiting period cannot begin until the area above the MSE has been brought to the design subgrade elevation. The Contractor must incorporate a temporary surcharge from the design bottom of bridge footing grade to the design roadway subgrade elevation to permit full soil load application during the settlement waiting period. The temporary surcharge is to be applied over the area of the bridge footing in addition to the approach area.
- D. Backfill from the bottom of the bridge footing to the subgrade elevation of the approach slab shall consist of Granular Material Type B. The granular material Type B shall meet the material requirements outlined in SS 840 if the reinforcing straps for the bridge wing walls will extend into the granular material, Type B.

### 18.3.3.7.4 Temporary Retaining Walls

Temporary retaining walls, including but not limited to phase line sheet pile walls, soldier pile walls and temporary MSE wire walls, shall be designed with the requirement that during wall service, the top of wall deflection will be the lesser of 1 percent of the wall height or 2 inches. The maximum wall deflection applies to both service and strength limit state loading conditions. All temporary wall designs shall be reviewed by the Geotechnical Engineer of Record and shall be designed per the latest LRFD guidelines. Submit all design calculations, with concurrence by the Geotechnical Engineer of Record, to the Department as outlined in CMS 501.05 with the Buildable Unit in which the wall is to be constructed.

During construction and operation of all temporary retaining walls, the Contractor shall install monuments on maximum 25-foot intervals along the length of the wall. Each wall shall have minimum of three monitoring points regardless of length. The monitoring points shall be evenly spaced along the length of each wall. The Contractor is to survey the top of wall at least weekly during operation. The survey monitoring shall include the station, offset and elevation of each monitoring point as well as the coordinates (latitude, longitude) of each point. Provide the Engineer a weekly summary spreadsheet of the monitoring data and indicate the differences between individual readings as well as the total movement from the baseline reading. Damage to adjacent pavement, structures, utilities, etc. as well as

voids created by wall movement shall be repaired by the Contractor at no additional cost to the Department.

Temporary MSE walls shall not be utilized at angles less than 45 degrees to the supporting phase line.

#### **18.3.3.8 Noise Barrier – Ohio**

This Section 18.3.3.8 is not used. No Noise Barriers are within the State of Ohio limits.

### **18.3.4 Structure Type and Limitations – Kentucky**

This Section 18.3.4 applies to all Structures owned by Kentucky or located in the State of Kentucky and Work within Kentucky's JDM except the Companion Bridge. See Section 18.3.5 (Companion Bridge Requirements) for Companion Bridge requirements.

#### **18.3.4.1 General – All Bridges**

- A. Select and design structures that are redundant.
- B. Fracture critical members are not permitted.
- C. When using structural steel, the material shall be painted or hot-dip galvanized (HDG) with Department approved systems.
- D. Prestressed concrete beams are permitted.
- E. Load rate all structures. Meet all load rating requirements per KYTC. Contractor to coordinate with Division of Maintenance, Bridge Maintenance Branch for latest load rating vehicle configurations, load rating requirements, and required file types for submittal.
- F. Coordinate with the geotechnical department to determine if approach slabs are necessary in areas of high settlement.
- G. Seal with Silany concrete sealer per KYTC standards over any portion of concrete exposed to salts and chlorides.
- H. Where median barriers are required, the 56-inch single slope barrier shall be used.
- I. Barrier located along bridge fascia shall be 40-inch single slope barrier.
- J. The use of bridge barriers or bridge sidewalks for cross sectional structural capacity is not permitted.
- K. Post-tensioning is not permitted.
- L. Side-by-side precast, prestressed box beams are not permitted.
- M. Three-sided structures used as tunnels or traffic conduits for traffic purposes are not permitted.
- N. Design all superstructures to accommodate a future deck replacement while maintaining traffic for the number of lanes agreed upon during Sub-Phase 1A.

#### **18.3.4.2 Decks**

- A. Full depth cast-in-place concrete with an 8-inch minimum thickness and a 0.5-inch integral wearing surface shall be used.
- B. Contractor to perform cost analysis on the following deck reinforcement alternates for each structure. Final determination of deck reinforcement materials shall be made by KYTC based on this analysis:

1. Epoxy.
  2. Stainless.
  3. Hot dip galvanized.
  4. Continuous galvanized.
  5. Chromium Type CS in the top mat with chromium Type CM in the bottom mat.
- C. Lightweight concrete is not permitted except as otherwise noted in this scope.
- D. Bituminous type wearing surfaces are not permitted.

#### **18.3.4.3 Superstructures**

- A. A minimum of four girder/beam lines for girder/beam bridges shall be required. Three girders/beams are permitted for single lane ramps and for bridges under part-width construction but shall be designed for additional future wearing surface load as directed per KYTC.
- B. Joints shall be sealed from bridge deck surface drainage. Drainage troughs shall be provided for open-type joints that accept bridge deck drainage, such as finger joints.
- C. Stay-in-place (SIP) deck forms are permitted, when needed. Design shall be adjusted for the additional load from material in the troughs of the SIP forms.
- D. The number of joints shall be minimized, and necessary joints shall be located at end substructures.
- E. Superstructures shall lend preference toward integral end bents, then semi-integral end bents.
- F. Bridge design shall include conduit for the full barrier length, junction boxes at 200-foot maximum spacing along bridge barriers, and junction box Type A at the ends of bridge.

#### **18.3.4.4 Substructures**

- A. Substructures shall use reinforced concrete designs.
- B. Internal forms shall be removed for hollow piers and where bottom of voids for hollow piers do not extend below the groundline.
- C. Straddle bents shall be permitted where necessary with a minimum of three independent steel beams. Straddle bents shall not contain fracture critical members or requiring post-tensioning.
- D. Substructures that rest directly on soil behind MSE walls shall not be permitted.
- E. Substructures that utilize spread footings on soil shall not be permitted.

#### **18.3.4.5 Foundations**

Select and design bridge foundations that are deep foundations or spread footings founded on competent bedrock. See [Section 12](#) (Geotechnical) for additional requirements and information. Deep foundations are required for bridge abutments located within MSE walls.

#### **18.3.4.6 Existing Structure Identification**

The existing bridges in [Table 18-3](#) (Existing Kentucky Bridges) are located within the anticipated project limits. These structures may or may not be receiving work based upon the specified scope and the extents of the Contractor's design plans. All dimensions are approximate. Contractor is responsible for field measuring critical bridge dimensions. Existing plans are available.

**Table 18-3: Existing Kentucky Bridges**

<i>SFN</i>	<i>Facility Carried by Structure</i>	<i>Feature Intersected</i>	<i>Year Built</i>	<i>Structure Length (ft)</i>	<i>Deck Width (ft)</i>
059B00099N	US 25	I-75	1999	199.5	72.0
059B00100L	I-75	ORCHARD ROAD	1999	151.9	99.3
059B00100R	I-75	ORCHARD ROAD	1999	151.9	76.1
059B00043L	I-75	RIVARD DRIVE	1960	159.1	78.1
059B00043R	I-75	RIVARD DRIVE	1960	159.1	66.9
059B00047N	KYLES LANE	I-75	1960	254.0	86.0
059B00044L	I-75	11TH-12TH-LEWIS IN COVINGTON	1960	684.0	86.0
059B00044R	I-75	US25, KY1120, (11TH, 12th, LEWIS)	1960	684.1	54.0
059B00087N	I-75 RAMP	PIKE ST-ON RMP TO I-75N	1993	85.0	26.0
059B00090N	I-75 RAMP	9TH ST-COVINGTON	1993	160.1	25.9
059B00038L	I-75	NINTH ST IN COVINGTON	1960	159.0	88.0
059B00038R	I-75	NINTH ST IN COVINGTON	1960	159.0	55.0
059B00089N	I-75 RAMP	9TH ST (COV)	1993	159.0	25.9
059B00088N	I-75 RAMP	9TH ST (I-75NB) RAMP 'G'	1993	159.0	25.9
059B00039N	5TH ST/SB I75 RAMP	4TH ST RAMP TO SB I-75	1963	62.0	62.0
059B00041N	PED. OP AT 5TH ST	NB I75 EXT RMP TO 5TH STREET	1968	149.0	0.0
059B00040N	I-75 NC	3RD-4TH-5TH STS COVINGTON	1963	3132.8	30.0
059B00046N	I-75	OHIO RIVER	1963	1736.5	91.6

**18.3.4.7 Proposed Structure Identification**

The following proposed bridges in Table 18-4 (Proposed Kentucky Bridges) have been preliminarily identified. Refer to ST-02 (Concept I-W Structure List Plan).

**Table 18-4 Proposed Kentucky Bridges**

Structure Number	Route Name	Alignment	Begin Station	End Station	Crossing	Length	Width	Notes
1	Dixie Highway (US 25)	Dixie Highway	3+57.65	7+12.83	I-71/I-75	355.18	87	
2	I-71/I-75	IOPI075CL	407+56.13	409+11.23	Orchard Rd	155.1	240	
3	I-71/I-75	IOPI075CL	424+83.15	426+49.25	Rivard Dr	166.1	245	
4	Kyles Lane	Kyles Lane	7+43.18	10+26.71	I-71/I-75	283.53	110	
5	I-71/I-75	IOPI075CL	536+82.44	543+67.50	12th/Pike	685.06	249	
6	I-71/I-75	KY-75-N	547+58.07	549+14.49	9th St	156.42	258	
7	Ramp - NB Exit to 5th St	KY-CD-NB-5thEx	6+80.71	15+67.49	9th St/NB Entrance	886.78	28	
8	I-71/I-75	KY-75-N	555+49.85	581+10.09	3rd, 4th, 5th	2560.24	90	
9	I-71/I-75	KY-75-S	565+63.20	582+89.55	3rd, 4th, 5th	1726.35	88	
10	Northbound CD	KY-CD-NB	71+56.41	78+24.48	4th, 5th	668.07	39	
11	Northbound CD	KY-CD-NB	78+24.48	83+12.48	3rd	488	60	
12	Southbound CD	KY-CD-SB	565+46.16	571+53.16	Bullock	607	47	
13	Ramp - SB Exit to 9th St	KY-CD-SB-9thExit	6+35.32	11+98.98	Bullock	563.66	40	
14	Southbound CD	KY-CD-SB	571+53.16	584+26.19	Bullock	1273.03	58	
15	Ramp - SB Exit to 5th St	KY-CD-SB-5thExit	3+35.26	6+87.59	4th	352.33	36	
16	I-71/I-75	KY-75-N	582+89.55	597+93.54	Ohio River	1503.99	110	Companion Bridge
17	Northbound/Southbound CD	KY-CD-NB	83+12.48	98+60.17	Ohio River	1547.69	49	Existing BSB
18	Northbound/Southbound CD	OH-CD-NB-75-5thExit	0+00.00	1+84.00	Ohio River	184	49	Existing BSB
19	I-71/I-75	OH-75-N	0+00.00	3+16.97	Ohio River	316.97	110	Companion Bridge

**18.3.4.8 Temporary Structures**

All temporary structures shall be designed for a minimum HL93 loading.

**18.3.4.9 Rehabilitated Structures**

For any potential widening or reuse of existing structures within the project corridor, design structure rehabilitations to meet the following criteria:

- A. Coordinate designs with the KYTC Division of Structural Design;
- B. Consider the need for upgrading to current crash wall standards;
- C. Coordinated with the KYTC Geotechnical Division for foundation requirements;
- D. Utilize lightweight fill per geotechnical requirements over existing culverts, if necessary;
- E. Incorporate the same beam material as the existing structure;
- F. Load rating of rehabilitated structure shall meet or exceed the existing structure rating; and
- G. Lightweight concrete shall not be permitted unless determined to be necessary to meet load rating requirements. In this case, use of lightweight concrete shall be coordinated with the KYTC Division of Structural Design.

**18.3.4.10 Retaining Walls – Kentucky**

Contractor shall refer to special notes and guidance provided online under Geotechnical Resources on the Structural Design website. The Contractor shall contact the KYTC Geotechnical Support and Review Branch for the most recent guidance on retaining walls and guidance specific to site conditions. Retaining walls have been identified as required in several locations for project geometry. Contractor shall refer to ST-04 Concept I-W Retaining Wall List Plan.

**18.3.4.11 Noise Barrier - Kentucky**

Contractor shall design and construct noise wall systems where required by KYTC noise policy to protect residences adjacent to the project. Noise barriers shall be considered roadside hazards and may be located adjacent to the roadway shoulders, the top of cut slopes, on top of or immediately behind retaining walls, and on bridges. Preliminary studies have indicated that noise abatement is



anticipated. See [Section 7](#) (Environmental) Appendix EN-08 (Ohio Noise Analysis Report), EN-26 (KY Traffic Noise Impact Analysis North), and EN-27(KY Traffic Noise Assessment South).

### **18.3.5 Companion Bridge Requirements**

#### **18.3.5.1 Prestressing Strand Type**

Strand type for both Cable Stayed and Arch type structures shall be greased and sheathed strands as per PTI 6th Edition 13.4.1.2.1 As an alternative, if the Arch type of structure is the selected option, single strand, multiple wire, zinc coated Bridge Strand Hangers conforming to the requirements of ASTM A 586, modified to require all wires be furnished with class C zinc coating throughout and prestressed may be used.

#### **18.3.5.2 Cable / Hanger Replacement**

The bridge shall be designed so that stay cables / hangers can be replaced one at a time while maintaining two lanes of traffic. The active lanes shall be shifted at least the shoulder width and one lane of live load away from the cable/hanger under exchange. Fatigue stress consideration need not be applied for this condition. A cable replacement plan shall be included in the Companion Bridge Maintenance Manual. Companion Bridge Maintenance Manual shall be finalized and submitted in Phase 2.

#### **18.3.5.3 Cable / Hanger Loss**

The bridge shall be designed so that the accidental loss (breakage) of a single cable or multiple cables in close proximity acting together as a group and having the potential to fail as a group, shall not result in structural instability of the bridge or failure of any individual component. For this condition, all lanes of live load shall be placed in their striped lanes.

#### **18.3.5.4 Design Criteria**

- A. Loads:
  - 1. Companion bridge is to be designed for loadings required in KYTC Bridge Design Manuals including the 125 percent HL-93 loading required by KYTC.
- B. Models:
  - 1. Full 3D structural models will be required to be utilized for the design of the bridge. The Contractor shall set up a pre-modelling meeting with the Lead Independent Companion Bridge Engineer to discuss and decide the extent of the modelling refinement.
- C. Wind effects and wind induced vibration may be critical in cable and arch type bridges. As a result, detailed wind analysis is a design requirement for this project and must be carried out by engineers with proven expertise in this specialist field work. The final design must be certified by a professional engineer recognized in wind and vibration analysis.
- D. Zone of intrusion shall be accommodated for in the location of any hangers and cables.

#### **18.3.5.5 Load Ratings**

An automated rating tool shall be provided for future rating of each element of the Companion bridge, whether the selected bridge type is a Cable Stayed or an Arch bridge. The tool shall include the load rating input files from the chosen structural analysis software to be used in the future by the DOTs to

permit over the Companion bridge. Files shall include all the current rating vehicles required for load rating by both ODOT and KYTC. The Contractor shall have a discussion with both KYTC and ODOT to ensure the rating tool will include features and vehicles that are required from both states.

#### **18.3.5.6 Precast Deck**

Full depth precast panels combined with a rigid overlay shall be allowed to be used for the Companion Bridge. To ensure durability, transverse post-tensioning may be used for both Cable Stayed and Arch bridge types. Longitudinal post-tensioning of the precast deck may be used for the Arch bridge. For the Cable Stayed option the horizontal cable thrust may be utilized to ensure post-tensioning of the precast deck in the longitudinal direction. For either structure type Contractor is to design for zero tensile stresses in the deck for all loadings acting on the structures.

#### **18.3.5.7 Type of Rebar in the Deck**

The Companion bridge deck, precast or cast-in-place shall be designed and constructed using only the following types of reinforcing bars:

- A. Stainless steel reinforcing bars.
- B. Type CS chromium bars.

The decision should be made with the Owner based on a cost/benefit analysis prepared by the Contractor, and availability of each type to meet project schedule.

#### **18.3.5.8 Barge Impact Study**

The Companion bridge supports shall be designed to resist vessel collision. The methodology to be used to determine the magnitude and application of vessel impact forces should be in accordance with the 2020 American Association of State Highway and Transportation Officials (AASHTO) LRFD Bridge Design Specifications (9th Edition) Article 3.14. As stated in the AASHTO LRFD Specifications, the AASHTO "Guide Specifications and Commentary for Vessel Collision Design of Highway Bridges" may be used as an additional source of information for the determination of vessel impact parameters.

#### **18.3.5.9 Coast Guard Requirements**

Cable stayed and arch bridge shall provide a minimum low steel elevation of 532 feet NAVD88 between the two river piers. Contractor shall coordinate with the Department to establish the minimum acceptable navigational clearance with the USCG. Contractor to refer to PC-02 (USCG Coordination Correspondence), ST-03 (BSB USCG Coordination Summary), and PC-03 (Brent Spence Bridge Section 9 Project Initiation Request).

#### **18.3.5.10 Independent Companion Bridge Review Requirements**

Companion bridge has been determined to be either a Cable Stayed structure or Arch type structure, hence either option is considered a complex signature bridge. Therefore, a design review (with independent design computations) will be performed by the Independent Companion Bridge Engineer (ICBE). The ICBE shall be selected as a fully independent firm that:

- A. Will use an independent structure software at least as sophisticated as that used by the Design Engineer of Record; and



- B. Will utilize only information provided by the Design Engineer of Record as part of their official sequenced submittals and will have no access to the designer's calculations.

The ICBE will participate as part of the project team beginning with the development of design criteria. Department expects that the ICBE, DBT Design Manager, and DBT Lead Structure Design Engineer will generally resolve issues where they may initially differ as the project progresses through Sub-Phase 1A OTS reviews, Base Design, Sub-Phase 1B Scope development, and Phase 2 Final Design and Construction. The Contractor shall have the ICBE seal a statement agreeing with the overall design provided by the DBT Design Manager and Lead Structure Design Engineer.

#### **18.3.5.11 Tower Configuration**

Tower configuration for the Companion bridge shall be established as part of the aesthetic study for the project.

No elevators shall be included in the Companion bridge towers. Access inside the towers for installation and inspection shall be provided using a combination of ladders installed in the inner walls and rest areas.

#### **18.3.5.12 Access for Biannual Bridge Inspection**

The Companion Bridge shall be designed with inspection in mind:

- A. The Cable Stayed option of the Companion bridge shall include tie-offs for inspectors to hook safety gear along the fascia girders and all floor beams and on the exterior of the towers.
- B. The Arch option of the Companion bridge shall provide for the ability of the inspectors to climb and access the interior of the steel arch ribs and ties.

#### **18.3.5.13 NEPA Commitments**

The following information is included in EN-28 (Environmental Commitments):

- A. The highest point of the bridge shall be at least 300 feet +/- above the Normal Pool Elevation of the Ohio River (EL. 456.36' NAVD88).
- B. The highest point of the bridge shall be less than 420 feet +/- above the Normal Pool Elevation of the Ohio River (EL. 456.36' NAVD88).
- C. The Minimum Provided Underclearance shall be no lower than that provided by the existing Brent Spence Bridge. The lowest point in the companion bridge shall be at elevation 532' NAVD88.
- D. The bridge main span shall provide sufficient length to ensure that substructure units are outside of the main span piers of the existing Brent Spence Bridge.
- E. If a double deck design is provided, a 25-foot minimum vertical clearance shall be provided above the bottom deck roadway surface.

#### **18.3.5.14 Cofferdam Design**

Hydrograph is provided based on USCG river elevation records. Contractor and Department shall get together during the progressive design-build process to review and determine the required cofferdam elevation up to which the Department will be responsible. Contractor to refer to ST-05 (BSB Companion Bridge Hydrograph).

### 18.3.5.15 Use of Stay-in-Place Deck Forms

Stay-in-place deck forms may be utilized in erecting the deck for the Companion bridge, as needed.

### 18.3.5.16 Tie Girder Configuration

The tie girder for the Arch option of the Companion bridge shall:

- A. Not be constructed using concrete of any type; and
- B. Be designed as an internally redundant member. That would mean that when any one plate compounding the steel tie section does fracture, the remaining assembly of independent plates shall be designed to sustain the total load demand coming from the structure. The steel tie shall not be designed to be inspected as a fracture critical member.

### 18.3.5.17 Duke Energy Commitments

Design requirements for parcel 2, near and over the Duke Energy gas regulating station (RW-02 - right of way plans denote these areas as 2). This 3-story brick structure is located on the east side of the existing Brent Spence Bridge along Mehring Way. The follow design and construction requirements shall be met:

- A. Gas regulating station:
  1. Stay-in-place metal deck forms shall be used to construct the bridge deck in this area.
  2. All temporary personnel walkways to access the construction area shall have a solid face using plywood.
  3. Portable Concrete Barrier (PCB) shall be placed around the above ground facility.
  4. Bottom of all new bridge beams shall be at least 6 feet above the top of the existing gas structure.
  5. Drilled foundations and/or shoring shall be used on Ramp A (north bound CD Road to north bound 71) around the existing gas facility and gas main.
- B. East & West Bridge railing – Vandal Protection:
  1. Permanent bridge vandal protection fencing shall be placed on the western and eastern bridge railing:
    - a. Western side to be a 42-inch-high concrete railing and use a 6-foot-high solid screen from Ohio River north to south side of W. Pete Rose Way.
    - b. Eastern side to be a 42-inch-high concrete railing and use a 6-foot-high solid screen from Ohio River north to south side of W. Mehring Way.

## 18.3.6 Clay Wade Baily Bridge Requirements

During Sub-phase 1A, the Contractor shall evaluate the addition of bike lanes on the Clay Wade Baily Bridge from 4th Street in Covington to 3rd Street in Ohio. Evaluation shall include preliminary layout, establishment of work limits, and development of scope for future phases. Coordination with the Cities of Cincinnati and Covington for the development of the bike plans will be required.

### **18.3.7 Existing Bridge Rehabilitation Requirements**

#### **18.3.7.1 Deck Replacement**

Both upper and lower decks shall be replaced. Standard Class AA Concrete is to be used for deck construction. Same requirements as specified for the Companion bridge shall be applicable for reinforcement and precast panel utilization. Lightweight concrete may be used with concurrence from the Department based on load rating demands.

#### **18.3.7.2 Deck Joint Replacement**

All joints and their supports are to be replaced. Types of joints permitted shall be:

- A. Finger joints (preferred joint type); and
- B. Modular joints.

#### **18.3.7.3 Drainage System**

The entire drainage system shall be replaced.

#### **18.3.7.4 Roadway Lighting**

All roadway lighting in the Existing bridge is to be replaced.

#### **18.3.7.5 Inspection Walkways**

Repair damaged inspection walkways. Place toe plate on all inspection walkways. Low steel point over river cannot be lowered. Place safety railing around the periphery of Ohio River piers.

#### **18.3.7.6 Expansion Pin Guide Plates**

All expansion pin guide plates in the existing river bridge are to be repaired.

### **18.4 Submittals**

Submittals under this [Section 18.4](#), a non-exhaustive list of which is set forth in [Table 18-5](#) (Structures Submittals Table), shall be submitted in both electronic format and hardcopy format in accordance with the schedule set forth below. Unless otherwise indicated, acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

#### **18.4.1 Structure Type Base Concept Design**

Prepare and submit Base Concept Buildable Units with concept level information and documentation for Department approval for each Structure prior to proceeding with further Design Work for the Base Design. Submittal documents include a summary report, plans, calculations, risk matrix, and all other documentation required to address items in [Section 18.3](#) (Design Requirements), discussed in Structure Type Base Concept Design meetings, and to receive Department approval.

#### **18.4.2 Structure Type Base Design**

Prepare and submit Structure Type Base Buildable Units for Department approval. Submittal documents include plans, calculations with design assumptions and references, specifications, and all other documentation required to address items in the Structure Type Base Design [Section 18.3.2](#)

(Structure Type Base Design Submittal), discussed in Structure Type Base Design meetings, and to receive Department Approval. At a minimum, the Contractor shall submit the following to the Department:

**Table 18-5: Structures Submittals Table**

<i>Submittal/State</i>	<i>For Acceptance, Approval or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Structure Type Study Base Design Concepts	Approval	1	1	Prior to Base Design Submittal and as defined in the DBT Design Submittal Plan	<u>18.2.2.1</u>
Structure Type Base Designs	Approval	1	1	*Base Design Submittal and as defined in the DBT Design Submittal Plan	<u>18.3.2</u>
Draft structural load ratings	Approval	1	1	Prior to Release for Construction Documents and as defined in the DBT Design Submittal Plan	<u>18.3</u>
Final structural load rating summary	Approval	1	1	After completion of construction of each bridge and as defined in the DBT Design Submittal Plan	<u>18.3</u>
* Required percent completion submittal will vary per Structure for the Base Design Submittal. Scope of work for each structure to be defined in Sub-Phase 1A Proposal for the Interim and Final Design Submittals. Department Accepted structural load ratings is a condition of approval for RFC submittals.					

## 19. AESTHETICS AND ENHANCEMENTS

A subgroup of the Project Advisory Committee (PAC) – referred to as the Aesthetics Committee – has been established for evaluating aesthetic treatments along the corridor. At several stages in the project development process, the Aesthetics Committee is engaged as a whole to provide feedback on corridor-wide considerations. In addition, smaller subsets of the Aesthetics Committee are engaged for targeted feedback on specific Project locations. Furthermore, Fort Wright and Fort Mitchell – although not included on the Aesthetics Committee - provide input on the development of aesthetics guidelines for the portions of the corridor located in those cities.

Aesthetic Design Guidelines (AE-01) were established as part of the prior NEPA effort completed in 2012 under ODOT PID 75119. In addition, an Aesthetic Design Checklist (AE-02) has been developed for Phases I and II of the corridor. An Aesthetic Design Checklist (AE-04) has been developed for Phase III in Ohio. Conceptual Aesthetic Design Guidelines for Phase III in Kentucky are under development. The Contractor shall update the Ohio Phase III Aesthetics Design Checklist and Conceptual Kentucky Aesthetic Design Guidelines during Sub-Phase 1A and during Sub-Phase 1B for inclusion in the Base, Interim, and Final Design submittals.

The Aesthetics Committee and the Department are coordinating additional aesthetics requirements for the existing and Companion Bridges. Lighting enhancements will likely be required for the Companion Bridge.

The aesthetic process will follow ODOT’s current Aesthetic Design Guidelines and KYTC’s current aesthetic guidance. The Contractor will coordinate with the Department, the Aesthetic Committee, subsets of the Aesthetic Committee, and the cities of Fort Wright and Fort Mitchell to finalize aesthetic details to be included in the Base, Interim, and Final Design submittals.

The Contractor shall coordinate with the Department to develop a landscape development plan per the Aesthetic Design Checklist and Conceptual Aesthetic Design Guidelines.

### 19.1 Submittals

Submittals under this [Section 19.1](#), a non-exhaustive list of which is set forth in [Table 19-1](#) (Aesthetics and Enhancements Submittals Table), shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

**Table 19-1: Aesthetics and Enhancements Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Landscape Development Plans	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>19</u>

## 20. TRAFFIC CONTROL

### 20.1 Pavement Markings and Delineators

The Contractor shall provide design of all pavement striping, intersection markings, lane markings, raised pavement markers, and delineators within the Project Limits in accordance with Section 1.2 (Governing Regulations). Pavement markings shall follow each States' current specifications for different pavement types. Contractor is to validate Conceptual Design pavement marking layouts and incorporate design updates into the Base Design Submittal.

### 20.2 Signing

The Contractor shall design all permanent signage for the Project according to Section 1.2 (Governing Regulations). The development of signing plans shall start with the Concept I-W Conceptual Signing Plan provided in LD-01 (Concept I-W Final Design Summary Report). All modified and relocated signage must be new. All proposed overhead sign supports shall be of new construction and the Contractor will be required to replace all existing sign structures within the Project Limits.

The Contractor, Department, and KYTC shall meet with local agencies, as necessary, to discuss, define signing design criteria, and review signing plans. The Contractor shall schedule two or more concept meetings to present to the Department the inventory of existing signing and pavement markings for the Project and the proposed permanent signing and pavement markings. The Contractor shall document the resolutions of issues in a correspondence file, including meeting minutes and memoranda for the record. The Contractor shall document meetings with other local agencies to define criteria as required. The Contractor shall submit conceptual signing plans as part of the Base Design Submittal.

### 20.3 Traffic Signals

Contractor shall perform signal warrant analysis using certified traffic provided by the Department during Sub-Phase 1A.

Contractor shall provide design of proposed temporary and permanent traffic signals for the Project as part of the Base Design Submittal. Traffic data for use in the design of signalized intersections will be provided in LD-11 (BSB IMS Addendum 2 (Concept I-W)). At a minimum the Base Design Submittal shall include:

- A. Recommendations for signal timing (during construction as well as final configuration);
- B. Type of detection to be used (radar, video, loops);
- C. Proprietary item approvals;
- D. Conceptual MOT;
- E. Signal plan sheets with signal support locations;
- F. Signal heads;
- G. Signal cabinet locations;
- H. Detector locations;

- I. Underground conduit and pull boxes;
- J. Overhead sign locations;
- K. Pavement markings; and
- L. Design calculations.

All signals should have remote communications per the owner's standards. The Contractor shall also coordinate with all agencies, power companies, and Department to provide appropriate design methods, procedures, plan preparation, analysis methodology, equipment specifications, and construction requirements. Contractor shall coordinate power service locations with the power companies and Department.

An Aesthetic Design Checklist (AE-04) has been developed for Phase III in Ohio and Conceptual Aesthetic Design Guidelines for Phase III in Kentucky are under development. Contractor shall design signals for aesthetics requirements.

## 20.4 Lighting

The Contractor shall design a roadway lighting system for all roadways within the Project Limits. This would include design of a complete and functional lighting system that integrates utility service, foundations, poles, luminaires, support and support hardware, service equipment, conduits, conductors, boxes, grounding components, commissioning, and testing. The Contractor shall coordinate with all agencies, power companies, and Department to provide appropriate design methods, procedures, plan preparation, analysis methodology, equipment specifications, and construction requirements. Contractor shall also coordinate power service locations with the power companies and Department. The Contractor shall coordinate pad size and locations with the power companies. The street lighting systems shall be metered separately from the traffic signals and accent lighting. Lighting circuits shall also be separated based on ownership. The ownership of the lighting should be the agency that maintains the roadway being illuminated. All new luminaires shall be designed with LED and shall meet the requirements stated in [Section 1.2](#) (Governing Regulations).

Companion Bridge shall be lighted in accordance with FAA requirements for obstruction marking. The Contractor shall provide all temporary aviation obstruction lighting required by the FAA during construction including on cranes, structures, or any other objects more than 200 feet above water or ground. FAA lighting design criteria will be coordinated during Sub-Phase 1A. See [Section 1.5](#) (Airway/Highway Clearance for Airports and Heliports) for FAA permit coordination.

An Aesthetic Design Checklist (AE-04) has been developed for Phase III in Ohio and Conceptual Aesthetic Design Guidelines for Phase III in Kentucky are under development. Contractor shall design lighting for aesthetics requirements.

Lighting over the navigation channel shall conform with USCG requirements, as provided for the in USCG Bridge Permit Application Guide, USCG Bridge Lighting Manual, and as listed in 33 CFR Part 118 for fixed bridges. The Contractor shall determine navigation channel lighting requirements with the USCG for both the companion bridge and any modifications required to the existing Brent Spence Bridge. The Contractor shall take into account the existing navigational lighting on the existing Brent Spence Bridge and work with the USCG to provide appropriate lighting of piers. In addition, any



modifications to the existing Brent Spence Bridge navigational lighting shall be as approved by the USCG for both directions of traffic. The Contractor shall maintain navigational lighting as required by the USCG on the existing Brent Spence Bridge for the replacement of its bridge deck. Power supply for the Navigation lighting may be combined with the obstruction lighting (FAA) circuits but shall not be made part of the aesthetic lighting circuit and shall be provided on its own dedicated, separately metered circuit.

At a minimum the conceptual Lighting Base Design Submittal shall include:

- A. Location of each luminaire and support;
- B. Calculations supporting locations;
- C. Possible service points have been found and indicated in the plans;
- D. Circuits have been laid out and preliminary checks of cable sizes;
- E. Utility company coordination meeting minutes indicating service will be made available at the desired locations;
- F. Computations and computer analyses program files. A separate analysis for each of the proposed luminaire packages is required;
- G. Luminaire and lamps details;
- H. Companion Bridge Aesthetic Lighting;
- I. Companion Bridge FAA Obstruction Lighting;
- J. Navigational Lighting with minimum navigational clearances over the river to be provided to USCG for advertisement in the USCG Public Notice as part of the Federal bridge permit. Provide at a minimum, upstream and downstream lights that show the centerline and the limits of the navigation channels;
- K. Underpass Lighting Details;
- L. Temporary Lighting placement in coordination with the MOT phasing; and
- M. Renderings of architectural lighting for the bridges, inclusive of the Companion Bridge and approach structures, cables or arch ribs and ties, deck, understructure, and piers. The drawings/renderings shall be set within the context of the local site.

## 20.5 Intelligent Transportation System (ITS)

ODOT and KYTC, in conjunction with FHWA, and the Cincinnati Metropolitan area, has deployed an Intelligent Transportation System (ITS). ODOT maintains its own ITS system on the Ohio side of the river. KYTC system is referred to as TRIMARC, Traffic Response and Incident Management Assisting the River Cities. ODOT ITS data is shared with TRIMARC but all ITS devices and ramp meters. in Ohio shall be integrated with the ODOT Traffic Management Center (TMC). The system comprises a network of traffic sensors, surveillance cameras, and variable message signs managed from a central control center. The Contractor will coordinate with multiple parties including but not limited to the Department, KYTC, Homeland Security, and subconsultants operating, maintaining, and managing the ITS systems. Contractor shall anticipate meeting at a minimum bi-weekly during Sub-Phase 1A. Many of TRIMARC's and ODOT's assets are currently located within the proposed Project area and shall be impacted during construction. To provide ITS support, the Project must be designed to redeploy similar capabilities and



offers an opportunity to utilize newer ITS technologies and applications. The TRIMARC TMC is located in Louisville at 901 W. Main Street Louisville, KY. 40202. The ODOT TMC main fiber is connected to the ARTIMIS building located at 508 W. 3rd St., Cincinnati, OH. The Contractor shall locate and design a utility vault, either above ground or buried, to house the ARTIMIS equipment. The utility vault shall be temperature controlled, have vehicle access, and doors large enough to get equipment in and out (36 inches wide, standard height door at a minimum). All access to the vault shall be secure via normal lock and key design. The design of the vault shall include details to supply power to a 200-amp breaker panel. The vault shall be at least 10-foot square. All of the existing fiber from the ARTIMIS facility needs to be terminated in the new vault. ODOT shall have the ability to run new communications to the vault, so a conduit system to an outside manhole will be required. Four, 4-inch conduits shall be provided. ITS connectivity must be maintained, and relocation of ITS infrastructure must be completed prior to demolition. For existing ARTIMIS building plans see EX-18 through EX-25.

### 20.5.1 ITS Design

The Contractor will work with the Department to develop scope that provides support for ITS assets with regard to removal, temporary equipment support options, and a concept of the new infrastructure design with specifications and installation requirements for new ITS equipment. Contractor shall also coordinate power service locations with the power companies and Department. It is the intent the scope that is developed during Sub-Phase 1A for Sub-Phase 1B Proposal will provide general guidance that shall allow the Contractor to produce detailed ITS Design Plans to accomplish the goals stated, within the confines described and in adherence to the rules, regulations, and standards of ODOT and/or KYTC. The Contractor shall maintain and protect the existing fiber optic trunk cables located in the Right-of-Way. Should any disruptions of the existing fiber optic network be required due to Contractor operations, a temporary communication system or bypass communication linked to the TMC and/or TRIMARC shall be provided.

The design and construction of all ITS and components shall meet the requirements of CFR 940 and provide functionality, connectivity, and compatibility with Central Software in the respective TMC (TRIMARC for Kentucky, OKI Regional ITS, and ODOT Statewide TMC) with considerable thought included in the design for durability, ease of maintenance, safety, and aesthetics.

### 20.6 Submittals

Submittals are defined within Section 1.2 (Governing Regulations) and Section 2 (Project Management). Contractor shall provide traffic control plans and calculations in the Base Design Submittal.

**Table 20-1:Traffic Control Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Conceptual Pavement Marking Plans	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>20.1</u>
Conceptual Signing Plans	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>20.2</u>
Signal Warrants	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>20.3</u>
Temporary and Permanent Signal Plans	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>20.3</u>
Temporary and Permanent Lighting Plans	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>20.4</u>
Temporary and Permanent ITS Plans	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>20.5</u>

## 21. MAINTENANCE OF TRAFFIC

The Contractor shall coordinate and collaborate with the Department; the Regional Incident Management Task Force; counties; the cities of Covington, Cincinnati, Fort Wright and Fort Mitchell; local transit agencies; and other agencies that may be impacted by construction, detours, and traffic diversions to inform the Contractor's development of the conceptual Maintenance of Traffic (MOT) plan, and to define the requirements of the Traffic Management Plan (TMP), and the Traffic Incident Management Plan (IMP) for the Project. This effort shall begin with a Pre-Design Meeting with the Contractor, the Department, the City of Covington, and the City of Cincinnati to define requirements, goals, opportunities, and key constraints that will form the basis of the Contractor's MOT concept. Following the Pre-Design Meeting, the Contractor shall conduct routine Design Progress Meetings as defined in [Section 2](#) (Project Management) to share the results of the Contractor's ongoing collaboration efforts and MOT plan development efforts.

### 21.1 General Requirements

The Contractor's Conceptual MOT Plan shall:

- A. Be developed in accordance with all applicable governing regulations. See [Section 1.2](#) (Governing Regulations);
- B. Maintain all vehicular traffic including bike and pedestrian on existing, temporary, and new pavements;
- C. Provide safe and efficient access; maintain all existing, temporary, and new lighting;
- D. Minimize impacts to communities caused by construction activities and traffic diversions;
- E. Be coordinated with other projects that may be in affect within the Project area and detour limits; and
- F. Be fully coordinated with the Contractor's design and Project Schedule and be developed to sufficient detail to establish the OPC.

### 21.2 Provided Information

The following additional information is provided for the Contractor's benefit in establishing the Conceptual MOT Plans:

- A. EN-28 (Environmental Commitments) – includes MOT commitments;
- B. MT-01 (Alternative I Phasing Plan);
- C. MT-02 (Concept I-W Phasing Plan);
- D. MT-03 (Alternative I MOTAA); and
- E. MT-04 (Brent Spence Bridge Concept I-W TMP Closure Approval Authority Matrix).

### 21.3 Conceptual MOT Plan and Summary Report

The Conceptual MOT Plan and Summary Report shall include:

- A. Anticipated schedule showing MOT phases and durations, including closure durations for freeways, ramps, and local streets. The schedule shall take into consideration snow and ice operations from December 1 through March 31. Lane shifts, restrictions, and closures may not be approved if they adversely affect snow removal operations.
- B. Discussion of sequence of operations and MOT procedures, identifying all long-term lane closures and all complete directional roadway closures (short-term or long-term). Long-term shall mean any closures greater than 24 hours.
- C. Plans at an appropriate scale showing the Work area, tapers, temporary pavement and/or structures, signs, locations of typical sections, locations of construction access points, and references to applicable standard construction drawings (SCDs).
- D. Typical sections including lane widths, pavement markings, drums, portable barriers, limiting stations, barrier and shoulder offsets, work area, and drop-offs.
- E. Detour plans and alternative route plans identifying anticipated improvements. The Contractor may need to provide additional lanes along mainline and ramps along the detour/alternate routes used to bypass the construction area.
- F. Temporary local street closures and detour routes.
- G. Temporary pedestrian and bicycle detour routes.
- H. Haul routes.
- I. Ingress/egress locations and details for Contractor Work access.
- J. Information and guidance for signing and detour routes, including color-coded definitions of detour routes.
- K. Summary of traffic modelling with anticipated level of service due to lane closures and detour routes.
- L. Summary of anticipated locations and durations of variable message signs and boards.
- M. Outline of the IMP and TMP requirements. The TMP will require a Worksite Traffic Supervisor (WTS). See PDBC [Exhibit AA](#) (Worksite Traffic Supervisor Disincentive) for WTS qualification requirements. The IMP will require a Contractor TIM contact.
- N. Opinion of Probable Costs for MOT, TMP, and IMP items.
- O. The disincentives required by the Department consistent with the requirements of PDBC [Exhibit S](#) (Lane Value Contract).
- P. List of signals that could be impacted during each phase of construction.
- Q. Evaluate MOT drainage (ODOT) and temporary drainage structures (KYTC). Provide MOT or temporary drainage culverts and/or drainage structures as needed to avoid disruption of existing drainage flow patterns. Provide temporary drainage items on the MOT plans and drainage calculations per ODOT Location and Design Manual Volume 2 and KYTC Drainage Manual.
- R. Prior to shifting traffic to the existing shoulders or to the opposite bound of the freeway via temporary crossovers, replace existing drainage structure covers where traffic is driving over the covers with temporary bolt down drainage structure covers. Prior to shifting traffic to proposed shoulders provide temporary bolt down drainage structure covers on proposed drainage structures where traffic is driving over the final phase proposed covers. Final proposed covers to be added after traffic is shifted.

## 21.4 Submittals

Submittals under this Section 21.4, a non-exhaustive list of which is set forth in Table 21-1 (Maintenance of Traffic Submittals Table), shall be submitted in electronic format in accordance with the schedule set forth below. Acceptable electronic formats include PDF and current versions of Microsoft Word and Microsoft Excel, unless otherwise indicated.

**Table 21-1: Maintenance of Traffic Submittals Table**

<i>Submittal</i>	<i>For Acceptance, Approval, or Submittal</i>	<i>Number of Copies</i>		<i>Submittal Schedule</i>	<i>Reference Section</i>
		<i>Hardcopy</i>	<i>Electronic</i>		
Conceptual MOT Plan	Approval	N/A	1	As Defined in the DBT Design Submittal Plan and Base Design Submittal	<u>21.1</u>
Conceptual MOT Plans and Summary Report	Approval	N/A	1	As Defined in the DBT Design Submittal Plan	<u>21.3</u>

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**BRENT SPENCE**  
**BRIDGE CORRIDOR**



BRENT SPENCE BRIDGE CORRIDOR PROJECT

# **REQUEST FOR PROPOSALS (RFP) PROGRESSIVE DESIGN-BUILD CONTRACT EXHIBITS**

ODOT PID 116649 | KYTC PROJECT ITEM NO. 6-17  
ODOT CONSTRUCTION PROJECT 23-3000

APRIL 10, 2023

ADDENDUM 10



**TEAM**  
**KENTUCKY®**

TRANSPORTATION  
CABINET

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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 AND PRINCIPAL PARTICIPANTS

EXHIBIT E: TECHNICAL REQUIREMENTS

EXHIBIT F: NONCOMPLIANCE POINTS SYSTEM

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: FACILITATED PARTNERING

EXHIBIT S: LANE VALUE CONTRACT

EXHIBIT T: CRITICAL PATH METHOD PROGRESS SCHEDULE

EXHIBIT U: NOT USED

EXHIBIT V: SURFACE SMOOTHNESS REQUIREMENTS

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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: INTERSTATE COOPERATIVE AGREEMENT

EXHIBIT Z: RISK REGISTER

EXHIBIT AA: WORKSITE TRAFFIC SUPERVISOR DISINCENTIVE



## 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 \$30,000,000.

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 \$200,000,000.

### Schedule Milestones for Phase 1

The Sub-Phase 1B Proposal shall be submitted no later than 230 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 390 Days<sup>3</sup> after the Sub-Phase 1B NTP (the “Phase 2 Proposal Due Date”).

### Schedule Milestones for Phase 2

The target date for the Companion Bridge Opening Deadline is July 15, 2029.

The target date for the Substantial Completion Deadline is September 15, 2030.

### Phase 1 Mark-up Percentage

The Phase 1 Mark-up percentage shall be [●] %<sup>4</sup>.

### Multipliers for Professional Services

The Phase 1 Multiplier Rate is 2.8.

The Phase 2 Multiplier Rate for FAR Participants is 2.8.

The Phase 2 Multiplier Rate for Non-FAR Participants is 2.2.

### 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 \$50,000.

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<sup>2</sup> Based on: 7/15/23 for Sub-Phase 1A NTP

<sup>3</sup> Based on: 3/1/24 for Sub-Phase 1B NTP, 4/1/25 for Phase 2 NTP

<sup>4</sup> To be inserted from the Proposal

## 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 and Principal Participants)]

## **EXHIBIT D: KEY PERSONNEL AND PRINCIPAL PARTICIPANTS**

[Insert in this Exhibit D the names and qualifications of the Key Personnel and the Principal Participants including all details from the Proposal]

## **EXHIBIT E: TECHNICAL REQUIREMENTS**

Refer to the separate document entitled "Technical Requirements"

## EXHIBIT F: NONCOMPLIANCE POINTS SYSTEM

### 1. Noncompliance Points System

**1.1** Certain of the Contractor's failures to perform and breaches of its contractual obligations under the Contract Documents constitute Noncompliance Events (NCEs) that may result in the assessment of Noncompliance Points. Table F-1 (Noncompliance Events Table) identifies each Noncompliance Event, the points assessed per event and the NCE Cure Period available to the Contractor for each Noncompliance Event. Noncompliance Points are a system to measure the Contractor's performance and trigger the remedies set forth or referenced in this Exhibit F.

### 2. Assessment Notification and Cure Process

#### 2.1 Electronic Database and Notification Initiated by the Contractor

**2.1.1** The Contractor shall provide an electronic database, which the Contractor shall utilize in connection with the Noncompliance Points system. Upon the occurrence of any Noncompliance Event specified in Table F-1 (Noncompliance Events Table), the Contractor shall enter such Noncompliance Event into the electronic database in real time upon discovery or being made aware of the discovery but no later than 12:00 noon the next Working Day (once the Contractor is aware of or is made aware of the occurrence) if the occurrence takes place after normal business hours. The format and design of the electronic database shall provide the Contractor, and the Department the ability to make full or partial entries and edits to any existing entry. At a minimum, each electronic database entry by the Contractor shall:

- (a) Include a description of the Noncompliance Event in reasonable detail;
- (b) Identify the reference number and headings and sub-headings assigned to the Noncompliance Event in Table F-1 (Noncompliance Events Table);
- (c) Identify the Project location (if applicable);
- (d) Identify the date and exact time of occurrence;
- (e) Identify the applicable response date and time, if any;
- (f) Indicate the applicable NCE Cure Period, if any, as set forth in Table F-1 (Noncompliance Events Table);
- (g) Indicate status of cure, whether the item is open or cured by the Contractor, rejected by the Department, or disputed by the Contractor; and
- (h) Indicate the date and exact time of cure (if any).

**2.1.2** In cases of dispute of entries, the Department may edit or enter comments to the Contractor entries at any time. If the Contractor disagrees with the Department's entries, the changes or entries inserted by the Department must remain in place, subject to the provisions regarding Dispute Resolution in Section 5 (Provisions Regarding Dispute Resolution).

**2.1.3** The Department may provide to the Contractor a "Notice of Determination" via the electronic database or in writing. A Notice of Determination may:

- (a) make a determination of occurrence of a Noncompliance Event;
- (b) make a determination of whether a Noncompliance Event was cured during the applicable NCE Cure Period;

- (c) reject or dispute an entry in the electronic database by the Contractor; or
- (d) make a determination of the number Noncompliance Points to be assessed.

If the Department identifies any Noncompliance Points to be assessed the Department will provide the "Notice of Determination" in writing to the Contractor.

## **2.2 Notification Initiated by the Department**

If the Department believes there has occurred any Noncompliance Event which the Contractor is not aware of, the Department may deliver to the Contractor a Notice Noncompliance Event.

## **2.3 NCE Cure Periods**

**2.3.1** The Contractor shall cure each Noncompliance Event by the end of the NCE Cure Period for each such Noncompliance Event set forth in Table F-1 (Noncompliance Events Table). The start of the NCE Cure Period shall be determined according to the "Assessment Category" shown in Table F-1 (Noncompliance Events Table).

**2.3.2** For each "Category A" Noncompliance Event, the NCE Cure Period shall start not later than the date and time of delivery by the Department of a Notice of Noncompliance Event to the Contractor.

**2.3.3** For each "Category B" Noncompliance Event, the NCE Cure Period shall start upon the earlier of: (i) the date and time the Contractor first obtained knowledge of the Noncompliance Event or (ii) the date and time the Contractor received notice thereof by any third party.

## **2.4 Notification of Cure**

**2.4.1** When the Contractor determines that it has completed cure of any Noncompliance Event, the Contractor shall enter in the electronic database a record that it has completed the cure, a brief description of the cure, and any modifications needed to the DBT PMP to avoid future similar Noncompliance Events.

**2.4.2** Upon the Contractor's determination that it has completed the cure, the Department shall have the right, but not the obligation, to inspect to verify completion of the cure. If satisfied that the Noncompliance Event is fully cured, The Department will deliver to the Contractor a Notice of Determination with its acceptance or rejection of the cure. If the Department issues a Notice of Determination with its acceptance of a cure, the cure is effective as of the date of the Contractor's notice of cure.

**2.4.3** Subject to the time restrictions in this Section 2, The Department may reject the Contractor's notice of cure if the Department determines that the Contractor has not fully cured the Noncompliance Event or if the Department cannot determine whether the Contractor has fully cured the Noncompliance Event. Upon making this determination, the Department will deliver a Notice of Determination to the Contractor rejecting the cure. Any Dispute regarding rejection of cure shall be resolved according to the Dispute Resolution procedures in Section 5 (Provisions Regarding Dispute Resolution).

## **3. Assessment of Noncompliance Points**

If The Department is notified as required by Section 2 (Assessment Notification and Cure Process) or otherwise becomes aware of a Noncompliance Event, the Department may assess

Noncompliance Points in accordance with Table F-1 (Noncompliance Events Table), subject to the following:

- (a) For each Noncompliance Event for which an NCE Cure Period is identified in the Table F-1 (Noncompliance Events Table) (Category A or B), that is not a late, incomplete or defective Submittal, provided that the Noncompliance Event is not cured, Noncompliance Points shall first be assessed at the end of the first NCE Cure Period.
- (b) For each Noncompliance Event for which a NCE Cure Period is identified in Table F-1 (Noncompliance Events Table) (Category A or B) that is a late, incomplete, or defective Submittal, Noncompliance Points shall first be assessed at the date of expiration of the time period required by the Contract Documents for the Submittal plus the applicable NCE Cure Period.
- (c) If a Noncompliance Event for which an NCE Cure Period is provided in Table F-1 (Noncompliance Events Table) (Category A or B) is not fully cured within the applicable NCE Cure Period then continuation of such Noncompliance Event beyond such NCE Cure Period shall be treated as a new and separate Noncompliance Event. Additionally,
  - (i) a new cure period equal to the NCE Cure Period set forth in Table F-1 (Noncompliance Events Table) shall apply upon expiration of the NCE Cure Period, and
  - (ii) if applicable, additional Noncompliance Charges shall be assessed against the Contractor in accordance with Section 6 (Noncompliance Charges) and deducted from the amounts due to the Contractor under this PDBC.
- (d) The Department may, but is not obligated to, assess fewer than the maximum number of Noncompliance Points for any Noncompliance Event.
- (e) The Department shall not be entitled to assess Noncompliance Points under more than one category for any event or circumstance that is a breach or failure. Where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Noncompliance Points, and the highest amount of Noncompliance Points under the relevant breaches or failures shall apply.

#### **4. Special Provisions for Certain Noncompliance Events**

**4.1** The provisions of this Section 4 apply to a Noncompliance Event identified in Table F-1 (Noncompliance Events Table) that is directly attributable to a Force Majeure Event.

**4.2** If any such Noncompliance Event occurs, then:

- (a) The applicable NCE Cure Period for any such Noncompliance Event shall be extended if such Noncompliance Event is not reasonably capable of being cured within the applicable NCE Cure Period solely due to the occurrence of such Force Majeure Event. The extension shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of the Force Majeure Event on the Contractor's ability to cure, availability of temporary remedial measures, and the need for rapid action due to impact of the Noncompliance Event on safety or traffic movement; and
- (b) Regardless of which Party initiates notice of such Noncompliance Event, no Noncompliance Points shall be assessed, nor result in Noncompliance Charges under Section 6 (Noncompliance Charges); provided, however, that the Noncompliance Event is cured within the applicable NCE Cure Period, as it may be extended pursuant to Section 4.2(a) above.

**4.3** For the avoidance of doubt, for any Noncompliance Event directly attributable to a Force Majeure Event where the Contractor is unable to comply with a requirement of the Contract Documents due to an ongoing Force Majeure Event, then solely during the period that such Force Majeure Event prevents compliance with such requirement, no Noncompliance Points or Noncompliance Charges will be assessed for such Noncompliance Event and the Contractor shall be excused from performance of the underlying requirement.

## **5. Provisions Regarding Dispute Resolution**

**5.1** The Contractor may object to the assessment of Noncompliance Points or the starting point for or duration of the NCE Cure Period respecting any Noncompliance Event by delivering to the Department Notice of such objection not later than seven Days after The Department delivers its Notice of Determination.

**5.2** If the Contractor gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according Section 18 (Partnering and Dispute Resolution).

## **6. Noncompliance Charges**

**6.1** Upon assessment of the 10th Noncompliance Point pursuant to Section 3 (Assessment of Noncompliance Points) and upon assessment of each subsequent 10th Noncompliance Point pursuant to Section 3 (Assessment of Noncompliance Points), the Department shall be entitled to immediate and automatic Noncompliance Charges from the Contractor in an amount equal to \$50,000 (such amount calculated at a rate of \$5,000 per Noncompliance Point).



**TABLE F-1: NONCOMPLIANCE EVENTS TABLE**

<i>Ref.</i>	<i>Main Heading</i>	<i>Sub-heading</i>	<i>Noncompliance Events Table Failure to:</i>	<i>No. of Points</i>	<i>Assessment Category</i>	<i>NCE Cure Period</i>
1	General	Insurance Coverage	Provide the Department with a copy of any insurance certificate or evidence of payment of any premium all in accordance with <u>Section 17</u> (Insurance Requirements) of the PDBC.	2	B	7 Days
2	General	Maintain a Noncompliance Event Database	Maintain a fully functional and up to date Noncompliance Events database accessible to the Department in accordance with this <u>Exhibit F</u> .	2	A	7 Days
3	General	Written Direction from the Department	Comply within the stated time frame contained within a Written Direction from the Department.	1	B	1 Day
4	General	Submittals	Prepare, implement, maintain, update or timely deliver, or otherwise be compliant with any Submittal requirement within the Contract Documents or mutually agreed upon in writing. This Noncompliance Event shall not apply to failure to timely deliver a Submittal described more specifically in another line item in this <u>Exhibit F</u> (for which Noncompliance Points shall be assessed in accordance with the particular line item).	1	B	7 Days

<b>Ref.</b>	<b>Main Heading</b>	<b>Sub-heading</b>	<b>Noncompliance Events Table Failure to:</b>	<b>No. of Points</b>	<b>Assessment Category</b>	<b>NCE Cure Period</b>
5	Contracting and Labor Practices	Comply with DBE Reporting Requirements	Comply with the reporting requirements or any requirement of the DBE Performance Plan in accordance with <u>Section 5.1</u> (DBE Performance Plan) of <u>Exhibit E</u> (Technical Requirements) and <u>Exhibit L</u> (Disadvantaged Business Enterprise (DBE) Performance Plan and Good Faith Efforts) of the PDBC.	2	B	5 Days
6	Reporting	Federal Reporting Requirements	Report compliance with, or to comply with the reporting requirements of, any of the Federal Requirements, as required by the Contract Documents, including <u>Exhibit N</u> (Contract Provisions For Federal Aid Construction Projects).	2	B	30 Days
7	Reporting	DB Contractor Reporting Requirements	Comply with any of the reporting, recording keeping, or documentation requirements, including monthly and annual reporting, or any Subcontractor reporting requirements, as required by and in accordance with the Contract Documents.	1	B	14 Days
8	Environmental Compliance	SWPPP and SWPPP Track Non-compliance items	Maintain and update the complete Stormwater Pollution Prevention Plan (SWPPP) as required by <u>Exhibit E</u> (Technical Requirements); Resolve any deficiencies/open Work Items in SWPPP Tracker.	2	A	7 Days

<b>Ref.</b>	<b>Main Heading</b>	<b>Sub-heading</b>	<b>Noncompliance Events Table Failure to:</b>	<b>No. of Points</b>	<b>Assessment Category</b>	<b>NCE Cure Period</b>
9	Environmental Compliance	Notify the Department of Regulated Materials	Notify The Department of Regulated Materials or a Recognized Environmental Condition as set forth in <u>Section 5.13.6</u> (Regulated Materials) of the PDBC.	2	B	1 Day
10	Maintenance during Construction	Ensure Timely Hazard Repair of Defect	Perform a permanent repair to a hazardous defect in accordance with <u>Section 5.11</u> (Damage to the Work and Maintenance During Construction) of the PDBC.	3	B	1 Day plus Defect Repair Period
11	Traffic Management	Comply with Traffic Management (TMP) Plan or Incident Management Plan (IMP)	Implement any provision/feature/item pursuant to the TMP/IMP.	2	B	1 Day

## 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, which, upon mutual agreement of the Department and the Contractor, any such GMP Price proposals may be subsequently converted into a Lump Sum Contract Price for the applicable portion of the Work. This framework may be modified by the Parties upon their mutual agreement and with the input of their respective consultants, including the Independent Cost Estimator (ICE) and the State Cost Estimator (SCE).

### Part A: Establishment of Cost Model; Estimating Methodology; and Training Program

#### 1. Establishment of Cost Model

No later than 15 Days after the Sub-Phase 1A 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 ICE and the SCE. The purpose of this meeting is to (i) establish the baseline Cost Model for the development of OPCs and GMP Price Proposals, including design and construction cost and Project Schedule estimates, and (ii) establish applicable standards for the conversion of GMP Price Proposals into Lump Sum Contract Prices, which shall include the conversion of the Contractor's Fee into a Work Package Mark-Up and the allocation of Contractor's Risk Contingency within the Lump Sum Contract Price. 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 and the ICE 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. Sub-Phase 1B Work OPC and Sub-Phase 1B Maximum Prime Compensation Price Proposal

The Contractor will develop an OPC for the Sub-Phase 1B Work to establish the proposed Sub-Phase 1B Maximum Prime Compensation. The OPC for the Sub-Phase 1B Work will be developed during Sub-Phase 1A with reference to the Sub-Phase 1B Project Scope set forth under Section 3.2 (Sub-Phase 1B Project Scope) of the PDBC.

Upon completion of the OPC pertaining to the Sub-Phase 1B Work, the Contractor will convert the OPC into a formal Price Proposal incorporating the approved Sub-Phase 1B Maximum Prime Compensation for the Department's review and comment.

### 3. OPCs Early Work Packages

OPCs for Early Work Packages will be developed from time to time in accordance with the general terms and conditions set forth under Section 5 below, and thereafter converted to GMP Price Proposals for the Department's review and comment.

### 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) Prior to the end of Sub-Phase 1A, based upon approximately 30% of completed Design; and
- (b) Prior to the end of Sub-Phase 1B, based upon approximately 60% of completed 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 90 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 SCE and the ICE, the applicable Project Scope and Design Documents pertaining to the OPC.
- (b) Approximately 60 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 30 Days before the anticipated completion of an 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 and the ICE (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 ICE and the SCE will conduct a review to determine where the cost estimates differ and what assumptions or details were used to determine each difference.

**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);
- (c) 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, the ICE and the SCE. 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;
- (d) 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
- (e) Each OPC shall be independently prepared by the Contractor but in coordination with the Department and the ICE.

**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:

- (i) 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) The proposed Contractor's Fee;
  - (G) A summary of costing activities since the previous OPC submittal;
  - (H) Changes subsequent to the previous OPC submittal and reasons for the changes;
  - (I) Responses to the Department's comments on the previous OPC submittal;
  - (J) The then-current Project Schedule or updated draft of the Project Schedule upon which the OPC is based;
  - (K) A list of proposed Materials to be installed and the procurement status for each (including Supplier selection activities);
  - (L) A list of critical or long lead Materials;
  - (M) A list of proposed Subcontracts with the procurement status for each (including Subcontractor selection activities);
  - (N) A cost summary table;
  - (O) An updated Schedule of Values showing a line-item cost breakdown of the cost of Work as further detailed under Section 5 below;
- (ii) 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
- (iii) 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 D9 below.

### **D1. Labor Costs**

Labor Costs will include costs for Professional Services undertaken in the performance of any Early Work Packages, or the Phase 2 Work by personnel and entities that meet the definition of FAR Participants shall be the actual direct labor rates multiplied by the number of hours estimated to be worked multiplied by the Phase 2 Multiplier Rate for FAR Participants.

Costs for Professional Services undertaken in the performance of the Phase 2 Work by personnel and entities that do not meet the definition of FAR Participants shall be the actual direct labor rates multiplied by the number of hours estimated to be worked multiplied by the Phase 2 Multiplier Rate for Non-FAR Participants.

Cost for Professional Services delivered by geotechnical professionals for field exploration activities and laboratory developed as part of the subsurface exploration program will be paid based on the rates on file with the Department's Office of Geotechnical Engineering as set forth under attached Appendix I.

Construction labor costs will be based on the wages and fringe benefits currently in effect for each estimated hour the Work is performed by all labor employed in the Work and all foremen in direct charge of the specific operation. "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 or Kentucky 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.

### **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 Contractor's Fee 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 Contractor's Fee will not apply to the costs of Equipment.

### D4. Indirect Costs

To the extent not included in any other item under D1-D9, 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-D9.

The Contractor's Fee will not apply to insurance premiums and bond premiums.

**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 an Early Work Package, 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. General and Administrative Expenses (G&A)**

To the extent not included under any other item under D1-D9, the G&A costs to be incorporated into each OPC 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:

- (a) 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.
- (b) Expense of the Contractor's principal and branch offices other than the Contractor's office at the Project Site.
- (c) 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
- (d) Other overhead or general expense costs of any kind to the extent the same is auditable.

The Contractor's G&A allocable to the Project will be initially established as a lump sum during the development of the initial OPC and updated throughout the production of subsequent OPCs through the OPC constituting the basis for the development of the GMP Price Proposal pertaining to the Phase 2 Work. Such lump sum G&A amount shall be established through the development of a project-specific sum allocated to the Project with

reference to the Contractor's aggregate G&A or through such other method as the Parties and the ICE may determine to be commercially reasonable.

The Contractor's Fee will not apply to the G&A amount.

#### **D9. 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 in consultation with the ICE, SCE and 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.

#### **6. Contractor's Fee**

During the development of each OPC, the Contractor will develop a proposed Contractor's Fee pertaining to the applicable portion of the Work. The Contractor's Fee will be expressed as a percentage between 8% and 12% and will be applied to the applicable elements of items D1 through D9 above. The Department will incentivize the Contractor through the Contractor's Fee based upon certain factors, including but not limited to: (i) the degree to which the Contractor has assumed management and financial responsibility for Risk Register Events, (ii) the extent to which the Contractor is self-performing the Work contemplated under the corresponding Change Order, (iii) the proposed allocation of GMP Savings, Contractor's Risk Contingency savings, and Department's Risk Contingency savings. Each of the Contractor's requests for progress payments may incorporate a request for the payment of a portion of the Contractor's Fee based upon the amount of the approved Period Costs for the corresponding Processing Date. By way of example, if the approved Period Costs for a corresponding Processing Date are \$500,000, then the amount of the Contractor's Fee payable with respect to such Processing Date shall be the product resulting from the Contractor's Fee percentage multiplied by \$500,000.

#### **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 or KYTC standard bid item codes whenever possible. Where Department or KYTC 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 and Early Work Packages**

### **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, the ICE and the SCE, 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, the ICE, and the SCE 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, (iii) request the Contractor prepare a Lump Sum Price Proposal, or (iv) 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.
- (j) The Parties may agree to convert the GMP to a Lump Sum any time after the establishment of a GMP. In proposing a Lump Sum Price Proposal, the Contractor shall consider the buyout savings, any unused Contractor's Risk Contingency amounts and the Subcontracts that have not been finalized. In preparing any Lump Sum conversion proposal, Contractor must deliver the following information:
- (i) The stage of completion of the applicable Work;
  - (ii) The Subcontracts that have been completely bought out;
  - (iii) The Subcontracts remaining that have not been bought out;
  - (iv) Impacts of the conversion on the Project Schedule;
  - (v) Any proposed reallocation of financial responsibility for Risk Events under the Risk Register;

- (vi) A complete line-item breakdown of the calculations used to establish the Lump Sum amount based upon the approved Schedule of Values;
- (vii) An accounting of all GMP Savings amounts that are to be returned to the Department as part of the Lump Sum calculation; and
- (viii) Any other Project information requested by the Department.

### **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 coordinate with the ICE to 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, the ICE and the SCE 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 corresponding Early Work Package or the Phase 2 Work.

### **6. Request for Conversion to Lump Sum**

As an alternative to approving any GMP Price Proposal, the Department shall be permitted to notify the Contractor of its request to convert the GMP Price Proposal to a Lump Sum Price Proposal, after which if the Contractor is in agreement, they shall proceed to coordinate with the ICE to prepare a Lump Sum Price Proposal in accordance with the standards pertaining to the conversion to a Lump Sum developed during Phase 1A.

**Appendix I**

**Fee Schedule for Geotechnical Services**

Payment for field exploration activities and laboratory testing to support geotechnical evaluation and design of the project will be compensated on a unit rate basis as outlined in Tables I1 and I2 in this appendix. The rates were established based on the Specification for Geotechnical Explorations (SGE), January 2023 version and the ODOT Consultant Fee Guidance. The rates will be updated during the contract corresponding with updates to the SGE laboratory rates and Fee Guidance. The fee schedule in Appendix I applies to all project geotechnical work. Consistent with the Specifications for Geotechnical Explorations, overhead, cost of money and net fee are included in these rates, no additional markup will be applied.

Professional services supporting geotechnical activities will be compensated with the appropriate markup for Phase 1A and 1B.

Follow the SGE guidelines and cost summary template available online at the web site for Office of Geotechnical Engineering and Consultant Services websites.

**Field Exploration**

The table below outlines unit rates for geotechnical field exploration activities. The rates are included for daytime drilling activities. Rates will be negotiated for geotechnical drilling needed to be performed at night. Traffic control activities will be considered a subcontractor and will be compensated based on the direct cost-plus subcontractor markup. Field crew mileage, lodging and per diem must follow established CONUS rates for Cincinnati, Ohio.

<b>Table I1 - Field Exploration</b>				
	<b>Task</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Task Description</b>
	<b>Mobilization / Demobilization</b>	each	\$2,000	Getting the necessary equipment and personnel to and from the project site. Includes crew travel time and mileage to and from the site, at the start and upon completion of drilling program. Multiple drill crew mobilizations will be compensated accordingly.
<b>Subsurface Exploration</b>	Test Pits	each	\$2,500	Includes all equipment and personnel to excavate, sample, log and backfill test pit. Test pits are not anticipated for the project.
	Pavement/ Bridge Deck Core Diameter, 4" Dia	each	\$200	Includes all equipment, personnel, and material to core and patch pavement/bridge deck and either handle or dispose of core, cost assumes an 8" diameter core



<b>Table I1 - Field Exploration</b>				
	<b>Task</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Task Description</b>
	<b>Truck/ATV/Trailer Mounted Rotary Drilling</b>			Includes all methods of rotary drilling on land, except skid rig
	No Sampling	feet	\$15.00	Advancement of hollow-stem augers without sampling
	5-ft SPT	feet	\$25.00	
	2.5-ft SPT	feet	\$30.00	
	Continuous SPT	feet	\$30.00 \$35.00	\$30/ft for 0-10 ft. depth \$35/ft for > 10 ft. depth
	Undisturbed Samples	Each	\$125.00	Includes press, preservation, transport, and extraction, minimum 50% recovery
	Rock Coring	feet	\$65.00	
	Permanent Borehole Sealing	feet	\$8.00	Sealing per Appendix F of the SGE, backfill of boreholes with cuttings is included in drill footage unit price.
	<b>Skid Drilling</b>			
	No Sampling	feet	\$18.00	Advancement of hollow-stem augers without sampling
	5-ft SPT	feet	\$28.00	
	2.5-ft SPT	feet	\$35.00	
	Continuous SPT	feet	\$40.00	
	Undisturbed Samples	Each	\$130.00	Includes press, preservation, transport, and extraction, minimum 50% recovery
	Rock Coring	feet	\$75.00	
	Permanent Borehole Sealing	feet	\$9.00	Sealing per Appendix F of the SGE, backfill of boreholes with cuttings is included in drill footage unit price.
	<b>Barge Drilling</b>			<b>Barge Drilling, if deemed necessary, will be negotiated at Phase 1.</b>
	No Sampling	feet	\$ ---	Advancement of hollow-stem augers without sampling
	5-ft SPT	feet	\$ ---	
	2.5-ft SPT	feet	\$ ---	
	Continuous SPT	feet	\$ ---	
	Undisturbed Samples	Each	\$ ---	Includes press, preservation, transport, and extraction, minimum 50% recovery
	Rock Coring	feet	\$ ---	
	Permanent Borehole Sealing	feet	\$ ---	Sealing per Appendix F of the SGE, backfill of boreholes with cuttings is included in drill footage unit price.
	Barge	days		Includes all costs associated with barge drilling access (permits, spuds, safety equipment, boats, tugs, etc.)

Table I1 - Field Exploration				
	Task	Unit	Unit Cost	Task Description
	<b>Other Exploratory Methods</b>			CPT, DCP, Geophysical, etc. Propose a daily rate to include all costs associated with performing the described exploratory method.
	Method Description			
	Method Description			
		days		
	<b>In-situ Testing</b>			Includes all mobilization/demobilization, equipment, material, labor, travel, per diem, calibration, and data reduction
	Test:			
		days		
	Test:			
		days		
	<b>Installation/Reading of Geotechnical Instruments</b>			Excludes cost of drilling - present above. Includes all material and labor for installation.
	Open Standpipe Piezometer	feet	\$ ---	
	Monitoring Well	feet	\$ ---	
	Inclinometer	feet	\$ ---	
	Misc (describe)			pneumatic or vibrating wire piezometers, strain gages, extensometers, TDR cable, etc.
	Instrument Readings	trips		Includes all equipment, material, labor, travel, per diem, calibration, and data reduction

**Laboratory Testing**

The table below outlines the unit rates for geotechnical laboratory test for soil and bedrock. The table is not all-encompassing and additional test procedures identified by the Contractor may be added to support project design activities. Fees for added laboratory testing will be negotiated in Phase 1.

Table I2 - Geotechnical Laboratory Testing						
		Test Method				
	Test	AASHTO	ASTM	Unit	Unit Cost	Remarks

Table I2 - Geotechnical Laboratory Testing						
		Test Method				
<b>Soil Testing</b>						
	Complete Classification	Multiple	Multiple	each	\$199	Includes Visual Description per SGE Section 602, T265, T88, T89, T90
	Water Content Test and Visual Description	T265	D2216	each	\$16	Visual Description per SGE Section 602
	Particle Size Analysis - Sieve Only	T88	D422	each	\$86	As modified per SGE Section 603.3
	Particle Size Analysis - Sieve and 2-hour Hydrometer	T88	D422	each	\$113	As modified per SGE Section 603.3
	Liquid Limit Test	T89	D4318	each	\$44	As modified per SGE Section 603.3
	Plastic Limit Test	T90	D4318	each	\$43	As modified per SGE Section 603.3
	Organic Content by Loss on Ignition	T267	D2974	each	\$60	
	Soil Unconfined Compression Test	T208	D2166	each	\$91	
	Unconsolidated-Undrained Triaxial Compression Test	T296	D2850	1 point	\$193	
	Consolidated-Undrained Triaxial Compression Test (with pore pressure measurement)	T297	D4767	3 points	\$1,032	
	One-Dimensional Consolidation Test	T216	D2435	each	\$585	
	Specific Gravity Test	T100	D854	each	\$76	
	Direct Shear Test	T236	D3080	3 points	\$580	

Table I2 - Geotechnical Laboratory Testing						
		Test Method				
	Sulfate Content in Soils, Colorimetric Method	ODOT S1122	NA	each	\$117	
	Misc. (identify test)					Identify the test and test method for any tests not listed above
	Misc. (identify test)					Identify the test and test method for any tests not listed above
<b>Rock Testing</b>						
	Unconfined Compressive Strength of Intact Rock Core Specimen	NA	D7012, Method C	each	\$110	
	Slake Durability of Shales and Similar Weak Rocks	NA	D4644	each	\$243	
	Determination of the Point Load Strength Index of Rock	NA	D5731	each	\$75	
	Elastic Moduli of Intact Rock Core Specimens in Uniaxial Compression	NA	D7012, Method D	each	\$278	
	Misc. (identify test)					Identify the test and test method for any tests not listed above
	Misc. (identify test)					Identify the test and test method for any tests not listed above
	Misc. (identify test)					Identify the test and test method for any tests not listed above
	Misc. (identify test)					Identify the test and test method for any tests not listed above

## 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 Contractor's Fee or Work Package Mark-Up 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:
  - (1) 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.
- (2) 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:
    - (1) The Materials were taken from the Contractor's stock.
    - (2) The quantity shown was actually used for the force account Work.
    - (3) 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:

- (1) Manufacturer's name or trademark.
- (2) Equipment type.
- (3) Year of manufacture.
- (4) Model number.
- (5) Type of fuel used.
- (6) Horsepower rating.
- (7) Attachments required, together with their size or capacity.
- (8) All further information necessary to determine the proper rate.
- (9) Dates, daily hours, total hours of actual operation and idle time.
- (10) Blue Book rate with reference or category.
- (11) Amount.
- (12) Applicable Blue Book hourly operating cost.
- (13) 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:

- HOER = Hourly owned Equipment rate
- RAF = Regional adjustment factor shown in the Blue Book
- ARA = Age rate adjustment factor shown in the Blue Book
- R = Current Blue Book monthly rate
- 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:

- HIER = Hourly idle Equipment rate.
- RAF = Regional adjustment factor shown in the Blue Book.
- ARA = Age rate adjustment factor shown in the Blue Book.
- 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.

##### **(1) 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.

(2) 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:

- HRER = hourly rented Equipment rate.
- 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.
- 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.
- b. 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:

- a. 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.

- b. 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:

- a. Proof of cost of superintendent, or other project staff salaries, wages, and payroll taxes and insurance.
- b. Proof of cost of office rent, utilities, land rent, and office supplies.
- c. Proof of escalated cost for labor and Material.
- d. 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:

- (1) 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.
- (2) 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).
- (3) 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:

- (1) 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.
- (2) 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 1A and Sub-Phase 1B and the established durations will be utilized. For Phase 2 early work packages, it would be early work package change order costs and durations. Once, the Phase 2 change order (which will incorporate the early work packages) 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:

- 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):
  - 1. (Delays due to Revised Work); and
  - 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):
  - 1. (Delays due to Revised Work); and
  - 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 or KYTC SS. 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. In Kentucky follow the SS.

**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:

1. When the character of the Work as altered differs materially in kind or nature from that involved or included in the Contract Documents; or
2. 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

<i>% Decrease</i>	<i>Factor</i>	<i>% Decrease</i>	<i>Factor</i>
46	1.21	70	1.58
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)):

1. Restocking charges supported by paid invoices and an additional 5 percent markup on the compensation for overhead and profit.
2. 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.
3. 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

- The Brent Spence Bridge Corridor Project; Project Identification No.: 116649 (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 Brent Spence Bridge Corridor 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 Two-Hundred and Fifty Million Dollars and 00/100 (\$250,000,000.00), 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:

1. 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.
2. 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: \_\_\_\_\_

- 
3. 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

Name of Surety Company (1)

Address of Surety Company (1)

Witness to Attorney-in-fact

Address of Witness

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.

(1) 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)."

(2) 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 (3) 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 Brent Spence Bridge Corridor Project, Project Identification No.: 116649, ODOT Construction Project 23-3000.

**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):

- increase** by \$\_\_\_\_\_ effective upon and pursuant to the Obligee's issuance of a Notice to Proceed for Early Work;
- increase** by \$\_\_\_\_\_ effective upon and pursuant to the Obligee's issuance of the Notice to Proceed for Phase 2 under the Contract; or
- 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:

1. 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

- The Brent Spence Bridge Corridor Project; Project Identification No.: 116649 (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 Brent Spence Bridge Corridor 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 Two-Hundred and Fifty Million Dollars and 00/100 (\$250,000,000.00), 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:

1. 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.
  
2. 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: \_\_\_\_\_

\_\_\_\_\_

3. 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)

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Witness to Attorney-in-fact

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
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

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
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 (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.

(1) 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)."

(2) 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 (3) 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 Brent Spence Bridge Corridor Project, Project Identification No.: 116649, ODOT Construction Project 23-3000.

**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):

- increase** by \$\_\_\_\_\_ effective upon and pursuant to the Obligee's issuance of a Notice to Proceed for Early Work;
- increase** by \$\_\_\_\_\_ effective upon and pursuant to the Obligee's issuance of the Notice to Proceed for Phase 2 under the Contract; or
- 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:

2. 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

The Phase 1 DBE Performance Plan included with the Offeror's Proposal, submitted in response to the ITO, demonstrated current commitments and strategy of how the Contractor will meet the Phase 1 DBE goal. An updated DBE Performance Plan shall be submitted by the Contractor to the Department at the execution of the Contract (Sub-Phase 1A) and each Change Order for Sub-Phase 1B, Early Work Packages, 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:

1. The names and addresses of the certified DBE firm(s) committed;
2. 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 Phase 2 DBE goal;
3. Whether the DBE firm(s) being used to meet the Phase 2 DBE goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity;
4. The dollar amount each DBE firm will be utilized for in order to meet the Phase 2 DBE goal;
5. Written documentation of the Offeror's commitment to use a DBE firm whose participation it submits to meet a contract goal; and
6. 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 contract goal.

The Phase 2 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 Phase 2 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 Phase 2 DBE Performance Plan will be required to include the following information:

1. The names and addresses of the certified DBE firm(s) committed;

2. 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 Phase 2 DBE goal;
3. Whether the DBE firm(s) being used to meet the Phase 2 DBE goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity;
4. The dollar amount each DBE firm will be utilized for in order to meet the Phase 2 DBE goal;
5. Written documentation of the Offeror's commitment to use a DBE firm whose participation it submits to meet a contract goal; and
6. 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 in determining adequate good faith efforts.

### **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 make decisions with respect to all aspects of DBE attainment and compliance.

## 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:

- 1st Tier: Letter of Reprimand.
- 2nd Tier: Damages equivalent to the DBE shortfall.
- 3rd Tier: If a pattern of paying damages 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:

- The magnitude and the type of offense.
- The degree of the DBT's culpability.
- Any steps taken to rectify.
- The DBT's record of performance on other projects including, but not limited to:
  - Annual DBE participation;
  - Annual DBE participation on projects without goals;
  - The number of complaints ODOT has received regarding the DBT; and
  - 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 make decisions with respect to all aspects of DBE compliance and good faith efforts.

A DBE trucking firm performs a CUF only when:

- It provided the DBT with a quote. The DBE trucking firm must be given the opportunity to negotiate its rates.
- 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.
- 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:

- 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:



- 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).
- The leased trucks display the DBE trucking firm's name and federal identification number.
- 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:

1. 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.

2. 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.

3. 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:

- The DBT's past project practices;
- The magnitude and the type of offense;
- The degree of the DBT's culpability;
- Any steps taken to rectify;
- The DBT's record of performance on other projects; and
- 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:
  - Does not manufacture the item(s);
  - 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.);
  - 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);
  - Is certified in the correct (wholesale or retail) NAICS code(s) for the item(s);
  - Is certified in the correct MSV descriptor(s) for the item(s), if its store/warehouse/other establishment is located in Ohio; and
  - Does not drop-ship the item(s).
- 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:
  - 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);
  - 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);
  - Is certified in the correct (wholesale or retail) NAICS code(s) for the item(s);
  - Is certified in the correct MSV descriptor(s) for the item(s), if located in Ohio;
  - Is certified in the correct trucking NAICS code(s); and
  - Does not drop-ship the item(s).

- 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.

In addition, the Work herein proposed will be financed in part by a federal grant of funds from the Bridge Investment Program ("BIP") and therefore, all of the statutes, rules and regulations promulgated by the federal government and applicable to the Work financed in whole or in part with these federal funds from the BIP will apply to such Work. 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:

- A. The magnitude and the type of offense;
- B. The degree of the Contractor's culpability;
- C. Any steps taken to rectify;
- D. The Contractor's record of performance on other projects; and
- E. 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 July 5, 202

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

## General

- I. Nondiscrimination
- II. Non-segregated Facilities
- III. Davis-Bacon and Related Act Provisions
- IV. Contract Work Hours and Safety Standards Act Provisions
- V. Subletting or Assigning the Contract
- VI. Safety: Accident Prevention
- VII. False Statements Concerning Highway Projects
- VIII. Implementation of Clean Air Act and Federal Water Pollution Control Act
- IX. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- X. Certification Regarding Use of Contract Funds for Lobbying
- XI. Use of United States-Flag Vessels:

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).

## ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

## 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 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 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).

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.

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.

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.

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).

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 (USDOL) 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.

#### I. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of 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.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. 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.

(3) 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 shall 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall 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.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. 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, 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.

## 2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(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 of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) 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. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate 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 the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by

the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

##### d. 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 journeymen 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 shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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 (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) 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 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### 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 watchmen 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. 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 watchmen 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. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) 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. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

#### 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 200.326.

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. 7401-7671 q) 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 200.326.

#### 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 participants 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.

\* \* \* \* \*

### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) 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;



(b) 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

(c) 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)

2. 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 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.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

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 2 TO EXHIBIT N****SPECIFIED FEDERAL PROVISIONS****CONTRACTOR MUST COMPLY WITH, AS APPLICABLE,  
FOR BRIDGE IMPROVEMENT PROGRAM FUNDING****General Federal Legislation**

- a. Davis-Bacon Act — 40 U.S.C. 3141, et seq., as applicable under 23 U.S.C. 113
- b. Federal Fair Labor Standards Act — 29 U.S.C. 201, et seq.
- c. Hatch Act — 5 U.S.C. 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. 4601, et seq.
- e. National Historic Preservation Act of 1966 - Section 106 - 54 U.S.C. 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. 312501, et seq.
- g. Native American Graves Protection and Repatriation Act — 25 U.S.C. 3001, et seq.
- h. Clean Air Act, P.L. 90-148, as amended — 42 U.S.C. 7401, et seq.
- i. Section 404 of the Clean Water Act, as amended — 33 U.S.C. 1344
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended — 16 U.S.C. 1536
- k. Coastal Zone Management Act, P.L. 92-583, as amended — 16 U.S.C. 1451, et seq.
- l. Flood Disaster Protection Act of 1973 - Section 102(a) — 42 U.S.C. 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended — 21 U.S.C. 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended — 42 U.S.C. 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended — 42 U.S.C. 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. 8373
- t. Contract Work Hours and Safety Standards Act — 40 U.S.C. 3701, et seq.
- u. Copeland Anti-kickback Act, as amended — 18 U.S.C. 874 and 40 U.S.C. 3145
- v. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended — 16 U.S.C. 1271, et seq.
- x. Federal Water Pollution Control Act, as amended — 33 U.S.C. 1251-1376
- y. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. 12101, et seq.
- aa. Title IX of the Education Amendments of 1972, as amended — 20 U.S.C. 1681 through 1683 and 1685 through 1687
- bb. Section 504 of the Rehabilitation Act of 1973, as amended — 29 U.S.C. 794
- cc. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. 2000d, et seq.
- dd. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. 1101 - 1104, 541, et seq.
- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions — 31 U.S.C. 1352
- ff. Freedom of Information Act — 5 U.S.C. 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act — 16 U.S.C. 1855
- hh. Farmland Protection Policy Act of 1981 - 7 U.S.C. 4201, et seq.
- ii. Noise Control Act of 1972 - 42 U.S.C. 4901, et seq.
- jj. Fish and Wildlife Coordination Act of 1956 — 16 U.S.C. 661, et seq.
- kk. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. 401 and 525
- ll. Section 4(f) of the Department of Transportation Act of 1966 - 49 U.S.C. 303 and 23 U.S.C. 138

- mm. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended — 42 U.S.C. 9601, et seq.
- nn. Safe Drinking Water Act — 42 U.S.C. 300f to 300j-26
- oo. Wilderness Act — 16 U.S.C. 1131-1136
- pp. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 - 42 U.S.C. 6901, et seq.
- qq. Migratory Bird Treaty Act — 16 U.S.C. 703, et seq.
- rr. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. 109-282, as amended by section 6202 of Public Law 110-252)
- ss. Cargo Preference Act of 1954 - 46 U.S.C. 55305
- tt. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

#### Executive Orders

- a. Executive Order 11246 — Equal Employment Opportunity
- b. Executive Order 11990 — Protection of Wetlands
- c. Executive Order 11988 — Floodplain Management
- d. Executive Order 12372 — Intergovernmental Review of Federal Programs
- e. Executive Order 12549 — Debarment and Suspension
- f. Executive Order 12898 — Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 — Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 13985 — Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 14005 - Ensuring the Future is Made in All of America by All of America's Workers
- j. Executive Order 14008 — Tackling the Climate Crisis at Home and Abroad

#### General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards — 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment — 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures — 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates — 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States — 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) — 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) — 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying — 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964 — 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs — 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance — 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance — 49 C.F.R. Part 27

- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation — 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors — 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) — 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A — 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs — 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)

#### Office of Management and Budget Circulars

- a. Any applicable OMB Circular based upon the specific FY2022 BIP Grant Recipient.

#### Highway Federal Legislation

- a. Highways — Title 23, U.S.C. including but not limited to:
  - a. Brooks Act (for FHWA projects, this incorporates Title IX of the Federal Property and Administrative Services Act of 1949 (formerly 40 U.S.C. 541, et seq.)) — 40 U.S.C. 1101-1104; 23 U.S.C. 112(b)(2)
  - b. Letting of Contracts, 23 U.S.C. 112
  - c. Highway Design and Construction Standards, 23 U.S.C. 109
  - d. Prevailing Rate of Wage, 23 U.S.C. 113
  - e. Planning, 23 U.S.C. 134 and 135 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
  - f. Tolls, 23 U.S.C. 301 (to the extent the Recipient wishes to toll an existing free facility that has received Title 23 funds in the past); except as authorized by 23 U.S.C. 129 and 166.
  - g. Size, Weight, and Length Limitations — 23 U.S.C. 127, 49 U.S.C. 31101 et seq.
  - h. Buy America — 23 U.S.C. 313 - (see <http://www.fhwa.dot.gov/construction/contracts/buyamga.cfm>)
  - i. Nondiscrimination — 23 U.S.C. 140
  - j. Efficient Environmental Reviews - 23 U.S.C. 139

#### Federal Highway Regulations

- a. Highways — Title 23, C.F.R. including but not limited to the specific parts identified herein.
- b. Planning — 23 C.F.R. Part 450 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- c. National Highway System Design Standards — 23 C.F.R. Part 625
- d. Preconstruction Procedures — 23 C.F.R. Part 630 Subparts A and B
- e. Construction and Maintenance — 23 C.F.R. Part 635
- f. Manual on Uniform Traffic Control Devices — 23 C.F.R. Part 655
- g. Environmental Impact and Related Procedures — 23 C.F.R. Part 771
- h. Procedures for Abatement of Highway Traffic and Construction Noise — 23 C.F.R. Part 772
- i. Procedures Implementing Section 4(f) of the Department of Transportation Act — 23 C.F.R. Part 774
- j. Permitting Requirements under the National Pollutant Discharge Elimination System — 40 C.F.R. Part 122
- k. Required Contract Provisions — 23 C.F.R. Part 633 (Form 1273)
- l. External Programs — 23 C.F.R. Part 230

**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:

- (a) did not, directly or indirectly, induce or solicit anyone else to submit a false or sham bid/proposal;
- (b) 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 bidding or withdraw bid/proposal;
- (c) 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;
- (d) 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 an Early Work Package Change Order or 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.

- **Census Availability Percentages for minority and female workers** by craft per county (applicable to project):
  - <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.xlsx>.
  - <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.pdf>.
- **Statewide utilization obligations/ goals for minority workers** by county (applicable to each project).
- **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 \(dol.gov\)](#).

067 Cincinnati, OH:

SMSA Counties:

1640 Cincinnati, OH-KY-IN \_\_\_\_\_ 11.0

IN Dearborn; KY Boone; KY Campbell; KY Kenton; OH Clermont; OH Hamilton; OH Warren.

3200 Hamilton - Middletown, OH \_\_\_\_\_ 5.0

OH Butler.

Non-SMSA Counties \_\_\_\_\_ 9.2

IN Franklin; IN Ohio; IN Ripley; IN Switzerland; KY Bracken; KY Carroll;

KY Fleming; KY Gallatin; KY Grant; KY Lewis; KY Mason; KY Owen;

KY Pendleton; KY Robertson; OH Adams; OH Brown; OH Clinton; OH Highland.

068 Dayton, OH:

SMSA Counties:

2000 Dayton, OH \_\_\_\_\_ 11.5

OH Greene; OH Miami; OH Montgomery; OH Preble.

7960 Springfield, OH \_\_\_\_\_ 7.8

OH Champaign; OH Clark.

Non-SMSA Counties \_\_\_\_\_ 9.9

OH Darke; OH Logan; OH Shelby.

**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:*

1. Visit [Ohio Business Gateway](#)
2. Log in using username and password (OH|ID)
3. Ensure "Equal Opportunity Division" is among available service areas
4. Ensure "Input 29" is among available transactions
5. Select "Input 29" and complete the form
6. Click "File" button on the Summary page to see a confirmation page

7. 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 percent 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 the 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 and all subcontractors. ODOT will monitor compliance utilizing an agreed upon process that meets the following requirements:

- 1) Present quarterly reports showing the percentage of female and minority workers hired by the DBT and Subcontractors on the project;
- 2) If female and/or minority workforce goals at not being met, the DBT must demonstrate Good Faith Efforts were made to meet the goal. Good Faith Efforts must be submitted within 30 days of Substantial Completion. for approval.
- 3) The Department will determine whether the Good Faith Efforts are acceptable within 10 days of receiving the checklist from the DBT and will inform the DBT of the decision.

## 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 journeyman 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.

- 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).
- 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:

- 1.) The name of the payee;
- 2.) The dollar amount of the payment to the payee;
- 3.) The date the payee was paid; and
- 4.) 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.

- 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).
- 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).

- 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.
- 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:

- 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.

## EXHIBIT R: FACILITATED PARTNERING

This Exhibit R supplements the partnering process as provided in Section 2.2 (Project Meetings) of Exhibit E (Technical Requirements). If any term here conflicts with a term in the partnering process provided in the Technical Requirements, the term provided in the Technical Requirements shall control.

### A. Facilitated Partnering

The type of partnering required on this project is Facilitated Partnering. The Parties shall select a partnering facilitator from the ODOT prequalified list located on the Division of Construction Management's Partnering website:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/Partnering.aspx>.

### B. Initial Partnering Session

Every attempt shall be made to hold an Initial Partnering Session prior to beginning the Work and separately from the Pre-Design Meeting defined in Section 2.2.2 (Pre-Design Meeting) of Exhibit E (Technical Requirements). This session shall be no later than one month after the Preconstruction Meeting. With reference to the applicable provisions of the Technical Requirements, identify and invite all Stakeholders necessary to make the Project successful including utility companies, other transportation entities (i.e., railroads), community leaders, all Project participants including Subcontractors. The Parties shall develop the Partnering agenda with the Department and facilitator before holding the Initial Partnering Session.

During the Initial Partnering Session the Parties will collaborate to:

1. Develop Partnering teams consisting of Department and Contractor senior personnel and Project personnel.
2. Identify and develop a consensus on Project Goals consistent with the contractual obligations, including specific goals concerning safety, quality, schedule, and budget.
3. Decide on how the teams will measure progress on Project Goals.
4. Identify any potential risks to the project's success, mitigation strategies and an implementation plan for appropriate strategies.
5. Define key issues, project concerns, joint expectations, roles of key partnership leaders, lines of decision making authority, and share relevant information to help determine the scope of the Partnering efforts.
6. Identify any opportunities for Project enhancement, enhancement strategies, and a specific action plan for implementing strategies.
7. Develop a communication protocol to enhance communication on the Project.
8. Develop an issue identification and resolution process that identifies and attempts to resolve issues at the level closest to the Work. The issue identification and resolution process will develop all the necessary steps for issue elevation as contemplated under Section 18.2.4 (Step 1: Mitigation and On-Site Determination) of the PDBC.

### C. Partnering Update Sessions

Hold quarterly Partnering update sessions, unless the frequency is otherwise determined by the Parties, to maintain open communication and evaluate the Partnering relationship on the Project. Identify Partnering successes and possible areas of improvement. Identify and invite all stakeholders necessary to make the session successful including utility companies, other

transportation entities (i.e., railroads), community leaders, all project participants including subcontractors.

**D. Partnering Monitoring**

Monitor the progress of the Partnering relationship based on the goals decided during the Initial Partnering Session. On-line surveys of project participants will be used to monitor goals progress and help identify issues as they arise. The Contractor shall complete the survey prior to every Partnering Update Session and determine with the Department and facilitator whether more frequent evaluations are necessary. The on-line surveys will be consistent with the Department’s Partnering Project Rating Form which is located on the Division of Construction Management’s Partnering website:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/Partnering.aspx>.

**E. Compensation**

1. Submission for Compensation. The facilitator shall submit to the Contractor actual invoice costs.
2. Facilitator Compensation. After review and verification by the Contractor and Department of the facilitator’s submission for compensation, the Contractor shall pay the facilitator the fees earned.
3. Contractor Reimbursement. The Department shall bear 100 percent of the costs and expenses of the facilitator and venue. Costs for the reimbursable portion of facilitated partnering will be considered an indirect cost per Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process). The Department will not pay a Project Mark-Up on these costs. All Contractor labor and direct costs associated with preparing for and attending these sessions shall be borne by the Contractor.

The facilitator chosen by the Department and the Contractor shall be compensated at a maximum rate of \$3,500 for the Initial Partnering Session. The facilitator shall be compensated at a maximum rate of \$1,500 for the Partnering Update Sessions.

The maximum session rates above shall be considered full compensation for venue cost, on-site time, travel expenses, transportation, lodging, and incidentals, or portion thereof that the facilitator is at an authorized meeting.

**F. Basis of Payment**

The Contractor shall include a cost loaded schedule activity for each Facilitated Partnering meeting/session in the Project Schedule.

Tracking and payment for Facilitated Partnering shall use the following item in the Schedule of Values pursuant to Exhibit G (Opinion of Probable Cost (OPC) and Pricing Process):. The Department will furnish the following item with an amount in the Proposal:

Item	Unit	Description
Special	Lump Sum	Department’s Share Facilitated Partnering Costs

The payments due will be deducted from the item. If the Department’s costs of the Facilitated Partnering item exceed the fixed amount, the Department will continue to pay its share of the actual invoice costs of the item by processing a change order.

The Department will make partial payments according to the PDBC. This item is exempt from the non-performance table found in the PDBC.

## EXHIBIT S: LANE VALUE CONTRACT

Payment deductions shall be assessed for certain Lane Closures during Phase 2 in accordance with the Phase 2 Change Order or Early Work Change Order and this Exhibit S.

### A. Non-Chargeable Lane Closures and Chargeable Lane Closures

A “Non-Chargeable Lane Closure” is: (i) a Lane Closure for which the minimum number of lanes and movements to be maintained during the Construction Work are observed, as described in Section E (Minimum Number of Lanes and Allowable Lane and Roadway Closures) below, or (ii) a Lane Closure required due to Incidents or Emergencies that are not attributable to, could not have been avoided by or are not exacerbated by the actions of the Contractor, and only to the extent necessary to remediate the Incident or Emergency. No Payment deductions / disincentives shall be assessed for a Non-Chargeable Lane Closure.

A “Chargeable Lane Closure” is any Lane Closure that is not a Non-Chargeable Lane Closure, regardless of whether the Department has approved the Lane Closure.

### B. General Requirements for Lane Closures

Except for Lane Closures required due to Incidents or Emergencies, advance written notice of any Lane Closure must be provided to the Department as provided in the Contract Documents.

Except for Lane Closures required due to Incidents or Emergencies, all Lane Closures shall be pursuant to a Temporary Traffic Control Plan (TCP) submitted to the Department for approval 10 Days in advance of the Lane Closure.

Lane Closures shall comply with the approved Traffic Management Plan (TMP) and an approved TCP. No Lane Closure will be permitted unless the Contractor can demonstrate that the Lane Closure will provide clear benefit to the progress of the Work. When simultaneous requests for traffic control are received from the Contractor, adjacent projects, and/or Government Entities, the Department will give priority to the closure request submitted first. For Lane Closures on a non-Department controlled facility, the Contractor shall obtain approval from the applicable Government Entity in addition to approval from the Department. The Contractor shall coordinate Lane Closures that may affect crossing Department facilities with appropriate Department Project staff, as needed, to ensure that no conflicts occur.

The Contractor shall consider the safety of workers and the traveling public as the primary factor when determining the appropriate time to implement a Lane Closure.

### C. Unauthorized Lane Use Disincentives

The Contractor shall be assessed a payment disincentive as designated in Table S-1 (Payment Disincentives for Unauthorized Lane Use Closures) for each unit of time a Critical Lane/Ramp is closed by the Contractor’s action while not otherwise permitted by the Contract Documents. The payment disincentive will be for any Lane Closures caused by the Contractor during times and locations not specifically permitted by the Contract Documents.

Unauthorized Lane Use Payment disincentives shall be assessed for (i) Full Roadway Closures, or (ii) Lane Closures that result in less than the minimum number of lanes that must be maintained as described in Section D (Lane Value Disincentives) and that occur during a

Holiday, a Special Event, or the Peak Period. For purposes of this Exhibit S, a “Full Roadway Closure” means a Lane Closure that has no lanes or shoulders available to traffic in one or both directions of travel. The disincentives for Unauthorized Lane Use Closures are set forth below in Table S-1 (Payment Disincentives for Unauthorized Lane Use Closures) for the applicable number of lanes that are closed below the minimum number of lanes required to be kept open set forth in Section E (Minimum Number of Lanes and Allowable Lane and Roadway Closures).

**TABLE S-1: PAYMENT DISINCENTIVES FOR UNAUTHORIZED LANE USE CLOSURES**

	<i>Roadway Type</i>	<i>Full Roadway Closure</i>	<i>Lane Closure resulting in less than minimum number of Lanes</i>	
		<i>Disincentive \$ per minute</i>	<i>Holiday Periods/ Special Events Disincentive \$ per minute per lane</i>	<i>Peak Period Disincentive \$ per minute per lane</i>
Number of Critical Lanes closed	Mainline	\$1,150	\$385	\$385
	Ramp	\$1,150	\$385	\$385
	Crossing Street	\$420	\$140	\$140

**D. Lane Value Disincentives**

The Contractor shall be assessed disincentive as designated in Table S-2 (Lane Value Contract Table) below for each unit of time the described Critical Lane/Ramp is restricted from full use by the traveling public within the restricted time period. The payment disincentives will be assessed for all restrictions of Critical Work defined as having the designated sections open to unrestricted traffic as shown in the table, or the entire Project if not otherwise listed.

Unrestricted traffic is defined as all traffic lanes being available for use with specified striping and safety features in place.

The disincentives for Lane Value Closures are set forth below in in Table S-2 (Lane Value Contract Table) for the applicable number of lanes that are closed below the minimum number of lanes required to be kept open as set forth in Section E (Minimum Number of Lanes and Allowable Lane and Roadway Closures) of this Exhibit S.

**TABLE S-2: LANE VALUE CONTRACT TABLE**

	<i>Facility Type</i>	<i>Restricted Time Period</i>	<i>Off-peak period 1<sup>5</sup> Disincentive \$per minute per lane</i>	<i>Off-peak period 2 Disincentive \$ per minute per lane</i>
Number of Critical Lanes closed (repeat as needed for each scenario)	Mainline		\$385	\$577
	Ramp		\$385	\$577
	Crossing Street		\$140	\$210

**E. Minimum Number of Lanes and Allowable Lane and Roadway Closures**

The minimum number of lanes and movements to be maintained after issuance of Construction NTP are listed below. *[Insert minimum requirements]*.

**F. Crossing Streets**

*[Describe any special requirements for crossing streets]*.

**G. Holidays**

The following are “Holidays” for the purpose of this Exhibit S. The Department has the right, without liability, to lengthen, shorten, or otherwise modify these Holidays as actual, or expected, traffic conditions may warrant.

- New Year’s Eve and New Year’s Day (12:00pm on December 31 through 10:00pm on January 1).
- Easter Holiday Weekend (12:00pm on Friday through 10:00pm on Sunday).
- Memorial Day Weekend (12:00pm on Friday through 10:00pm on Monday).
- Independence Day (12:00pm on July 3 through 12:00pm on July 5).
- Labor Day Weekend (12:00pm on Friday through 10:00pm on Monday).
- Thanksgiving Holiday (12:00pm on Wednesday through 10:00pm on Sunday).
- Christmas Day (12:00pm on December 24 through 10:00pm on December 25).
- Total Solar Eclipse per ODOT Traffic Engineering Manual Section 642-6.
- Major events (to be defined in the Phase 2 Change Order).

<sup>5</sup> Definitions of the peak period during which during which Unauthorized Lane Use payment deductions shall apply and the off-peak period(s) during which Lane Value payment deductions shall apply will be based upon impacts to traffic determined in accordance with the findings of the conceptual MOT Plan.



## EXHIBIT T: CRITICAL PATH METHOD PROGRESS SCHEDULE

### 1.1 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 Schedule and Documentation
- 1.13 Other Schedule Submittal Requirements

### 1.2 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.

### 1.3 Quality Assurance

- A. 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.

## 1.4 Interim, Phase 1, and Phase 2 Baseline Schedule Requirements

### 1.4.1 Interim Baseline and Baseline Schedules

#### A. Definitions:

1. **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.
2. **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.

#### B. Schedule Levels:

1. 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, Early Work, and Phase 2 Work
  - iii. Level 3 - The Work Breakdown Level: Includes each Buildable Unit of the project (Early Work or 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.

#### C. Interim, Phase 1, and Phase Baseline Development Overview:

1. 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.
2. 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.
  3. 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 and/or Early Work Packages 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/or Early Work Packages 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 after Early Work Packages NTP 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.
- D. Interim, Phase 1, and Phase 2 Baseline Schedule Workflow:
1. 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.
2. 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. The activities in the Phase 1 Baseline Schedule shall correlate directly with the cost loaded schedule per PDBC Section 11.4 (Phase 1 Estimates and Payments) from which Progress Payments will be based (for Phase 1 Construction Work activities only) until the Phase 2 Baseline is accepted by the Department.
  - ix. The activities in Phase 1 Baseline Schedule for Sub-Phase 1A and Sub-Phase 1B direct costs per PDBC Section 11.4 (Phase 1 Estimates and Payments), Contractor shall provide a cash flow curve of expected progress payments over the performance period. Plot curve using costs assigned to activities in the Baseline Schedule. Contractor to update the curve with actuals from the approved bi-monthly invoice payment and forecast progress payments and submit bi-monthly to the Department per PDBC Section 11.1 (Cost Principles and Limitations for Phase 1).

- x. Contractor shall submit progress curves with the Bi-Monthly Progress update. Show with the curves the cumulative scheduled percent complete of each phase, time-scaled in calendar days from NTP to Contract completion. Derive schedule, actual, and forecast progress from cash flow curve. Update progress curves with each bi-monthly update of the current Baseline Schedule.
  - xi. Four Week look ahead bar chart schedule.
    - 1. Contractor shall submit a weekly manpower/construction report and progress schedule listing activities completed and in progress for the previous week and the activities schedule for the succeeding two weeks that is produced/generated from the current Baseline 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.
3. 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. The Phase 2 Baseline Schedule shall correlate directly with the cost loaded schedule per PDBC Section 11.12 (Administration of Estimates and Payments) from which Progress Payments will be based.
  - viii. Contractor shall provide Monthly Progress update Schedules based upon the Phase 2 Baseline Schedule through the end of the Completion of the Contract.
  - ix. Four Week look ahead bar chart schedule.
    - 1. Contractor shall submit a weekly manpower/construction report and progress schedule listing activities completed and in progress for the previous week and the activities schedule for the succeeding two weeks that is produced/generated from the current Baseline 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.

E. Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules:

1. 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.
2. 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.
3. 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**

<b><i>Weather and Seasonal Conditions</i></b>	
<b><i>Month</i></b>	<b><i>Anticipated Days Lost days due to weather</i></b>
January	8
February	8
March	7
April	6
May	5
June	5
July	4
August	4
September	5
October	6
November	6
December	6

4. 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. Activity codes shall be used to represent construction crew types, specialty equipment, and material(s) procurement.
  - iii. The structure shall be formed using project activity codes.
  - iv. A WBS structure may be used, but shall still include the activity codes as indicated above.
5. 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.
6. 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.
7. 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 Contractor shall propose a schedule activity ID nomenclature prior to the completion of the CPM Baseline. The proposed activity ID nomenclature, at a minimum, shall reflect the Location, area or segment of the project, the Buildable Unit, the Work Element, the roadway associated with schedule activity, the discipline performing the Work, and a unique identifier. The activity ID may contain additional information but is not to exceed 20 characters in total length. The activity ID should include decimal places to distinguish the differences in Nomenclature. Once accepted, the activity ID shall be used for the duration of the Project.

- Example:
  - Location.Area. Buildable Unit. Work Element. Roadway. Discipline. Unique Identifier
    - K.1.MS.144.75.BR.15
      - K = Kentucky
      - 1 = Area 1
      - MS = Main Span
      - 144 = Block (Contractor Proposed Identifier)
      - 75 = Interstate 75
      - BR = Bridge Discipline performing the work
      - 15 = Unique Identifier
- iv. Location identifiers align with the progress payment for activities to roll up to the location. The Location identify allows pay estimates to meet funding split requirements between Ohio and Kentucky. The location identifiers are the following:
  1. O = Ohio
  2. K = Kentucky
  3. C = Companion Bridge
  4. E = Existing Brent Spence Bridge
- v. 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).
- vi. Assign a planned duration in Working Days for each activity.
- vii. Assign an appropriate project calendar to each activity in the schedule.
- viii. 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.
- ix. Include review activities by the Department with a duration of not less than 10 Working Days on a calendar containing typical government holidays.
- x. 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.

- xii. 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.
  - xiii. Include activities such as cure times and/or settlement periods as per the applicable specifications.
8. 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. Construction activities shall have a ROW acquisition activity, based on the ROW availability schedule provided by the Department, or based on Contractor initiated ROW acquisition as a predecessor.
  - v. All Final Design activities shall have a Construction activity as a successor.
  - vi. 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.
  - vii. 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.
9. 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.
10. 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.

11. Cost and Resource Loading:

- i. Cost Loading Activities: Costs for incremental design preparation will be assigned to the respective design phase submittal. Mobilization costs will be included in activities for which mobilization costs are required per PDBC Section 11.7 (Mobilization). Delivered Material costs will be assigned to their respective procurement activities and invoiced costs shall follow PDBC Section 11.6.3 (Payment for Materials). Costs for installation of the material/Equipment (labor, construction Equipment, temporary materials, and permanent materials if no material Procurement Activity is included in the Schedule) will be assigned to their respective construction activities. Do not cost load LOE activities.
- ii. Evenly and properly disperse overhead and profit to each activity over the duration of the project. The total of all cost loaded activities; including costs for material and Equipment delivered for installation on the project, and labor and construction Equipment loaded construction activities shall total to 100 percent of the value of the contract.
- iii. Quantities and Units of Measure: Each cost loaded activity will have a detailed breakdown of the quantities for each of the various kinds of work and the unit of measure. These entries are informational only and are non-calculating. Quantities shall be entered into the schedule at RFC for each Buildable Unit and shall include all major items of Work (i.e.: structural steel, concrete, asphalt, earthwork, etc.). These quantities will be used to assist in the material sample and testing frequency determinations along with other adjustments.
- iv. Quantities and Cost Loading information will not be used for determination of Extra Work costs.
- v. Estimated Manhours: Each Cost Loaded Activity will have a detailed breakdown of the Estimated Manhours for each of the various kinds of work. These entries are informational only and are non-calculating. Manhours shall be entered into the schedule at RFC for each Buildable Unit and shall include all major items of Work (i.e.: structural steel, concrete, asphalt, earthwork, etc.). These Manhours will be used to assist in the analysis of completed work along with other adjustments.
- vi. Cost and Resource loading along with estimate of the current percentage completion of each cost loaded schedule activity shall follow PDBC Section 11.4 (Phase 1 Estimates and Payments) and PDBC Section 11.12 (Administration of Estimates and Payments).

F. Submission Requirements:

1. 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.
2. 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 1 Baseline schedule containing Early Work Packages.
  - iii. Submit per Section 1.4.1.F.3 (General Requirements).
3. 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>			

G. Interim Baseline and Baseline Schedule Review:

- 1. 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.
2. 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. Contractor shall provide a cost loaded Schedule in the Sub-Phase 1B Proposal. 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.
3. Phase 2 Baseline Schedule Review:
- i. Provide a Phase 2 Baseline Schedule with the Phase 2 Proposal for the Department’s review and acceptance. The Phase 2 Baseline Schedule shall correlate directly with the cost loaded schedule from which progress payments will be based per PDBC Section 11.12 (Administration of Estimates and Payments).
  - 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

### A. 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.

### B. Monthly Progress Update Schedule Preparation – Interim Schedule:

1. Once the Interim Schedule has been accepted by the Department it shall be updated in accordance with this Exhibit T.
2. Enter the “Actual Start”, “Actual Finish”, “Remaining Duration”, or “Percent Complete” as appropriate for each activity within the update period.
3. Any activity with an actual start shall also contain an appropriate percent complete.
4. Update the data date to the end of the update period.
5. 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.

### C. 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.

### D. Submission Requirements:

1. Monthly Progress Update Schedule Submission Deadlines:
    - i. 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.
    - ii. 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.
    - iii. 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).
- E. Monthly Progress Update Schedule Review:
1. 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.
  2. The Department will review the Contractor's actual dates compared to the project records to verify the accuracy of the information.
    - i. 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.
    - ii. 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.
  3. 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.

4. 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.
5. 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

### A. 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.

### B. Buildable Unit Phase Submission Overview:

1. 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.
2. 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.

### C. Buildable Unit Phase Submission Preparation:

1. The Buildable Unit Phase submission shall be developed using the latest "Accepted" Phase 2 Baseline, or the most recent "Accepted" update schedule.
2. The Buildable Unit Phase Submission Schedule may include a single buildable unit or may cover multiple Buildable Units.
3. 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).
4. Buildable Unit Phase Submission schedules shall be submitted as an independent schedule from any revision schedules.
5. 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.
6. 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.

7. 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).

D. Submission Requirements:

1. Buildable Unit Phase Submission Deadlines:

- i. 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.
- ii. Submit per Section 1.6.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.

3. Provide a written schedule narrative in .pdf format describing the following:

- i. Current schedule interim Milestone Deadlines and Completion Deadlines.
- ii. A general description of the Critical Path.
- iii. Changes or shifts in the Critical Path and the reason for these changes or shifts.
- iv. Overall project status (ahead, on, or behind schedule).
- v. Current delays.
- vi. Anticipated delays.
- vi. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).

E. Buildable Unit Phase Submission Review:

1. The Department will review the schedule within ten (10) Working Days (excepting holidays) beginning on the first business day after the Contractor’s submission.
2. 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

A. Definition:

1. Delay Schedule: During the course of the project, issues may arise that could not have been anticipated at the Early Work Package Change Order and/or 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.

B. Reasons for Revisions:

1. The Contractor shall revise the schedule to correct out-of-sequence logic errors that impact the critical path.
2. A revision schedule must be compiled in order to justify any time extension related to extra work.
3. 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.
4. 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.
5. 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.

C. Revision Schedule Preparation:

1. The basis of any revision or delay schedule shall be the most recently accepted Monthly Progress Update Schedule.

2. 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.
3. All revisions shall comply with applicable sections of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).

D. Delay Schedule Preparation:

1. 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.
2. In a copy of the Un-impacted Schedule, prepare a new Project activity code for the fragmentary network (fragnet).
3. Prepare a fragnet depicting the circumstance that is believed to have delayed the project within the new activity code.
4. 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.
5. Run the schedule calculations and determine the finish date. This schedule is referred to as the Impacted Schedule.
6. Compare the impacted Schedule finish date with the un-impacted Schedule finish date in order to determine the duration of any warranted time extension.

E. Submission Requirements:

1. Revision Schedule Submission Deadlines.
  - i. Revision schedules shall be submitted with a Monthly Progress Update, or within five (5) Working Days of “acceptance” of a progress update.
  - ii. 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.
  - iii. 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.
  - iv. Revision schedules shall be separated from Buildable Unit Phase Submissions.
  - v. Delay Schedule Submission Deadlines.
  - vi. Delay schedule submissions shall occur within five (5) Working Days of the alleged delay event.
2. General Requirements:
  - i. Submit all schedules within the time frames specified.
  - ii. 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.

- iii. 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.
- 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.
- v. 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 reason(s) for the revision or delay.
  4. Changes or shifts in the critical path and the reason for these changes or shifts.
  5. Overall project status (ahead, on, or behind schedule).
  6. Current delays.
  7. Anticipated delays.
- vii. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).

F. Revision/Delay Schedule Review:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

6. Upon acceptance, the revision schedule shall be the basis for evaluations replacing the original baseline logic.

## 1.8 Weather Delay Schedules

### A. 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.

### B. 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.

### C. Submission Requirements:

1. Weather Delay Schedule Submission Deadlines.
  - i. The Weather Delay Schedule shall be submitted no later than the 5<sup>th</sup> of the month following the weather impacted work.
2. 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).

### D. 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

### A. Definition:

1. 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.

### B. Recovery Schedule Preparation:

1. Make a copy of the latest submitted Monthly Progress Schedule file. This copy will be used to develop the recovery schedule.
2. Revise the schedule to provide a workable plan for completing the project by the current contract completion date.
3. All revisions shall comply with applicable sections of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).

### C. Submission Requirements:

#### 1. Recovery Schedule Submission Deadlines:

- i. 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.

#### 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. 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.
- v. Name the .xer or .xml as per Table T-2 (Schedule Filename Convention).

### D. Recovery Schedule Review:

1. 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.
2. 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.

3. 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.
4. 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.
5. 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.
6. Upon acceptance, the revision schedule shall be the basis for evaluations replacing the original baseline logic.
7. Department will withhold pay applications until Department or their Representative Accepts the Recovery Schedule.
8. 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

- A. Prepare a cost loaded schedule of activities for all design and construction Work to be done in each Phase and show status of completion per PDBC Section 11.4 (Phase 1 Estimates and Payments) for Phase 1 Work and Section 11.124 (Administration of Estimates and Payments).
- B. 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.
- C. Contractor shall submit a cash flow curve of expected progress payments over the performance period. Plot curve using costs assigned to activities in the Baseline Schedule. Contractor to update the curve with actuals from the approved bi-monthly invoice payment and forecast progress payments and submit bi-monthly to the Department per PDBC Section 11.4 (Phase 1 Estimates and Payments) and Section 11.12 (Administration of Estimates and Payments).
- D. Contractor shall submit progress curves with the Bi-Monthly Progress update. Show with the curves the cumulative scheduled percent complete of each phase, time-scaled in calendar days from NTP to Contract completion. Derive schedule, actual, and forecast progress from cash flow curve. Update progress curves with each bi-monthly update of the current Baseline Schedule.

### 1.12 As Built Schedule and Documentation

- A. Prior to final release of retention, and after all Contract Items are completed, Contractor shall submit an "as-built" Contract Schedule (Schedule Data Disks, Reports, and Plots) showing actual start and finish dates and actual logic used for all work items and milestones, and actual expenditures of man-hours and costs.
- B. The As-Built Schedule will be accompanied by a narrative report titled "Final Schedule Report" which provides an overview of the Schedule process, the history of changes to the Schedule and the resulting changes to milestone dates, discusses major schedule variances (including manpower and cost variances), and identifies any outstanding schedule issues.
- C. Provide two thumb drives or uploaded to a cloud-based server of Department's choosing of the electronic Schedule files with two copies of reports, charts and narratives identified.

- D. Contractor shall support the As-Built Schedule and “Final Schedule Report” with a letter on the Company letter head that confirms all information in the As-Built Schedule is truthful and accurate pertaining to start and finish dates, as-built logic, cost and resource loading and final schedule report. The accompanying letter shall be signed by an officer of the Company.

### **1.13 Other Schedule Submittal Requirements**

- A. Contractor shall coordinate schedule Submittals to avoid concurrent Submittals to maximum extent possible. Where concurrent schedule Submittals cannot be avoided, Contractor shall increase review time as required, to allow for Department’s review.
- B. Where Submittal is concurrent with or overlaps Submittals currently being reviewed, Contractor shall indicate priority of each outstanding submittal.
- C. Following corrections resulting from Department’s Accepted as Noted to Contractors initial Submittal, and after Department Review, Contractor shall print and electronically distribute copies to Department, Subcontractors, and other parties required to comply with Submittal dates indicated.
- D. Contractor shall post copies in the Project meeting room at PMO and temporary field offices.
- E. When revisions are made, Contractor shall distribute to the same parties electronically and post in same locations. Parties shall be deleted from distribution when they have completed their assigned part of Work and are no longer involved in construction activities.

## **EXHIBIT U: NOT USED**

## **EXHIBIT V: SURFACE SMOOTHNESS REQUIREMENTS**

### **Surface Smoothness Requirements for Pavements**

The Department anticipates incorporating within the Phase 2 Change Order a surface smoothness for pavements adjustment mechanism based upon ODOT's PN 420 (01/21/2023) and KYTC SS410 and SS501.

### **Surface Smoothness for Bridges and Approaches**

The Department anticipates incorporating within the Phase 2 Change Order a surface smoothness for all bridges and approaches adjustment mechanism based upon ODOT's PN 555 (01/15/2021).

## **EXHIBIT W: PRICE FLUCTUATION CLAUSES**

### **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

### 1. 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.

### 2. 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.

### 3. 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 and Kentucky Administrative Regulations 603 KAR 5:066.

## **EXHIBIT Y: INTERSTATE COOPERATIVE AGREEMENT**

PROPOSED EXECUTION VERSION 1/18/2023

**INTERSTATE COOPERATIVE AGREEMENT**  
**REGARDING THE**  
**BRENT SPENCE BRIDGE CORRIDOR PROJECT**  
**BY AND BETWEEN**  
**THE STATE OF OHIO**  
**AND**  
**THE COMMONWEALTH OF KENTUCKY**

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**INTERSTATE COOPERATIVE AGREEMENT REGARDING**

**BRENT SPENCE BRIDGE CORRIDOR PROJECT**

**BY AND BETWEEN**

**THE STATE OF OHIO AND THE COMMONWEALTH OF KENTUCKY**

This Interstate Cooperative Agreement Regarding Brent Spence Bridge Corridor Project (hereinafter “**Agreement**”) is made by and between the State of Ohio (hereinafter “**Ohio**”), by and through the Ohio Department of Transportation (hereinafter “**ODOT**”) and the Commonwealth of Kentucky (hereinafter “**Kentucky**”), by and through the Kentucky Transportation Cabinet (hereinafter “**KYTC**”). ODOT and KYTC are sometimes referred to individually herein as a “**Party**,” or collectively as the “**Parties**.” This Agreement shall be effective as of February 17, 2023 (the “**Effective Date**”).

**WHEREAS**, The I-71/I-75 corridor is a major north-south transportation corridor and is one of the busiest national freight movement routes, and as such is an important link for the local, regional and national economies; and

**WHEREAS**, the improvements comprising the existing Brent Spence Bridge (the “**Existing Brent Spence Bridge**”) together with its approaches provide an interstate connection over the Ohio River and carry both I-71 and I-75 traffic and facilitate local travel by providing access to downtown Cincinnati, Hamilton County, Ohio and Covington, Kenton County, Kentucky; and

**WHEREAS**, safety, congestion and geometric issues currently exist on the Existing Brent Spence Bridge and its approaches, which threaten the overall efficiency and flexibility of a vital national and regional mobility, trade and national defense corridor; and

**WHEREAS**, Kentucky and Ohio, by and through KYTC and ODOT, have agreed to jointly improve the operational characteristics of an approximately 7.8-mile segment of the I-71/I-75 corridor in Kentucky and Ohio for the purposes of improving traffic flow, level of service, and safety; correcting geometric deficiencies; and maintaining connectivity to key regional and national transportation corridors (collectively, the “**Project Purposes**”); and

**WHEREAS**, Kentucky and Ohio have determined to achieve the Project Purposes through the funding, design, and construction of improvements to and complementary to the Existing Brent Spence Bridge and its approaches, which improvements are anticipated to be comprised of: (i) the construction of a new interchange on I-75 in Ohio between Findlay Street and Marshall Avenue to connect I-75 to the new Western Hills Viaduct (Ohio PID 114161) (“**Brent Spence Bridge Corridor Phase I**”); (ii) the reconstruction and widening of I-75 in Ohio from Linn Street to Findlay Street and the reconstruction of Gest Street from Freeman Avenue to U.S. 50 (Ohio PID 113361) (“**Brent Spence Bridge Corridor Phase II**”); (iii) the improvement of the Existing Brent Spence Bridge and the approaches to the Existing Brent Spence Bridge from approximately state line mile 186.7 in Kentucky, including I-71/I-75, to approximately state line mile 2.7 in Ohio

(exclusive of those areas addressed under the scope for the Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II) (“**Brent Spence Bridge Corridor Phase III**” and, together with Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II, the “**Brent Spence Bridge Corridor Phases**”); and (iv) the development and construction of a companion bridge to the Existing Brent Spence Bridge (the “**Companion Bridge**”) to serve the I-71/I-75 corridor (the “**Companion Bridge Phase**,” any of the Brent Spence Bridge Phases or the Companion Bridge Phase may be referred to individually as a “**Phase**” or collectively as, the “**Brent Spence Bridge Corridor Phases**” or the “**Project**”), all as depicted in **Appendix A**; and

**WHEREAS**, from time to time the federal government has committed funding to the Project, including through multiple earmarks to evaluate the Project, and in 2021, made funding opportunities available to the Parties for the Project under the Infrastructure Investment and Jobs Act (the “**IJA**”); and

**WHEREAS**, Section 5501.44(A)(3) of the Ohio Revised Code authorizes the Director of the Ohio Department of Transportation to enter into agreements with “another state for the replacement, improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges at one location that carries two interstate highways over the Ohio river to another state and the replacement, improvement, rehabilitation, operation, and maintenance of roadways providing for ingress to and egress from that bridge or system of bridges”; and

**WHEREAS**, to memorialize their cooperation with respect to evaluating and assessing the feasibility of the Project, the Parties entered into an Agreement dated October 14, 2004 (the “**2004 Agreement**”), as amended by the First Supplemental Agreement to 2004 Agreement dated November 23, 2004 (the “**First Supplement**”), as further amended by the Second Supplemental Agreement dated December 11, 2008 (the “**Second Supplement**”), the Third Supplemental Agreement dated December 12, 2012 (the “**Third Supplement**”), the Fourth Supplemental Agreement dated August 30, 2014 (the “**Fourth Supplement**”), the Fifth Supplemental Agreement dated April 29, 2014 (the “**Fifth Supplement**”), and the Sixth Supplemental Agreement dated February 28, 2022 (the “**Sixth Supplement**” and the 2004 Agreement as so amended, the “**Prior Agreement**”); and

**WHEREAS**, to evaluate, implement, administer and monitor the Project, the Parties established a Bi-State Management Team comprised of representatives from ODOT and KYTC (the “**BSMT**”); and

**WHEREAS**, pursuant to the Prior Agreement, the Parties, between themselves and by and through the BSMT, have undertaken and completed various obligations and duties, including the completion of the Environmental and Preliminary Design phases described under the First and Second Supplements as evidenced by the approval of the Environmental Assessment and the issuance of a Finding of No Significant Impact (the “**FONSI**”) for the Project on August 9, 2012; and

**WHEREAS**, pursuant to the Fifth Supplement, the BSMT prepared (1) a Brent Spence Bridge Project Summary Report dated November 4, 2021 (the “**Project Summary Report**”), (2) a Brent Spence Bridge Project Governance Structural Evaluation and Recommendation Report



dated November 24, 2021 (the “**Governance Report**”), and (3) a draft project schedule to bring the Project to procurement and construction; and

**WHEREAS**, in furtherance of its duties and obligations with respect to evaluating procurement options for the Project, the BSMT released the Brent Spence Bridge Project Options Analysis dated October 2013; and

**WHEREAS**, the BSMT has evaluated financing options for the Project and issued the Brent Spence Bridge Project Initial Financial Plan dated December 2013 (the “**Initial Financial Plan**”); and

**WHEREAS**, the BSMT has commenced work on updating the Initial Financial Plan and the Parties anticipate that the updated Initial Financial Plan will be completed within twelve (12) months of the Effective Date; and

**WHEREAS**, since the development of the Initial Financial Plan and the passage of the IJJA, the Parties have agreed that a fundamental characteristic of the Project is that it shall be funded without the use of private financing and without toll revenue generation; and

**WHEREAS**, in anticipation of undertaking the Project and in accordance with the Sixth Supplement, the Parties have agreed to an interim funding plan, which provides that all preliminary engineering, environmental re-evaluation, financial analysis, procurement support, and other tasks prior to, and in furtherance of, construction of the Project will be shared equally between the Parties in an aggregate amount not to exceed Twenty Million dollars (\$20,000,000); and

**WHEREAS**, the interim funding plan provides that each Party will be responsible for property acquisition and related property acquisition costs incurred in connection with the portion of the Project to be located within their respective States, that, in accordance with applicable State and federal law, each State will be responsible for the relocation of utilities within their respective States at no cost to the other Party, that each State will be responsible for all design, construction, construction engineering, construction inspection, and program management costs for the costs of the portion of the Project to be located within their respective States except for any of the foregoing costs that are attributable to the Existing Brent Spence Bridge Rehabilitation and Companion Bridge Phase, which costs shall be shared equally between the States; and

**WHEREAS**, the Parties have further agreed that upon Final Completion of the Project, Kentucky will be responsible for performing the Bridge Operations and Maintenance of the Companion Bridge and the Existing Brent Spence Bridge, with the Bridge Operations and Maintenance costs attributable to the Companion Bridge and the Existing Brent Spence Bridge being allocated between the Parties in accordance with Sections 10.3 and 10.4 hereof; and

**WHEREAS**, this Agreement, as well as the obligations created hereunder or described herein, shall not constitute a debt, liability or obligation of Ohio or Kentucky, or a pledge or lending of the faith and credit of either State; and

**WHEREAS**, in furtherance of the recommendations set forth in the Governance Report, the Parties have agreed to enter into this Agreement to provide for jointly undertaking the Project with ODOT serving as the Lead Agency (defined herein) and KYTC serving as the Cooperating Agency (defined herein); and

**WHEREAS**, to advance the construction of the Project as described in this Agreement, the BSMT will produce a Major Project Management Plan (the “PMP”), which, after approval as provided herein, shall be submitted to the FHWA by no later than twelve (12) months from the Effective Date; and

**WHEREAS**, the Parties desire to further document and define their respective roles and responsibilities with respect to the procurement, funding, design, construction, operations and maintenance of the Project; and

**WHEREAS**, the Parties have conducted the appropriate meetings as required by law and have otherwise met all conditions precedent to entering into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS OF TERMS AND LIST OF ACRONYMS USED.**

“**Addendum**” means an addendum to this Agreement entered into by the Parties.

“**ADR Procedures**” shall have the meaning as described in Section 14.6.

“**Brent Spence Bridge Corridor Phase I**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge Corridor Phase II**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge Corridor Phase III**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge Corridor Phases**” shall have the meaning given to such term in the recitals hereto.

“**Brent Spence Bridge System**” means, together, the Existing Brent Spence Bridge and its approaches, in each case, as improved by the Brent Spence Bridge Corridor Phases constructed in accordance with this Agreement, and the Companion Bridge.

“**Bridge Inspection**” means all in-service and safety inspections of the Existing Brent Spence Bridge and/or the Companion Bridge, as applicable, required under applicable state or federal statutes, laws, rules, or regulations.

**“Bridge Operations and Maintenance (Bridge O&M)”** means the ongoing obligations of KYTC to maintain the Existing Brent Spence Bridge and the Companion Bridge, which include Bridge Inspection, Routine Maintenance, and Major Maintenance and Rehabilitation with respect to the Existing Brent Spence Bridge and the Companion Bridge.

**“BSMT”** shall have the meaning given to such term in the recitals hereto.

**“Companion Bridge Phase”** shall have the meaning given to such term in the recitals hereto.

**“Construction Agreements”** means, collectively, the Design-Bid-Build Agreement(s) and the Design-Build Agreement(s).

**“Construction Engineering and Inspection Consultant”** means the consultant selected by ODOT, in consultation with KYTC, pursuant to Section 9.3.8 hereof to perform the professional services contemplated under the Construction Engineering and Inspection Consultant Agreement.

**“Construction Engineering and Inspection Consultant Agreement”** means the professional services agreement entered into by and among ODOT, KYTC, and the Construction Engineering and Inspection Consultant providing for inspection services.

**“Construction Teams”** means, collectively, the Design-Build Team(s) and the designers and construction contractor(s) contracted under the Design-Bid-Build Agreement(s).

**“Cooperating Agency”** shall have the meaning as described in Section 3.1.

**“Cost of Funds Rate”** means the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under Section 1274 of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C.A. 1274, for July of the then-current calendar year.

**“DBE”** means the Disadvantaged Business Enterprises program of the U.S. Department of Transportation.

**“Delay Claim”** means any claim filed by the applicable Construction Team under the applicable Construction Agreement that pertains to a delay or acceleration in the performance of the work under the applicable Construction Agreement due to an act or failure to act by ODOT in its capacity as “owner” under the applicable Construction Agreement, including but not limited to, any act or failure to act by ODOT that is attributable to KYTC or ODOT and their respective obligations hereunder.

**“Delayed Payments”** shall have the meaning as described in Section 10.3.

**“Design-Bid-Build Agreement”** means the agreement or agreements pertaining to the Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II, or the applicable portion thereof, to be entered into between ODOT and the designers and the construction

contractor(s) for development and construction of the Brent Spence Bridge Corridor Phase I or the Brent Spence Bridge Corridor Phase II, applicable.

**“Design-Build Agreement”** means the agreement or agreements pertaining to the Project, or the applicable portion thereof, to be entered into between ODOT and the Design-Build Team for development and construction of the Project.

**“Design-Build Team”** means the applicable design-builder(s) for development and construction of the Project, or the applicable portion thereof, selected by ODOT as described in Subsection 9.3.2 herein.

**“Effective Date”** shall have the meaning given to such term in the recitals hereto.

**“Environmental Litigation”** means any lawsuit that is filed in a court of competent jurisdiction and seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency’s approval of the Project based on the agency’s alleged non-compliance with applicable laws, including but not limited to: the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; Section 4(f) of the Department of Transportation Act, 23 U.S.C. § 138; and 49 U.S.C. § 303; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; and other federal, state, or local laws.

**“Environmental Requirements”** means the requirements to be memorialized in the NEPA Documents and incorporated by reference in Section 8.1.

**“Existing Brent Spence Bridge”** means the bridge improvements (OH SFN: 3107787; KY SFN: 059B00046N) that presently carry the I-71/I-75 corridor traffic.

**“Existing Brent Spence Bridge Rehabilitation”** means that portion of the Brent Spence Bridge Corridor Phase III consisting of the improvement and rehabilitation of the Existing Brent Spence Bridge.

**“Federal Aid Funding”** shall have the meaning as described in Subsection 7.1.5.

**“Federal Funds”** shall have the meaning as described in Subsection 7.1.5.

**“Federal Grant Funding”** shall have the meaning as described in Subsection 3.7.3.

**“Federal Loan Programs”** shall have the meaning as described in Subsection 3.7.4.

**“Final Completion”** means, generally, with respect to any Phase that all work to construct the applicable Phase has been completed in accordance with Article 9 herein and has been determined in accordance with the procedures set forth under the applicable Construction Agreement.

**“FONSI”** shall have the meaning given to such term in the recitals hereto.

**“Force Majeure Event”** means the occurrence of any of the following events that materially and adversely affects performance of a Party’s obligations, provided that such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of reasonable caution, due diligence, or reasonable efforts, by such Party or its representatives: (a) war (including civil war and revolution), invasion, armed conflict, violent act(s) of enemy(ies), military or armed blockade, or military or armed takeover; (b) plague, epidemic, pandemic (including material worsening of the COVID-19 global health pandemic), outbreaks of infectious disease and any corresponding governmental health orders or mandates affecting the Project, including mandatory shutdowns, isolations or quarantine; (c) any act of terrorism, riot, insurrection, civil commotion including but not limited to acts of civil disobedience, criminal activity, or sabotage that causes direct physical damage to the Project or which cause the Project to be substantially impaired; (d) nuclear explosion or radiation weapon that causes direct physical damage to the Project or radioactive contamination of the Project; (e) flood, fire, explosion, gradual inundation caused by natural events, a tornado with an enhanced Fujita Score Rating of EF2, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting the physical improvements of, or the performance of work at, the Project; (f) a seismic event causing trembling or shaking movement of the earth’s surface that produces ground motions exceeding the design requirements and which directly impacts or causes damage to the physical improvements of the Project; (g) kinetic cyber-attack that causes direct physical damage to the Project, or which cause the project to be substantially impaired; and (h) use of chemical or/and biological weapon(s) that causes direct physical damage to the Project, or which cause the project to be substantially impaired.

**“Governance Report”** shall have the meaning given to such term in the recitals hereto.

**“HNTB”** means HNTB Ohio, Inc., an Ohio corporation.

**“ICE Agreements”** means the two Independent Cost Estimate Agreements each to be entered into by and among ODOT, KYTC and the applicable Independent Construction Cost Estimator providing for the delivery of the construction estimation services and related services.

**“IIJA”** means the Infrastructure Investment and Jobs Act signed into law by President Joseph R. Biden on November 15, 2021; Public Law 117-58.

**“Indemnitors”** means the Parties’ respective consultants, designers, contractors, and other professionals (including the Design-Build Team and the designer(s) and construction contractor(s) under the Design-Bid-Build Agreement(s)) involved in the design, and construction on the Project.

**“Independent Construction Cost Estimators”** means the two professional service firms selected to perform the construction estimation services under the corresponding ICE Agreement.

**“Initial Financial Plan”** has the meaning as set forth in Subsection 3.7.5 and as further described in Article 6.

**“Initiating Party”** shall have the meaning as described in Section 14.6.

**“Kentucky Brent Spence Bridge Corridor”** means the approaches to the Existing Brent Spence Bridge and the Companion Bridge that are located in Kentucky.

**“Kentucky Pre-Development Project Costs”** means the preliminary costs of undertaking the Project that are attributable to Kentucky, including all acquisition costs attributable to the Kentucky Property, all utility costs attributable to the Kentucky Property, 50% of the pre-engineering and design costs of the Project, 50% of the financial analysis costs of the Project, 50% of the procurement support costs of the Project, and 50% of the environmental re-evaluation costs of the Project.

**“Kentucky Project Costs”** means (i) 50% of the costs of the Companion Bridge Phase, (ii) 50% of the costs of the Existing Brent Spence Bridge Rehabilitation, (iii) 100% of the costs of the Kentucky Brent Spence Bridge Corridor, and (iv) 50% of the Project Wide Costs.

**“Kentucky Property”** means all real property and personal property interests, if any, including but not limited to such easements, licenses, leases or property rights, in whatever form reasonably necessary to construct and operate the portions of the Project located in Kentucky.

**“Kentucky Property Acquisition Scope”** shall have the meaning as described in Subsection 4.1.2.

**“Kentucky Right of Entry”** means those certain rights of entry to the Kentucky Property to be granted by KYTC in favor of ODOT for the purposes of undertaking and completing the Project, as further described in Subsection 4.2.3.

**“Kentucky Standards”** means the construction and engineering standards applicable to those portions of the Project located in Kentucky.

**“KYTC Delayed Payment”** shall have the meaning as described in Subsection 7.2.3.

**“KYTC Utility Relocation Scope”** shall have the meaning as described in Subsection 4.3.1.

**“Lead Agency”** shall have the meaning as described in Section 3.1.

**“Major Maintenance and Rehabilitation”** means, with respect to the Brent Spence Bridge System, the painting of the Existing Brent Spence Bridge or the Companion Bridge, and the repair of deteriorated or damaged elements of the Existing Brent Spence Bridge or the Companion Bridge, including the repair of pile, foundations, substructures, abutments, piers, superstructures, and/or approach slabs, in each case, to restore the structural integrity of the applicable bridge.

**“Major Projects Financial Plan”** means the financial plan required under 23 U.S.C. §106(h) to be developed by the BSMT and approved by FHWA.

**“Major Revision”** means any revision to any or all of (i) the Project Schedule, (ii) Project Budget, or (iii) the Environmental Requirements that meets or exceeds the corresponding threshold to be established under the Project Management Plans.

“**Mediation**” shall have the meaning as described in Section 14.6.1.

“**NEPA**” means National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

“**NEPA Documents**” means the FONSI or, if required at a later date, any Environmental Impact Statement or Supplemental Environmental Impact Statement, and any revisions to the foregoing.

“**Non-Appropriation Event**” shall have the meaning as described in Subsection 14.11.3.

“**ODOT Delayed Payment**” shall have the meaning as described in Subsection 10.3.

“**ODOT Utility Relocation Scope**” shall have the meaning as described in Subsection 4.3.2.

“**Ohio Brent Spence Bridge Corridor**” means the approaches to the Existing Brent Spence Bridge and the Companion Bridge that are located in Ohio.

“**Ohio Pre-Development Project Costs**” means the preliminary costs of undertaking the Project that are attributable to Ohio, including all acquisition costs attributable to the Ohio Property, all utility costs attributable to the Ohio Property, 50% of the pre-engineering and design costs, 50% of the financial analysis costs, 50% of the procurement support costs and 50% of the environmental re-evaluation costs.

“**Ohio Project Costs**” means (i) 50% of the costs of the Companion Bridge Phase, (ii) 50% of the costs of the Existing Brent Spence Bridge Rehabilitation, (iii) 100% of the costs of the Ohio Brent Spence Bridge Corridor, and (iv) 50% of the Project Wide Costs.

“**Ohio Property**” means all real property interests, including but not limited to such easements, licenses, leases or property rights, in whatever form, necessary to construct the portions of the Project located in Ohio.

“**Ohio Property Acquisition Scope**” shall have the meaning as described in Subsection 4.1.1.

“**Ohio Standards**” means the construction and engineering standards applicable to those portions of the Project located in Ohio.

“**Period Costs**” shall have the meaning as described in Subsection 7.2.3.

“**PMP**” or “**Project Management Plan**” means the Major Project Management Plan required under 23 U.S.C. 106(h) to be developed by the BSMT as provided herein and adopted by the Parties and submitted to FHWA.

“**Prior Agreement**” shall have the meaning given to such term in the recitals hereto.

“**Processing Date**” shall have the meaning as described in Subsection 7.2.3.

**“Project”** shall mean collectively, Brent Spence Bridge Corridor Phases, and the Companion Bridge Phase.

**“Project Budget”** shall mean the budget for the Project as initially set forth in the Initial Financial Plan and then updated in the Major Projects Financial Plan.

**“Project Committees”** means the Procurement Administration Committee, the Executive Oversight Committee, and the Design Build Project Administration Committee.

**“Project Costs”** means the aggregate amount of actual costs attributable to the Project, which amount as of November 2021 is estimated to be \$2,793,000,000.00 as the same shall be revised and updated in the Initial Financial Plan and again in the Major Projects Financial Plan and thereafter adjusted from time to time through Final Completion in accordance with Section 9.10 hereof.

**“Project Development Schedule”** shall have the meaning set forth in Article 5 and is attached hereto as **Appendix B**.

**“Project Evaluation Period”** shall have the meaning as described in Subsection 14.11.3.

**“Project Management Services Agreement”** means the professional services agreement authorized under the Sixth Supplement made by and among ODOT, KYTC and HNTB and providing for the delivery of certain project management and administrative services by HNTB in furtherance of the Project.

**“Project Purposes”** shall have the meaning given to such term in the recitals hereto.

**“Project-Specific Wage Rates”** shall have the meaning as described in Section 9.17.

**“Project Summary Report”** shall have the meaning given to such term in the recitals hereto.

**“Project Wide Costs”** means actual costs that are necessary for and that benefit the Project as a whole and that are not specifically attributable to either Party.

**“Project Year”** means each twelve (12) month period commencing with the Effective Date through the date that is three hundred and sixty-five (365) days thereafter and then each anniversary of the Effective Date.

**“Quality Assurance Manager/Owner’s Representative”** means the professional service firm selected to assist ODOT and KYTC pursuant to the Quality Assurance Manager/Owner’s Representative Agreement.

**“Quality Assurance Manager/Owner’s Representative Agreement”** means the Agreement to be entered into by and among ODOT, KYTC, and the Quality Assurance Manager/Owner’s Representative providing for review of the Design-Build Team’s design submissions, review of



buildable units, review of value engineering proposals, quality assurance management for design components of the Design-Build Agreement, and other related services.

“**Responding Party**” shall have the meaning as described in Section 14.6.

“**Routine Maintenance**” means, with respect to the Brent Spence Bridge System, clearing debris, sweeping, snow and ice removal, minor wearing surface patching, cleaning bridge drainage systems, marking for traffic control, guardrail repair, maintenance of lighting systems, and minor and emergency repairs to deck, railing and appurtenances.

“**State Funds**” shall have the meaning as described in Subsection 7.1.5.

“**State Standards**” shall mean, together, the Kentucky Standards and the Ohio Standards.

“**Substantial Completion**” of the Project generally means the stage in the progress of the Project or a designated Phase, portion or element thereof is sufficiently complete in accordance with the applicable provisions under the Construction Agreements so the Parties can utilize the Project or designated Phase, portion or element thereof for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Parties have received all certificates of occupancy and other permits, approvals, licenses and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project, as further detailed in the Construction Agreements with respect to the applicable portion of the Project.

## **ARTICLE 2. PURPOSE.**

The purpose of this Agreement is to cooperatively undertake the Project to improve the operational characteristics within the I-71/I-75 corridor for interstate, local, and through traffic. The objectives of the Project include (i) improving traffic flow and level of service; (ii) improving safety; (iii) correcting geometric deficiencies; and (iv) maintaining connections to key regional and national transportation corridors.

## **ARTICLE 3. GOVERNANCE STRUCTURE; PROJECT MANAGEMENT PLAN; PRELIMINARY EVALUATION.**

**3.1 Designation of Lead Agency.** In accordance with the recommendations of the Governance Report, the Parties hereby designate ODOT as the lead agency (the “**Lead Agency**”) for purposes of undertaking the Project as contemplated herein. The Parties further designate KYTC as the cooperating agency (the “**Cooperating Agency**”) for purposes of undertaking the Project as contemplated herein. The Parties agree that the Lead Agency and the Cooperating Agency shall hold such duties, responsibilities and obligations as are set forth under Sections 3.2 and 3.3 below together with such additional duties, responsibilities and obligations as may be identified from time to time by the Parties.

**3.2 Lead Agency Duties and Responsibilities.** In its capacity as Lead Agency, ODOT shall hold the following duties and responsibilities:

- 3.2.1 To utilize its powers, including eminent domain and condemnation powers, to acquire, at its sole cost and expense, the Ohio Property;
- 3.2.2 To utilize its powers, including eminent domain and condemnation powers, to relocate, at no cost to Kentucky, any public utilities or any other occupancies located in Ohio that are necessary to complete those portions of the Project located in Ohio;
- 3.2.3 To make sufficient State Funds and Federal Funds available to pay the Ohio Project Costs;
- 3.2.4 To make sufficient funds available to pay the Ohio Pre-Development Project Costs, including Ohio's commitment of 50% of the up to Twenty Million Dollar (\$20,000,000) contribution under the Sixth Supplement;
- 3.2.5 To pay 50% of the Project Wide Costs;
- 3.2.6 Upon Substantial Completion of the Ohio Brent Spence Bridge Corridor, to pay 100% of the costs of maintaining the Ohio Brent Spence Bridge Corridor;
- 3.2.7 Upon Substantial Completion of the Companion Bridge to pay the portion of the costs of the Bridge O&M allocated to Ohio under Section 10.3 below;
- 3.2.8 Upon Substantial Completion of the Existing Brent Spence Bridge Rehabilitation, to pay the portion of the costs of the Bridge O&M allocated to Ohio under Section 10.4 below;
- 3.2.9 To procure and provide all work, improvements, services, labor and materials necessary to develop, design, construct and complete the Project;
- 3.2.10 As Lead Agency, to apply for and procure the funding for the Project through Federal and State sources and to receive or direct all State Funds and Federal Funds made available to the Parties in furtherance of the funding for the Project, as set forth in Article 7 herein, except as otherwise set forth in Sections 3.2.11 and 3.3.5;
- 3.2.11 As Lead Agency, to join Kentucky as a co-sponsor in applying for Federal Funds for the Project as set forth in Article 7 herein;
- 3.2.12 Finalize and submit the updated Initial Financial Plan to FHWA and annual updates thereafter; and
- 3.2.13 Finalize and submit the updated PMP to FHWA and annual updates thereafter.

**3.3 Cooperating Agency Duties and Responsibilities.** In its capacity as Cooperating Agency, KYTC shall be responsible for the following duties and responsibilities:

- 3.3.1 To utilize its power, including eminent domain and condemnation powers, to acquire, at its sole cost and expense, the Kentucky Property;
- 3.3.2 To utilize its powers, including eminent domain and condemnation powers, at its sole cost and expense, to relocate any public utilities or any other occupancies located in Kentucky that are necessary to complete those portions of the Project located in Kentucky;
- 3.3.3 To grant the Kentucky Right of Entry to ODOT and its contractors, subcontractors and authorized agents;
- 3.3.4 To make sufficient funds available to pay the Kentucky Pre-Development Project Costs, including Kentucky's commitment of 50% of the up to Twenty Million Dollar (\$20,000,000) contribution under the Sixth Supplement;
- 3.3.5 To join Ohio as a co-sponsor and supporting agency in jointly applying for Federal Grant Funding as set forth in Article 7 herein;
- 3.3.6 To make sufficient State Funds and Federal Funds available to pay or reimburse the Kentucky Project Costs as set forth in Article 7 herein;
- 3.3.7 To pay 50% of the Project Wide Costs;
- 3.3.8 Assist in the development of the updated Major Projects Financial Plan, the PMP and the Project Development Schedule;
- 3.3.9 Upon Substantial Completion of the Kentucky Brent Spence Bridge Corridor, to pay 100% of the costs of maintaining the Kentucky Brent Spence Bridge Corridor;
- 3.3.10 Upon Substantial Completion of the Companion Bridge to perform the Bridge O&M with respect to the Companion Bridge and to pay the costs of the Bridge O&M allocated to Kentucky under Section 10.3 below;
- 3.3.11 Upon Substantial Completion of the Existing Brent Spence Bridge Rehabilitation to perform the Bridge O&M with respect to the Existing Brent Spence Bridge and to pay the costs of the Bridge O&M allocated to Kentucky under Section 10.4 below; and
- 3.3.12 Upon Substantial Completion of Brent Spence Bridge Corridor Phase I, to maintain the applicable portions of the Project in accordance with this Agreement.

- 3.4 **Executive Oversight Committee.** An Executive Oversight Committee comprised of two (2) members from each of ODOT, KYTC and the FHWA, shall be created to facilitate and assist the Lead Agency in the development and delivery of the Project by providing a bi-state forum for oversight, monitoring and communications regarding the Project. Membership composition and specific duties and responsibilities of the Executive Oversight Committee will be set forth in the Project Management Plan.
- 3.5 **Design Build Project Administration Committee.** A Design Build Project Administration Committee comprised of two (2) members from each of ODOT, KYTC and the FHWA, shall be created to perform construction management duties and responsibilities. Membership composition and specific duties and responsibilities will be set forth in the Project Management Plan.
- 3.6 **Procurement Administration Committee.** A Procurement Administration Committee comprised of two (2) members—one (1) member from ODOT and one (1) member from KYTC—shall be created to perform duties and responsibilities related to procurement performed in conjunction with preliminary Project activities being undertaken by the BSMT.
- 3.7 **Bi-State Management Team.** In furtherance of the development of the Project, the BSMT will perform the below-described duties and responsibilities as previously delegated to the BSMT in under the Prior Agreement.
- 3.7.1 **Traffic Analysis and Modeling.** The BSMT shall update existing traffic analysis and modeling with respect to the Project.
- 3.7.2 **Design Concept Development and Refinement.** The BSMT will refine and finalize the Project concept design options for review and approval by the Executive Oversight Committee.
- 3.7.3 **Federal Grant Funding.** The BSMT will assist KYTC’s and ODOT’s development of joint applications for federal funding of the Project, including but not limited, to the *Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program (Bridge Formula Program)*; the *Federal Highway Administration Competitive Grants for Nationally Significant Bridges (Bridge Investment Program)*; the *National Infrastructure Project Assistance (NIPA) Grant (Mega Projects Grant)*; the *Infrastructure for Rebuilding America (INFRA) (Nationally Significant Multimodal Freight and Highway Projects Program)*; the *Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Grant*, and any other federal grant funding for which the Project is or becomes eligible; (collectively, the “**Federal Grant Funding**”), such funding and grant applications to be submitted by ODOT and KYTC, jointly.
- 3.7.4 **Federal Loan Programs.** The BSMT will assist in ODOT’s and KYTC’s development of joint applications for financing through The

Transportation Infrastructure Finance and Innovation Act (TIFIA) financing program and similar federal loan programs (“**Federal Loan Programs**”) to finance a portion of the Project Costs, such financing applications to be submitted by ODOT and KYTC, jointly.

- 3.7.5 **Initial Financial Plan**. The BSMT shall assist in the development of the Initial Financial Plan (“**Initial Financial Plan**”), to be submitted to FHWA by ODOT, which will include the following elements: 1) project description, 2) Project Development Schedule, 3) project cost, 4) project funds, 5) project financing issues, 6) project cash flow projections, 7) risk and response strategies, and 8) annual update cycle, with annual updates pursuant to 23 U.S.C. §106 (h)(1) and (3) that will include: 1) summary of cost changes since last submitted financial plan; 2) cost and funding trends since initial financial plan; 3) summary of schedule changes since last financial plan; and schedule trends since initial financial plan.
- 3.7.6 **Major Project Management Plan (PMP)**. The BSMT shall assist in the development of the PMP to be submitted by ODOT to FHWA, which plan will include the following elements: 1) Project Purposes, goals, objectives and metrics; 2) Project description; 3) Project procurement; 4) Project organizational management; 5) Project management controls regarding contract administration, scope, cost, schedule, risk and quality; 6) Project communications management; 7) Project documentation and reporting; 8) project closeout; 9) Project oversight; and 10) other pertinent information as deemed appropriate that will enhance the project management and ensure that goals and objectives are met.
- 3.7.7 **Project Development Schedule**. Assist in the development of the Project Development Schedule as set forth in Article 5 herein.
- 3.7.8 **Project Procurement and Delivery Structure**. The BSMT will assist in the development of a Project procurement and delivery structure to ensure the cost effective and efficient delivery of the Project.
- 3.7.9 **NEPA Reevaluation and Update**. In anticipation of the implementation and undertaking of the Project, BSMT will complete a NEPA reevaluation commencing in 2022 and ending in 2023. If it is determined that any significant changes to the project impacts are identified that were not previously evaluated in the NEPA Documents, then the BSMT will complete a Supplemental Environmental Impact Statement. BSMT will fulfill any additional requirements relating to the NEPA Reevaluation, in accordance with applicable federal law.
- 3.7.10 **Communications**. The BSMT will manage routine public relations connected with the Project and shall maintain the Project website.

**ARTICLE 4. ACQUISITION OF PROPERTY, UTILITY RELOCATION AND PROJECT TERMINATION; PROPERTY TRANSFERS.**

**4.1 Property Interests Acquisition.**

4.1.1 **Ohio Property Acquisition.** ODOT has undertaken the acquisition of the Ohio Property pursuant to the Prior Agreement (the “**Ohio Property Acquisition Scope**”). In cooperation with the applicable Project Committees and, after adoption, the Project Management Plan, ODOT shall utilize its powers, including eminent domain and condemnation powers, to timely complete the Ohio Property Acquisition Scope in accordance with the dates set forth in the Project Development Schedule. ODOT shall be responsible for all costs to complete the Ohio Property Acquisition Scope, and in the event such property acquisition scope is not completed in accordance with the Project Development Schedule and results in Delay Claims filed by the Construction Teams, ODOT shall be solely responsible for paying 100% of the cost of such Delay Claims and any expenses related thereto as Ohio Project Costs from Ohio State Funds and/or Federal Funds allocated to Ohio, irrespective of the location of the Project or portion thereof to which the Delay Claims pertain.

4.1.2 **Kentucky Property Acquisition.** In cooperation with the applicable Project Committees and, after adoption, the Project Management Plan, KYTC shall timely acquire or shall utilize its powers, including eminent domain and condemnation powers, to timely acquire the Kentucky Property in accordance with the dates set forth in the Project Development Schedule (“**Kentucky Property Acquisition Scope**”). KYTC shall be responsible for all costs to complete the Kentucky Property Acquisition Scope, and in the event such property acquisition scope is not completed in accordance with the Project Development Schedule and results in Delay Claims filed by the Construction Teams, KYTC shall be solely responsible for paying 100% of the cost of such Delay Claims and any expenses related thereto as Kentucky Project Costs from Kentucky State Funds and/or Federal Funds allocated to Kentucky, irrespective of the location of the Project or portion thereof to which the Delay Claims pertain.

**4.2 Property Ownership.**

4.2.1 **Ohio Property.** ODOT shall own the Ohio Property and make such Ohio Property available for the development, construction, and operation of the Project.

4.2.2 **Kentucky Property.** KYTC shall own the Kentucky Property and, pursuant to the Kentucky Right of Entry, make such Kentucky Property available to ODOT, the applicable Construction Team, and their

respective contractors, subcontractors, consultants and agents for the development, construction, and operation of the Project.

- 4.2.3 **Kentucky Property Right of Entry**. KYTC grants the Kentucky Right of Entry to ODOT, and its authorized contractors, sub-contractors, agents, and employees the right to use the Kentucky Property for the purpose of (i) conducting any investigation or inspection of the Kentucky Property to the extent desired and deemed consistent with prudent commercial practice and necessary to evaluate the use of the Kentucky Property for the Project including, without limitation, such soils, engineering and environmental studies as may be necessary to assess the condition and suitability of the Kentucky Property for its intended uses in connection with the Project; and (ii) engaging in any and all activities intended to facilitate the completion of the Project (collectively, the “**Kentucky Right of Entry**”). The Kentucky Right of Entry shall include (y) the right of ingress, egress, transportation and use of vehicles, equipment, material, and personnel over, across, and under the Kentucky Property; and (z) the right to remove, restore, rebuild or construct any improvements necessary to complete the Project. ODOT shall take all reasonable precautions to minimize damage to the Kentucky Property while exercising the Kentucky Right of Entry. The instrument governing the Kentucky Right of Entry shall provide that in the event that ODOT or its authorized contractors, sub-contractors, employees, or agents shall cause material damage to the Kentucky Property, then ODOT shall at its own cost and expense (which may be passed on to any contractor or subcontractor), restore the Kentucky Property as reasonably practical to the condition of the Kentucky Property immediately prior to such damage.

### 4.3 **Utility Relocation**.

- 4.3.1 **Utility Relocation – Kentucky Property**. KYTC shall use best efforts and where applicable, its full authority, including, but not limited to, any rights of condemnation and/or eminent domain, to obtain an agreement to relocate any public utilities or any other occupancies located within the Kentucky Property that are necessary to complete the Project (the “**KYTC Utility Relocation Scope**”). The KYTC Utility Relocation Scope shall be conducted at no cost or expense to ODOT.
- 4.3.2 **Utility Relocation – Ohio Property**. ODOT shall use best efforts and where applicable, its full authority, including but not limited to any rights of condemnation and/or eminent domain, to obtain an agreement to relocate any public utilities or any other occupancies located within the Ohio Property that are necessary to complete the Project (the “**ODOT Utility Relocation Scope**”). The ODOT Utility Relocation Scope shall be conducted at no cost or expense to KYTC.

- 4.4 **Taxes and Permit Fees.** KYTC shall retain title to the Kentucky Property, subject to the Kentucky Right of Entry, and, pursuant to Section 170 of the Kentucky Constitution and related statutory provisions, the Kentucky Property shall be exempt from any and all Kentucky state and local *ad valorem* real property taxes and personal property taxes on tangible and intangible goods; provided however, to the extent the Kentucky Property or any portion thereof is determined not to be exempt from such taxes, then KYTC shall be solely responsible for any and all costs and expenses attributable to such taxes, including but not limited to interest, penalties and collection costs. In the event ODOT, its contractors, sub-contractors, agents and consultants are not exempt from the payment of Kentucky sales tax or use tax attributable to direct purchases of personal property (including construction materials to be incorporated into the Project), then 100% of the cost of such sales or use taxes shall be included as Kentucky Project Costs. Any state or local permit fees and related expenses shall be borne as Project Costs attributable to the Party whose jurisdiction imposes such permit fees and related expenses. It is anticipated that ODOT shall be exempt from all state or local income taxes levied by Kentucky or any local jurisdiction, provided that to the extent that any such income tax is levied against ODOT, then the cost of such income tax, including but not limited to interest, penalties and collection costs, shall be borne by KYTC as a Kentucky Project Cost.

#### **ARTICLE 5. PROJECT DEVELOPMENT SCHEDULE.**

- 5.1 **Project Development Schedule.** ODOT has prepared a Project Development Schedule, which is attached hereto as **Appendix B** (the “**Project Development Schedule**”). The Parties shall work in good faith and cooperatively with each other to achieve the timely completion of each element of the Project as set forth in the Project Development Schedule. Subject to the Major Revision provisions set forth under Section 9.6.2 hereof, with prior notice to KYTC, ODOT may elect to update the Project Development Schedule from time to time.

#### **ARTICLE 6. PROJECT BUDGET.**

- 6.1 **Preliminary Cost Estimate.** Upon completion of the traffic analysis and modeling and final design summary report, the BSMT shall prepare a preliminary cost estimate for the Project. The preliminary cost estimate will be used to complete the “cost estimate review workshop” required in accordance with the FHWA Major Project Cost Estimate Guidance dated January 2007 and last modified on March 22, 2007.
- 6.2 **Initial Financial Plan.** The BSMT shall prepare an Initial Financial Plan for review and analysis by ODOT and KYTC. Upon completion of the Initial Financial Plan review and analysis, ODOT shall submit the final Initial Financial Plan to FHWA for review and approval.
- 6.3 **Duties and Obligations.** Upon review and approval of the Initial Financial Plan, ODOT and KYTC shall be responsible to perform the duties and obligations set forth herein within the parameters identified in the Initial Financial Plan.



**ARTICLE 7. OVERVIEW OF PROJECT FUNDING.**

**7.1 Project Funding, Generally.**

- 7.1.1 In conjunction with the October 2022 Cost, Schedule and Risk Assessment, the Parties developed a conceptual cost estimate of \$3.537 billion for the Project.
- 7.1.2 As of the execution of the Sixth Supplement, the Parties have authorized expenditures of \$41,807,219.75 by KYTC and \$42,786,699.75 by ODOT for the evaluation and development of the Project.
- 7.1.3 Pursuant to the Sixth Supplement, BSMT is proceeding to develop an updated Initial Financial Plan for submission to the FHWA after approval by the BSMT.
- 7.1.4 The updated Initial Financial Plan and a subsequent Major Projects Financial Plan will allocate the Project Costs between the Parties with the understanding that (i) the Project Costs attributable to the Companion Bridge Phase will be shared equally between the Parties, (ii) the Project Costs attributable to the Existing Brent Spence Bridge Rehabilitation will be shared equally between the Parties, and (iii) each Party being responsible for 100% of the costs of the approaches to the Companion Bridge and the Existing Brent Spence Bridge that are located within their respective state. These amounts take into account Project Costs that already have been contributed by Ohio and by Kentucky for the evaluation and development of the Project.
- 7.1.5 In addition to funding their respective Project Costs, the Parties will be responsible for 50% of the Project Wide Costs. The Parties will fund their respective portions of the Project Costs and Project Wide Costs by making funds available to the Lead Agency from (i) contributions from conventional State transportation program funds and all other non-federal sources available to either Party (“**State Funds**”) and (ii) contributions from federal transportation program funds apportioned pursuant to the federal funding formula (“**Federal Aid Funding**”) and funds available under Federal Loan Programs (collectively “**Federal Funds**”), and discretionary program funds available through Federal Grant Funding.
- 7.1.6 Federal Grant Funding allocated to Kentucky and Ohio used to fund the Project has been and will continue to be matched by a combination of State Funds and Federal Aid Funding.
- 7.1.7 Based upon the significance of the Project to national freight movements and the national economy, the Parties agree to continue to identify and, as appropriate, pursue Federal Funds and the Federal Grant Funding set forth in Subsection 3.7.3 herein, and any other federal funding program

available to fund a portion of the Project with Federal Funds and Federal Grant Funding. In the event ODOT and KYTC are successful in obtaining Federal Grant Funding, KYTC shall file a transfer request or similar request with the U.S. Department of Transportation, FHWA and/or other applicable federal department or agency, as applicable, to undertake all actions necessary to directly transfer and disburse to ODOT, as the Lead Agency, all such Federal Grant Funding allocated and/or awarded to Kentucky and, further with respect to any transfer request made in conjunction with the Federal Grant Funding made available under Title 23, as “receiving agency” pursuant to and in accordance with 23 U.S.C. §104 (f)(3) and FHWA Order 4551.1, made available pursuant to 49 U.S.C. §6701. All such Federal Grant Funding allocated and/or awarded to Ohio and/or Kentucky for the Project shall be directly transferred and disbursed by U.S. DOT, FHWA and any federal department or agency in furtherance of the funding, development, procurement, and delivery of the Project.

## **7.2 Funding of Project.**

- 7.2.1 In cooperation with the applicable Project Committees, the Parties shall be responsible for procuring their respective portion of the Project Costs as set forth under the updated Initial Financial Plan and finalized under the Major Projects Financial Plan.
- 7.2.2 Except for the Federal Grant Funding transferred pursuant to Section 7.1.7, ODOT will advance funds for the total Project Costs. KYTC shall promptly reimburse ODOT pursuant to Section 7.2.3.
- 7.2.3 On the first (1<sup>st</sup>) day and the fifteenth (15<sup>th</sup>) day of each month (each a “**Processing Date**”), KYTC and ODOT will approve payments to the Design-Build Team for their respective portions of the Project Costs (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. Any delays in approving Period Costs shall be governed by Section 14.6 hereof. After approval of the Period Costs on the corresponding Processing Date, ODOT will allocate (i) Federal Grant Funding, (ii) Federal Funds, (iii) Ohio State Funds, and (iv) Kentucky State Funds to pay for the applicable portions of the Period Costs; thereafter, after the Processing Date on the first (1<sup>st</sup>) of each month, ODOT will remit the approved Period Costs to the Design-Build Team. By no later than the fifteenth (15<sup>th</sup>) of each month, KYTC will reimburse ODOT for KYTC’s remaining portions of the Period Costs with its Federal Funds and the Kentucky State Funds attributable to the Processing Date occurring on the first (1<sup>st</sup>) of each month. In the event the actual portion of the Project Costs payable from KYTC’s Federal Funds and Kentucky State Funds exceeds the Period Costs payable from KYTC’s Federal Funds and Kentucky State Funds with respect to any Processing Date, then ODOT shall (i) provide KYTC notice of the same and (ii) advance the unpaid

balance of such actual Project Costs; thereafter, KYTC shall reimburse ODOT within fifteen (15) days of the date on which such payment is made. Further provided that in the event the actual Project Costs payable from KYTC's Federal Funds and Kentucky State Funds are less than Period Costs payable from KYTC's Federal Funds and Kentucky State Funds, then such excess payment shall offset KYTC's Federal Funds and Kentucky State Funds contribution on the next Processing Date (or, if ODOT is due any reimbursement, then such excess payment shall reimburse ODOT for any prior advance of KYTC's Federal Funds and Kentucky State Funds). In the event ODOT advances Ohio State Funds to pay Kentucky Project Costs attributable to the corresponding Processing Date, and thereafter KYTC fails to reimburse ODOT for such payment within thirty (30) days of the date on which such reimbursement payment is due to ODOT (a "KYTC Delayed Payment"), then interest shall accrue on the amount of such KYTC Delayed Payment at a per annum rate of interest equal to the Cost of Funds Rate (computed by applying the ratio of the Cost of Funds Rate over a year of 360 days, multiplied by the amount of the KYTC Delayed Payment, multiplied by the actual number of days the KYTC Delayed Payment is unpaid) until such time that KYTC makes the reimbursement payment to ODOT. Each year, ODOT and KYTC will reconcile the interest due on all KYTC Delayed Payments with the interest due on all ODOT Delayed Payments (defined herein) in accordance with Section 10.6 hereof.

- 7.2.4 To ensure that funds made available through Federal Grant Funding are administered in accordance with the applicable federal laws and regulations, including applicable requirements pertaining to the matching of State Funds, the Parties will cooperate to reconcile on an annual basis during each Project Year the allocation of State Funds and Federal Grant Funding and make corresponding adjustments based upon actual expenditures.
- 7.2.5 Prior to the award of any Construction Agreement, KYTC will irrevocably commit Federal Funds and State Funds available to it to fund the Kentucky Project Costs. With respect to its contribution of State Funds, KYTC will cause 100% of the amounts appropriated and made available to KYTC by the Kentucky General Assembly for fiscal years 2022-2024 to be available for prompt disbursement pursuant to Section 7.2.3; provided however, to the extent that the foregoing amounts appropriated and made available by the Kentucky General Assembly to KYTC are insufficient to fund the full Kentucky Project Costs, then KYTC covenants and agrees to make additional State Funds available to pay the Kentucky Project Costs from time to time during the Project.
- 7.2.6 Prior to the commencement of any work on the Project, ODOT will commit Federal Funds and State Funds available to it from the federal government and the Ohio General Assembly to fund the Ohio Project Costs as contemplated under the Major Projects Financial Plan.

- 7.2.7 Nothing set forth herein shall be construed as constituting a debt, liability or obligation of Ohio or Kentucky, or a pledge or lending of the full faith and credit of either State within the meaning of any constitutional provision or limitation.
- 7.2.8 Either or both of the Parties may elect to finance a portion of their respective Project Costs through one or more of the following funding sources (i) borrowing funds through Federal Loan Programs, (ii) issuing and selling governmental purpose tax-exempt or taxable bonds in the form of GARVEE bonds secured by the future receipt of Federal Grant Funding, or (iii) issuing and selling governmental tax-exempt or taxable revenue bonds, secured by State Funds or Federal Funds available to either Party. For avoidance of doubt, neither Party shall have any obligation to repay any portion of the debt service attributable to any obligation issued or borrowed by the other Party to finance such other Party's Project Costs.
- 7.2.9 To the extent that change orders or other cost overruns require the Parties to increase the amount of their respective Project Costs, the Parties hereby covenant and agree to undertake such actions as may be required to make additional State Funds and Federal Funds available to the Project with such action including but not being limited to issuing additional indebtedness, securing additional appropriations from the respective legislatures and/or applying for additional Federal Funds (as contemplated under Section 7.3.1 below). The Parties further covenant and agree that to the extent any previously awarded Federal Funds subsequently become unavailable to either Party to pay Project Costs, that the applicable Party will make available its proportionate share of such unavailable Federal Funds from whatever sources may be available to such Party, including but not limited to State Funds.
- 7.2.10 The Parties shall be responsible for procuring their respective portion of the Project Costs as set forth under the updated Initial Financial Plan and finalized under the Major Projects Financial Plan. The Parties acknowledge and agree that the terms and conditions contained in this Section 7.2 are intended to set forth certain parameters with respect to the funding of the Project and the payment of Project Costs and that certain supplemental procedures may be provided for in the PMP to address the specific terms and conditions relating to the expenditure of the various sources of Federal Funds and Federal Grant Funding.

### **7.3 Path to Implementation.**

- 7.3.1 **Funding Applications.** ODOT and KYTC, in conjunction with the BSMT, will jointly prepare funding applications for available Federal Grant Funding as set forth in Subsection 3.7.3 and under the Federal Loan Programs as set forth in Subsection 3.7.4 as soon as practicable after the execution and delivery of this Agreement.

7.3.2 **Contract Procurement.** ODOT will advance the procurement process for the Construction Agreements pertaining to the Project through the development and issuance of one or more request(s) for qualifications and/or one or more request(s) for proposals in cooperation with KYTC and the applicable Project Committees. Notwithstanding anything to the contrary contained herein, ODOT shall not be obligated to award any Design-Build Agreement for the Project until such time that 100% of the State Funds and Federal Funds required to pay the Project Costs attributable to the Project are (i) in the case of Ohio’s Federal Funds and State Funds, held by ODOT or irrevocably committed to be held by ODOT, (ii) in the case of Kentucky’s Federal Grant Funding, transferred to ODOT as the Lead Agency or irrevocably committed to be transferred to ODOT as the Lead Agency “receiving agency,” and (iii) in the case of the Kentucky State Funds and Federal Funds, made available to fund the Kentucky Project Costs pursuant to this Agreement.

## **ARTICLE 8. ENVIRONMENTAL/OTHER FEDERAL REQUIREMENTS.**

- 8.1 **NEPA Documents.** Upon approval, the Parties shall be collectively responsible for achieving and maintaining compliance with the requirements of the NEPA Documents in the development, design, funding, construction, operation and maintenance of the Project, including any revisions, modifications, or amendments made to the NEPA Documents in accordance with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303 and 23 U.S.C. § 138; the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; and any other applicable federal, state, and local laws (hereinafter “Environmental Requirements”).
- 8.2 **NEPA Process.** The Parties agree to continue to cooperate with the BSMT to complete a NEPA reevaluation in 2023. If it is determined that there are new and significant environmental impacts not previously evaluated in the NEPA Documents, or if FHWA directs the Parties, the BSMT will prepare the necessary NEPA Documents.
- 8.3 **Modification of the NEPA Documents.** Before seeking FHWA approval to modify an Environmental Requirement that pertains to the any portion of the Project located in Kentucky, ODOT must notify KYTC in writing and, if requested in writing, consult with KYTC regarding (1) the decision to seek approval for the modification, and (2) the process for obtaining approval of the modification. In the event KYTC does not make a written request for consultation, then ODOT shall proceed with seeking FWHA approval to modify the applicable Environmental Requirements. For avoidance of doubt, ODOT shall have no duty to notify KYTC or otherwise seek the input of KYTC with respect to the modification of any Environmental Requirement that pertains to the Ohio Property.
- 8.4 **Project – Environmental Compliance.** ODOT, KYTC and the applicable Project Committees shall be responsible for achieving and maintaining compliance with those Environmental Requirements that apply to their respective portions of the Project, and may

delegate the responsibility for complying with any portion of those requirements to the applicable Construction Team.

- 8.5 Mitigation.** ODOT shall be responsible for environmental mitigation costs attributable to the Ohio Property together with the costs for achieving and maintaining compliance with any Project-wide Environmental Requirements that are attributable to the Ohio Property. KYTC shall be responsible for environmental mitigation costs attributable to the Kentucky Property together with the costs for achieving and maintaining compliance with any Project-wide Environmental Requirements that are attributable to the Kentucky Property. Notwithstanding anything to the contrary contained herein, the Parties may agree to delegate responsibility for complying with any portion of the Environmental Requirements to the applicable Construction Team under the terms of the applicable Construction Agreement.
- 8.6 Environmental Litigation.** The Parties agree to cooperate in the defense of any Environmental Litigation, but each Party shall bear its own costs in such litigation.

## **ARTICLE 9. PROJECT COORDINATION, PROCUREMENT, DESIGN STANDARDS AND CONSTRUCTION.**

- 9.1 Lead Agency Roles and Responsibilities.** ODOT, as the Lead Agency, will be responsible for all work, improvements, services, labor and materials necessary to design and construct the Project. The procurement will be carried out through the Construction Agreements, including a Design-Build Agreement for Brent Spence Bridge Corridor Phase III and the Companion Bridge Phase, and one or more Design-Bid-Build Agreements for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II, under which ODOT will be the contracting agency and will be responsible for design approval and construction acceptance. KYTC will serve in a cooperating and consulting capacity to assist with the review of plans, proposals, reports, and related documents as necessary or helpful to facilitate the procurement.
- 9.2 Coordination of Activities.**
- 9.2.1 KYTC will work cooperatively with ODOT as the Lead Agency to coordinate planning, design, funding, construction, and operation and maintenance of their respective portions of the Project. To that end, the Parties shall at their own cost and expense provide qualified staff and consultants to carry out their responsibilities with respect to the design, construction, scheduling, and coordination of Project activities, including attendance at working group meetings.
- 9.2.2 In furtherance of their respective responsibilities hereunder, ODOT and KYTC will coordinate with HNTB in accordance with the Project Management Services Agreement. The costs attributable to the Project Management Services Agreement will be paid by the Parties as Project Wide Costs.

9.2.3 KYTC shall communicate its comments and recommendations regarding the Project through ODOT and not directly to the applicable Design-Build Team. KYTC shall have no right to direct the work of any Design-Build Team. Subject to the dispute resolution provisions in Section 14.6 herein, ODOT shall exercise reasonable discretion over whether to adopt the comments and recommendations of KYTC and, with good cause established in writing in advance, may reject the same. For purposes of the foregoing sentence, “good cause” shall mean for purposes necessary to advance the Project and comply with the Construction Agreements and the PMP. KYTC shall provide any input and comments on a timely basis within such times as reasonably set forth by ODOT in order to continue with the Project on schedule, which shall consider all of the relevant circumstances when establishing the allowable time periods.

**9.3 Procurement of Project Development and Construction.**

9.3.1 Following receipt of bids, using the powers and rights authorized by Ohio and this Agreement, ODOT anticipates entering into Construction Agreement(s) for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.

9.3.2 Following receipt and evaluation of proposals and the selection of one or more preferred proposers using the design-build powers authorized pursuant to the Ohio Revised Code by Ohio, ODOT anticipates entering into a single Design-Build Agreement for the Companion Bridge Phase and Brent Spence Bridge Corridor Phase III.

9.3.3 ODOT, in consultation with KYTC, will select two Independent Construction Cost Estimators pursuant to applicable provisions of the Ohio Revised Code pertaining to the procurement of professional service providers. Upon the selection of the Independent Construction Cost Estimators, ODOT and KYTC will enter into the ICE Agreements, which will require each Independent Construction Cost Estimator to (i) conduct an independent cost review of the plans and documents prepared by the Design-Build Project Administration Committee, (ii) determine the estimated costs of constructing the Project, and (iii) review all cost estimates prepared by the Design-Build Team, provided that one of the ICE Agreements shall be entered into to satisfy applicable requirements of the Ohio Revised Code as determined by ODOT. The costs of the Independent Construction Cost Estimators under the ICE Agreements will be shared by the Parties as Project Wide Costs.

9.3.4 ODOT, in consultation with KYTC, will select a Quality Assurance Manager/Owner’s Representative pursuant to applicable provisions of the Ohio Revised Code pertaining to the procurement of professional service providers. Upon the selection of the Quality Assurance Manager/Owner’s Representative, ODOT, KYTC and the Quality

Assurance Manager/Owner's Representative will enter into a Quality Assurance Manager/Owner's Representative Agreement pursuant to which the Quality Assurance Manager/Owner's Representative will assist ODOT and KYTC with review of the Design-Build Team's design submissions, review of buildable units, review of value engineering proposals, and provide quality assurance management for design components of the Design-Build Agreement. The costs of the Quality Assurance Manager/Owner's Representative under the Quality Assurance Manager/Owner's Representative Agreement will be shared by the Parties as Project Wide Costs.

- 9.3.5 ODOT shall consult with KYTC, and the Design-Build Project Administration Committee in the review of plans, proposals, reports and related documents to facilitate the procurement of the Design-Build Agreement.
- 9.3.6 ODOT shall be solely responsible for the procurement for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.
- 9.3.7 ODOT will use its best efforts to execute the Construction Agreements, as soon as practicable and generally in accordance with the Project Development Schedule.
- 9.3.8 ODOT, in consultation with KYTC, will select a Construction Engineering and Inspection Consultant pursuant to applicable provisions of the Ohio Revised Code pertaining to the procurement of professional service providers. The Construction Engineering and Inspection Consultant will perform such inspections as are determined to be necessary by ODOT from time to time during construction of the Project. The costs attributable to the Construction Engineering and Inspection Consultant Agreement will be allocated between the Parties based upon the State in which the underlying services are performed with the costs of any inspection services pertaining to the Companion Bridge structure or the Existing Brent Spence Bridge structure being shared equally between the Parties.

#### **9.4 Design Standards and Construction Specifications.**

- 9.4.1 The Project shall be designed and constructed to meet current applicable State Standards. In the process of structuring and executing the procurement, ODOT, with KYTC's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, shall have the discretion to implement design changes to the extent consistent within the previous FHWA approvals for the Project and the Project Management Plan. ODOT, in consultation with KYTC and in accordance with applicable standards developed under the Project Management Plan, shall be responsible for developing any construction



or engineering standards which are applicable to any portion of the Project but not otherwise addressed under the applicable State Standards.

**9.5 Design/Change Order Review.**

- 9.5.1 KYTC shall appoint two liaisons to the Design-Build Project Administration Committee, which liaisons shall participate in design and construction meetings involving the applicable Construction Team. All communication of the liaisons with respect to the design and/or construction of the Project shall be made in coordination with representatives of ODOT.
- 9.5.2 Prior to the commencement of work on the applicable portion of the Project (except for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II to which this subsection shall not apply), design documents shall be promptly submitted to KYTC. KYTC shall review such design documents and provide comments to ODOT within a reasonable timeframe that will not adversely impact or cause delay work under the Design-Build Agreement. The Parties will establish a specific time frame for each response when design submittals are presented to KYTC for review and comment in order to meet the Project Development Schedule. Disputes regarding KYTC's comments to the design documents or ODOT's response to KYTC's comments shall be resolved pursuant to the dispute resolution process set forth in Section 14.6.
- 9.5.3 After KYTC approval of the design documents and commencement of work on the applicable portion of the Project, design changes shall be governed by the review processes set forth in the Project Management Plan and generally described under Section 9.4 above.

**9.6 Changes in Scope of Work and Change Orders.**

- 9.6.1 ODOT, subject to the review and approval of KYTC, which approval shall not be unreasonably withheld, conditioned, or delayed, may make changes in the scope of the work for the Project as detailed in the Project Management Plan.
- 9.6.2 ODOT, subject to the review and approval of KYTC, which approval shall not be unreasonably withheld, conditioned, or delayed, may make owner-directed changes in the scope of the work for the Project provided that such changes do not constitute a "Major Revision." Any owner-directed change proposed by ODOT that constitutes a "Major Revision" shall be subject to the review and recommendation procedures established under the PMP and approval by the applicable Project

Committee, if any, and KYTC, with such approval to be provided within the timelines established under the PMP.

9.6.3 Disputes regarding the comments or ODOT's response to the comments shall be resolved pursuant to the dispute resolution provision in Section 14.6.

9.6.4 The term "**Major Revision**" shall have the meanings assigned to it under the Project Management Plan.

9.7 **Construction Observation.** KYTC shall have continuous and unlimited access to observe construction being performed on the Project; provided however, Kentucky shall be responsible for its proportionate share of the costs of observation.

9.8 **Inspections and Inspection Reports.** Each Party shall provide the other Party an opportunity to observe and review inspections and to review inspection reports relating to the design and construction for the Project. The Parties shall meet and confer to develop a mutually acceptable procedure for attendance at inspections and sharing of inspection reports. Disputes regarding inspections and inspection reports shall be resolved pursuant to the dispute resolution process set forth in Section 14.6.

9.9 **Substantial Completion.** Whenever ODOT believes that any Phase has reached Substantial Completion, ODOT shall provide KYTC no less than three (3) business days advance notice of, and an opportunity to attend, the inspection to confirm Substantial Completion of the applicable Phase and shall provide a written notice of Substantial Completion of such Phase together with a copy of any remaining contract items for the applicable Phase and punch-list items from the inspection, to KYTC. KYTC shall have fourteen (14) days following such inspection to provide comments pertaining to those portions of the Project located in Kentucky. It shall be within ODOT's reasonable discretion, consistent with customary practices on similar projects, to determine whether Substantial Completion for any Phase has been achieved. Disputes regarding whether Substantial Completion has been achieved for any Phase shall be resolved pursuant to the dispute resolution provisions in Section 14.6. Notwithstanding anything to the contrary contained herein, KYTC shall have the foregoing inspection rights and opportunities with respect to Substantial Completion over those portions of the Project located in Kentucky. For avoidance of doubt, ODOT shall be solely responsible for conducting all inspections to confirm Substantial Completion of Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.

9.10 **Final Completion.** Whenever ODOT believes that any Phase has achieved Final Completion, ODOT shall provide KYTC no less than three (3) business days advance notice of, and an opportunity to attend, the final inspection to confirm Final Completion of the applicable Phase and shall provide a written notice of Final Completion of the applicable Phase together with a copy of any punch-list items from the inspection to KYTC. KYTC shall have fourteen (14) days following such inspection to provide comments pertaining to those portions of the Project located in Kentucky. It shall be within ODOT's reasonable discretion, consistent with customary practices on similar projects, to determine

whether Final Completion for any Phase has been achieved. Disputes regarding such Final Completion shall be resolved pursuant to the dispute resolution provisions in Section 14.6. Notwithstanding anything to the contrary contained herein, KYTC shall have the foregoing inspection rights and opportunities with respect to Final Completion over those portions of the Project located in Kentucky. For avoidance of doubt, ODOT shall be solely and exclusively responsible for conducting all inspections to confirm Final Completion for Brent Spence Bridge Corridor Phase I and Brent Spence Bridge Corridor Phase II.

- 9.11 Workforce Goals.** Because the Project is a single project to be built with Federal Funds, and as such, is subject to federal law, it is anticipated that ODOT, in cooperation with KYTC, will agree with FHWA on DBE goals appropriate for its procurement of the Project as applicable. ODOT will include provisions in its procurement advertisements and contract documents and/or Design-Build Agreement(s), as applicable, requiring the Design-Build Team(s) to meet the DBE/good faith effort goals applicable to its procurements and agreements as well as aggressively create and monitor opportunities for “race neutral” and other broader community participation. In addition to the foregoing DBE requirements and goals, the Parties will comply with such other workforce and hiring goals as may be applicable to the Project based on the underlying funding sources.
- 9.12 Federal Highway Administration Requirements.** The Parties shall comply and/or conform with all applicable rules, regulations, and any other requirements of whatever kind of FHWA, and any other governmental agency having jurisdiction relating to the design, construction, operation and maintenance of the Project.
- 9.13 Permitting.** KYTC shall provide all reasonable assistance to ODOT, its contractors, sub-contractors, agents, and consultants in obtaining the necessary permits required to perform construction work in Kentucky.
- 9.14 Insurance.** Except as provided herein, ODOT shall require the Construction Teams to procure and maintain, or cause to be procured and maintained, the insurance policies and coverages identified in the construction and materials specifications prepared in conjunction with the procurement of the Project.
- 9.15 As-Built Drawings.** Upon Substantial Completion of the applicable Phase, the applicable Construction Team shall deliver as-built drawings to ODOT and KYTC, including all approved submittals and shop drawings.
- 9.16 Ownership/License of Design and Construction Documents.** ODOT and KYTC shall have joint and undivided ownership rights in the design and construction documents for the Project.
- 9.17 Prevailing Wage Law.** Notwithstanding anything contained herein to the contrary, ODOT shall require the Construction Teams to comply with the state and/or federal prevailing and/or statutory common wage law(s) applicable to the Project, when performing or when contracting for the performance of its obligations on the Project. Without limiting the foregoing, to the extent that FHWA and the U.S. Department of Labor approve project-specific wage rates for the Project based upon the higher rate for each labor classification

of the two geographic areas (the “**Project-Specific Wage Rates**”), ODOT shall comply and shall require the Construction Teams to comply with such Project-Specific Wage Rates when performing or when contracting for the performance of obligations on the Project.

## **ARTICLE 10. OPERATIONS AND MAINTENANCE.**

- 10.1 Traffic Plan During Construction.** From commencement of construction of the Project until Final Completion of the entire Project, ODOT and KYTC, shall be responsible for jointly developing a traffic management plan to safely and efficiently manage, direct, and/or divert through-traffic affected by construction of each Phase of the Project.
- 10.2 Brent Spence Bridge Corridor Phases O&M.** At such time as ODOT has certified to KYTC that Substantial Completion of the Brent Spence Bridge Corridor Phase III has occurred pursuant to the provisions hereof, Kentucky shall be responsible for maintaining the Kentucky Brent Spence Bridge Corridor and Ohio shall be responsible for maintaining the Ohio Brent Spence Bridge Corridor.
- 10.3 Companion Bridge Phase O&M.** At such time as ODOT has certified to KYTC that Substantial Completion of the Companion Bridge Phase has occurred pursuant to the provisions hereof, Kentucky shall be responsible for performing the Bridge O&M for the Companion Bridge. The costs of Bridge Inspection, Routine Maintenance with respect to the Companion Bridge, and Major Maintenance and Rehabilitation with respect to the Companion Bridge Phase will be shared equally between Ohio and Kentucky. In the event KYTC advances funds to pay Ohio’s share of the costs for Bridge Inspection, Maintenance, and Major Maintenance and Rehabilitation of the Companion Bridge, and thereafter Ohio fails to reimburse KYTC for such payment within thirty (30) days of the date on which such payment is due to KYTC (an “**ODOT Delayed Payment**” and, together with any KYTC Delayed Payment(s), “**Delayed Payments**”), then interest shall accrue on the amount of such ODOT Delayed Payment at a per annum rate of interest equal to the Cost of Funds Rate (computed by applying the ratio of the Cost of Funds Rate over a year of 360 days, multiplied by the amount of the ODOT Delayed Payment, multiplied by the actual number of days the ODOT Delayed Payment is unpaid) until such time that Ohio makes the reimbursement payment to KYTC. Each year, KYTC and ODOT will reconcile the interest due on all ODOT Delayed Payments under this Section with the interest due on all KYTC Delayed Payments in accordance with Section 10.6 hereof.
- 10.4 Existing Brent Spence Bridge O&M.** At such time as ODOT has certified to KYTC that Substantial Completion of the Existing Brent Spence Bridge Rehabilitation has occurred pursuant to the provisions hereof, Kentucky shall be responsible for performing the Bridge O&M of the Existing Brent Spence Bridge. The costs of Bridge Inspection and Routine Maintenance with respect to the Existing Brent Spence Bridge will be the sole responsibility of Kentucky. Costs attributable to Major Maintenance and Rehabilitation with respect to the Existing Brent Spence Bridge will be shared equally between Ohio and Kentucky. In the event KYTC advances funds to pay Ohio’s share of the costs for Major Maintenance and Rehabilitation, and thereafter Ohio fails to reimburse KYTC for such payment within thirty (30) days of the date on which such ODOT Delayed Payment is due to KYTC, then the interest due on such ODOT Delayed Payment shall be determined in

accordance with Section 10.3 above. Each year, KYTC will reconcile the interest due on all ODOT Delayed Payments under this Section in accordance with Section 10.6 hereof.

- 10.5 Companion Bridge and Existing Brent Spence Bridge Replacement.** At such time as ODOT and KYTC mutually agree that either the Existing Brent Spence Bridge or the Companion Bridge requires replacement, separate agreements for that work will be executed by the Parties.
- 10.6 Annual Reconciliation of Interest Due on Delayed Payments.** On December 15<sup>th</sup> of each calendar year, KYTC, with reference to Sections 10.3 and 10.4 above, will deliver to ODOT a statement setting forth the aggregate amount of interest, if any, due on all ODOT Delayed Payments during the corresponding calendar year, and ODOT, with reference to Section 7.2.3 above, will deliver to KYTC a statement setting forth the aggregate amount of interest, if any, due on all KYTC Delayed Payments during the corresponding calendar year. Thereafter, within thirty (30) days from the date on which such statements are delivered, the Parties will reconcile the amounts due from each Party to the other, and if it is determined that the amount due from one Party exceeds the amount due from the other Party, then the Party responsible for the excess amount shall remit such excess amount to the other Party by no later than thirty (30) days after the date on which such reconciliation is finalized. Any dispute pertaining to the foregoing reconciliation process shall be resolved in accordance with Section 14.6 hereof.

## **ARTICLE 11. REPRESENTATIONS AND WARRANTIES.**

- 11.1 KYTC Representations and Warranties.** KYTC makes the following representations and warranties to ODOT:
- 11.1.1 KYTC is a cabinet of Kentucky exercising essential public functions and is duly organized and existing under KRS 12.250 and KRS Chapter 174.
  - 11.1.2 The Secretary of KYTC has approved the execution and delivery of this Agreement by KYTC and is duly authorized to execute and deliver this Agreement on behalf of KYTC.
  - 11.1.3 KYTC and the Commonwealth of Kentucky are authorized to perform their obligations hereunder and such obligations constitute legal, valid, and binding obligations of KYTC and the Commonwealth.
  - 11.1.4 As of the Effective Date, KYTC is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
  - 11.1.5 KYTC is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix C**.
- 11.2 ODOT Representations and Warranties.** ODOT makes the following representations and warranties to the KYTC:

- 11.2.1 ODOT is a department of the State of Ohio exercising essential public functions and is duly organized and existing under ORC Chapter 5501.
- 11.2.2 The Ohio Governor, Ohio Attorney General, and Director of ODOT have approved the execution and delivery of this Agreement by ODOT and are duly authorized to execute and deliver this Agreement on behalf of ODOT.
- 11.2.3 ODOT and the State of Ohio are authorized to perform their obligations hereunder and such obligations constitute legal, valid, and binding obligations of ODOT and the State Ohio.
- 11.2.4 As of the Effective Date, ODOT is not aware of any environmental, archeological, or hazardous materials on or near the Project that require remediation other than those that are identified in the NEPA Documents.
- 11.2.5 ODOT is not aware of any pending litigation relating to the Project other than the matter(s) identified on **Appendix C**.

**ARTICLE 12. TERMINATION/ALTERNATIVE PROCUREMENTS.**

- 12.1 **Material Delay.** In the event that the planned work for the Project has been cancelled or materially delayed, the Parties shall use their respective best efforts and work together in good faith to identify and implement appropriate measures to ensure that construction of the entire Project will be completed as contemplated in the NEPA Documents, this Agreement, and the Project Management Plan.
- 12.2 **Extraordinary Conditions.** In the event that unexpected state, federal, local or other conditions of extraordinary significance occur that are beyond the control of either of the Parties, causing the Parties or either of them to believe that (a) the Project in general cannot or will not proceed to completion as contemplated herein and that (b) termination, modification, suspension, interruption or amendment of this Agreement, and/or the Construction Agreements is necessary, then the Parties shall proceed as follows:
  - 12.2.1 The Party seeking to invoke the provisions of this Article shall provide written notice to the other Party of the condition requiring action by the Party.
  - 12.2.2 Within thirty (30) days after receipt of such written notice, the Parties shall meet in person, and shall use their best efforts and work together in good faith to address fairly and equitably, for both Parties, the changed conditions and to the extent reasonably practicable, to identify the measures by which construction of the entire Project may be completed as contemplated in the NEPA Documents and the Project Management Plan.
  - 12.2.3 In the event the Parties cannot identify measures by which construction of the entire Project may be completed with the aforementioned thirty

(30) day period, the Parties will proceed in accordance with the dispute resolution procedures set forth under Section 14.6 below.

#### **ARTICLE 13. RESTORATION AND FORCE MAJEURE.**

- 13.1 Destruction Prior to Substantial Completion.** If all or any part of the Project (excluding any part of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II) shall be destroyed or damaged prior to Substantial Completion by casualty or other cause of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, ODOT shall, subject to any procedures set forth in the applicable Construction Agreement, at the shared cost and expense of ODOT and KYTC, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restoration, replacement and rebuilding the applicable portion of the Project, proceed diligently to repair, restore, or rebuild the same to the applicable Project requirements. ODOT shall be entitled to pursue cost recovery against applicable third parties having responsibility for such damages or insurance; and KYTC shall reasonably assist with such cost recovery efforts. In the event of casualty to all or a portion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II prior to Substantial Completion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, ODOT shall be solely and exclusively responsible for the cost of repairs, alterations, restoration, replacement and rebuilding of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, and, subject to any procedures set forth in the applicable Construction Agreement, to pursue cost recovery against applicable third parties or insurance having responsibility for such damages to Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II.
- 13.2 Destruction Subsequent to Substantial Completion.** If all or any part of the Project (excluding any portion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II) shall be destroyed or damaged subsequent to Substantial Completion by casualty or other cause of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary, or extraordinary, foreseen or unforeseen, KYTC and ODOT, subject to any procedures set forth in the applicable Construction Agreement, shall allocate their respective costs and expenses based upon the allocation of O&M Costs under Section 10.3 and 10.4 whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restoration, replacement and rebuilding of the applicable portion of the Project, proceed diligently to repair, restore, or rebuild the same to the original project requirements for the applicable portion of the Project. ODOT and KYTC with the reasonable cooperation of the other shall be entitled to pursue cost recovery against applicable third parties having responsibility for such damages or insurance. In the event of damage or destruction affecting all or a portion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II subsequent to Substantial Completion of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, ODOT shall be solely and exclusively responsible for the cost of repairs, alterations, restoration, replacement and rebuilding of Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II, and, subject to any procedures set forth in the applicable Construction Agreement, to pursue cost recovery against applicable insurance or third

parties having responsibility for such damages to Brent Spence Bridge Corridor Phase I or Brent Spence Bridge Corridor Phase II.

- 13.3 Force Majeure.** Neither of ODOT or KYTC shall be excused from any obligation under this Agreement as a result of events such as those referenced in Section 13.1, Section 13.2, or as a result of a Force Majeure Event, nor shall such casualty or Force Majeure Event be considered grounds for terminating this Agreement. Notwithstanding the foregoing, the Party suffering the casualty and/or Force Majeure Event shall nonetheless have its obligations to deliver a completed crossing or fulfill its obligation to maintain an open, usable crossing, equitably suspended, but only for the period of time reasonably commercially necessary to undertake and complete the repairs or restoration.

#### **ARTICLE 14. GENERAL MATTERS.**

- 14.1 Access to Records.** Each Party shall require its contractors or consultants (including the Design-Build Team) to: (a) maintain all documents relating to the Project, including but not limited to design and construction documents, operations and maintenance documents, investigations, expert analyses, notices, claims, settlements, and correspondence, (including all such documents that are in electronic media), and (b) permit access thereto at such contractors'/consultants' facilities as requested by the applicable contracting Party. Each Party shall cooperate with the other Parties' reasonable requests for copies of, or inspection of such documents or material.
- 14.2 Federal Project Number.** ODOT and KYTC agree that each shall provide to the other the federal project number under which the Party's Federal Funds and Federal Grant Funding for the Project have been obligated.
- 14.3 Approval of Public Statements or Press Releases.** Prior to any press release regarding the Project or the making or releasing of any other major announcements concerning the Project, the Parties shall consult the PMP for the applicable procedure.
- 14.4 Confidentiality.** The Parties, and the Project consultants and Project contractors (including the Construction Teams) shall not disclose to third parties confidential factual data or information provided by the Parties except as may be required by statute, ordinance, or order of the court, or as authorized by the Party who provided the data or information. The Parties and the Project consultants and Project contractors shall provide notice to the other Parties of any request for such information as provided in this Agreement.
- 14.5 Dispute Resolution.** The Parties shall use best efforts to resolve any disputes between them. To this end, the Parties shall consult and negotiate with each other in good faith, recognizing their mutual interest in achieving a just and equitable solution satisfactory to both Parties. It is expressly acknowledged and agreed that the overriding consideration and goal is that the Project be accomplished on time in accordance with the Project Development Schedule and on budget in accordance with the Project Budget. In the event there is a dispute between the Parties, the applicable work may continue pending resolution of the dispute. The complaining Party shall immediately call a dispute resolution meeting with the Executive Oversight Committee. For disputes involving the proper application or



interpretation of the Environmental Requirements, or other federal issues, FHWA shall be consulted as part of a resolution.

**14.6 Resolution of Claims and Disputes.** All claims, disputes and other issues in question between ODOT and KYTC shall, as a condition precedent to litigation, first be subject to alternative dispute resolution (“**ADR Procedures**”) as provided in Subsection 14.6.2 regardless of (I) whether such matters relate to execution and progress of the Project, or (II) the extent to which the Project has been completed. Following receipt of a claim regarding a Dispute, the Executive Oversight Committee may comment on, and suggest a resolution for the Dispute. To assist the Executive Oversight Committee in this role, ODOT and KYTC shall furnish information relating to the claim to the Executive Oversight Committee, as requested by the Executive Oversight Committee, if such Dispute is not resolved.

14.6.1 **ADR Procedures.** ODOT and KYTC agree to exercise good faith efforts to resolve Disputes amicably and in a timely matter in accordance with a cooperative approach to problem-solving and, if mutual agreement is not achieved, by using negotiations and mediation (collectively, “**Mediation**”) prior to either ODOT and KYTC submitting a Dispute to litigation subject to the limitations described herein. If a Dispute is resolved by the cooperative process described in Subsection 14.6.1, 14.6.2 or an ADR Procedure, the Executive Oversight Committee will prepare or obtain appropriate documentation.

14.6.2 **Initial ADR Procedures.** The parties agree to proceed with dispute resolution as provided herein:

14.6.2.1 **Definitions; Disputes Governed by this Article 14; Priorities.** A “Dispute” is a written demand that seeks relief in any form arising out of or relating to this Agreement, the Construction Agreements or the work, including, without limitation, all contract Disputes, statutory Disputes and equitable Disputes.

14.6.2.2 **Procedure for Submitting a Dispute for Resolution; Time Limits.** ODOT or KYTC (the “**Initiating Party**”) shall follow the procedure provided below in submitting a Dispute for resolution against the other party or parties (the “**Responding Party**”):

- a) The Initiating Party shall give written notice to the Responding Party of the basis for the Dispute within fifteen (15) Days after the Initiating Party first recognizes the condition giving rise to the Dispute, provided, however, that the Initiating Party shall use its best efforts to furnish the Responding Party and the other parties, as expeditiously as possible, with notice of any Dispute once such Dispute is recognized, and shall cooperate with the Responding Party in an effort to mitigate the alleged or potential damages,

delay or other adverse consequences arising out of the condition which is the cause of such a Dispute.

- b) The Responding Party shall within fifteen (15) days of receipt of the Dispute, provide documents, backup data and other information with respect to the Dispute.
- c) Within forty-five (45) Days after receipt of the notice of Dispute, the Executive Oversight Committee shall meet in a good faith effort to compromise and settle the Dispute.
- d) Failure or refusal of a party to follow the procedure for submitting a Dispute for resolution constitutes a waiver of the right to make a claim for the Dispute.

14.6.2.3 **Mediation.** Unless delay in initiating or prosecuting a claim in litigation would irrevocably prejudice ODOT or KYTC, any Dispute which is not resolved by direct discussions and negotiations as provided in Subsection 14.6.3 shall be submitted to Mediation such rules as the Parties may promptly agree to utilize. If ODOT or KYTC cannot agree on the selection of a mediator within ten (10) Days of the request for mediation, either party may immediately request the appointment of a mediator in accordance with the governing mediation rules. Mediation shall occur at any location to which the Parties and mediator agree or, in the absence of agreement, at the location of the Project. Each party shall be responsible for an equal share of the mediation expenses.

14.6.2.4 **Timely Resolution.** The Parties agree to conduct and conclude Mediation proceedings under this Section 14.6 within sixty (60) Days from the designation of the mediator. In the event that mediation proceedings do not resolve the claim within such period, either party may initiate other means of dispute resolution with respect to the claim. Notwithstanding any other provision herein, no Dispute shall be subject to any form of arbitration.

14.6.3 **No Prejudice to Rights or Remedies.** Provided the Parties have complied with the requirements for giving notice of the existence of a Dispute, no delay in disposing of such Dispute while the Parties pursue resolution as provided by this Article shall prejudice the rights of either party; however, nothing contained in this Article shall be deemed to relax any requirement contained elsewhere in the Agreement for the giving of notice between the Parties.

14.7 **Jurisdiction and Venue.** ODOT and KYTC agree that, subject to those claims, counterclaims, disputes and other matters in question between the Parties that are resolved pursuant to Articles 14.6.1 – 14.6.3, all other actions or proceedings arising in connection

with this Agreement shall be governed in accordance with the laws of the State of Ohio (without regard to any conflict of laws principles) tried and litigated only in state courts located in the United States District Court for the Southern District of Ohio, having subject matter jurisdiction over the matter in controversy. The Parties further agree that this choice of venue is to be considered mandatory, and not permissive in nature, thereby precluding the possibility of litigation in any venue or jurisdiction other than that specified in this Section 7. The Parties agree that any final judgment rendered in any such action or such proceeding as provided herein shall be conclusive as to the subject matter of such final judgment, subject only to any right of appeal provided by the laws of the State of Ohio, and that once any such right of appeal has been exhausted or waived, such final judgment may be enforced in other jurisdictions in any manner provided by law. Each of the Parties hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in such court or that any such suit, action or proceeding that is brought in such court has been brought in an inconvenient form.

**14.8 Third Party Claims.** Subject to the Kentucky and Ohio Constitutions, and without waiving any claim of sovereign immunity, the Parties shall share equally, on a 50/50 basis, all losses or liabilities arising from tort claims for personal injury or property damage asserted by third parties with respect to the Project not covered by insurance, the Indemnitors or any other third party. Each of the Parties shall bear responsibility for its own attorneys' fees and costs incurred as a result of any third-party claims arising out of or relating to the Project, unless otherwise agreed by the Parties in writing.

**14.9 Indemnification/Third Party Beneficiary Rights.** ODOT shall cause the Indemnitors to name KYTC as an express beneficiary under an indemnity clause to be included in each such contract pertaining to the Project which protects the Parties against any and all third-party claims, losses, expenses and/or damages arising from the Indemnitors' performance on the Project. To the extent applicable, KYTC shall cause any KYTC contractors, consultants or agents that have agreed to indemnify KYTC under an indemnity clause or agreement to name ODOT as an express beneficiary under such indemnity clause or agreement. ODOT shall provide in the Design-Build Agreement(s) for the Project that KYTC shall be a third-party beneficiary under the Design-Build Agreement only as to any direct damages resulting from design or construction defects in the Project.

**14.10 Liability Between the Parties.**

14.10.1 Except to the extent set forth in this Agreement, neither Party shall be liable to the other for claims and/or actions (whether alleging negligence, breach of contract, strict liability, warranty, breach of professional services or otherwise) relating to the quality, suitability, operability or condition of any design, construction, operation or maintenance of any portion of the Project, and each Party expressly disclaims any and all express or implied representations or warranties with respect thereof, including any warranties of suitability or fitness for use. The limitation

of liability provided herein shall not apply to the following:

- 14.10.1.1 damages to the extent covered and paid for by insurance;
  - 14.10.1.2 damages to the extent covered and paid for by an Indemnitor pursuant to an indemnity obligation described in Sections 14.8 and 14.9; and
  - 14.10.1.3 damages to the extent paid for by a responsible party (other than a Party to this Agreement) pursuant to applicable federal and state environmental laws.
- 14.10.2 Notwithstanding Subsection 14.10.1, the Parties are entitled to seek injunctive relief for specific performance of any obligation set forth in this Agreement, provided such relief is timely sought so as to not result in prejudice to the other Party.

In the event the Project is not completed or is significantly delayed other than as a result of action or inaction on the part of ODOT, the Parties shall be equally responsible for any claims or costs that may be asserted by FHWA or the United States Department of Transportation for reimbursement under 23 CFR 630.112 or otherwise.

#### **14.11 Appropriation.**

- 14.11.1 **Ohio Appropriation.** This Agreement is subject to the determination by Ohio that sufficient funds have been appropriated by the Ohio General Assembly to ODOT for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code Section 126.07.
- 14.11.2 **Kentucky Appropriation.** Pursuant to the Commonwealth of Kentucky Constitution, Kentucky cannot enter into any contract or agreement which would obligate Kentucky beyond the current fiscal biennium. Therefore, work to be performed under this Agreement is to be continued in succeeding fiscal years for the term of the contract or agreement, contingent upon necessary funds being appropriated by the legislature to satisfy the obligations under this Agreement. Notwithstanding anything to the contrary contained herein, KYTC acknowledges and agrees that as of the Effective Date, the Kentucky General Assembly has appropriated that portion of the Kentucky State Funds attributable to fiscal years 2022-2024 and such funds are irrevocably committed to the Project and are not subject to a Non-Appropriation Event (as defined below).
- 14.11.3 **Non-Appropriation Event.** In the event of non-appropriation of State Funds (a “**Non-Appropriation Event**”) by either the Ohio General Assembly or the Kentucky General Assembly, ODOT shall first take into account the amount, if any, of Federal Funds, Federal Grant Funding, and State Funds available to complete the Project and determine, in its

reasonable discretion within ninety (90) days of the Non-Appropriation Event (the “**Project Evaluation Period**”), whether the Project can proceed to Final Completion while remaining in compliance with the terms and conditions of such available State Funds, Federal Grant Funding, and Federal Funds. If prior to the expiration of the Project Evaluation Period ODOT determines, in its reasonable discretion, that the amounts of such available Federal Funds, Federal Grant Funding, and State Funds are sufficient to bring the Project to Final Completion in compliance with all funding requirements and Environmental Requirements, then ODOT may proceed in accordance with the terms of this Agreement to Final Completion; provided however, prior to Final Completion, the Party whose legislature failed to appropriate the required State Funds shall undertake commercially reasonable efforts to secure the amount of such non-appropriated State Funds from any other source available to such non-appropriating Party and upon receipt of the same make them available for disbursement in accordance with Section 7.2.3 hereof. If prior to the expiration of the Project Evaluation Period ODOT determines, in its reasonable discretion, that (i) the amounts of such available Federal Funds, Federal Grant Funding, and State Funds are insufficient to bring the Project to Final Completion, or (ii) the Project cannot proceed to Final Completion and remain in compliance with the applicable funding requirements or Environmental Requirements, then ODOT shall deliver notice of the same to KYTC, and this Agreement shall be canceled in whole without penalty to either of the Parties at the end of the then current fiscal year for such non-appropriating Party, with this Agreement becoming null and void at the end of said fiscal year. The Parties hereby covenant and agree to provide written notice to the other Party in the event of a Non-Appropriation Event by no later than thirty (30) days prior to the end of the fiscal year in which such Non-Appropriation Event for the next fiscal year occurs. Notwithstanding anything to the contrary contained herein, during the Project Evaluation Period, ODOT may continue to expend Kentucky State Funds then on deposit with ODOT to pay Project Costs that were incurred prior to the Non-Appropriation Event and shall further be permitted to budget for the expenditure of such Kentucky State Funds should ODOT determine that the Project can be brought to Final Completion.

**14.12 Amendment and Assignment.** This Agreement may be further amended, supplemented, or modified only by a written document executed by the Parties. Except as otherwise provided herein, neither this Agreement nor any of the rights, duties, or obligations described herein shall be assigned by either Party without the prior express written consent of the other Party.

**14.13 Notice to Parties.**

As to KYTC: Secretary Kentucky Transportation Cabinet  
200 Mero Street, 6th Floor

Frankfort, KY 40622

With copies to: General Counsel  
Kentucky Transportation Cabinet  
200 Mero Street, 6<sup>th</sup> Floor  
Frankfort, KY 40622

DBL Law  
109 East Fourth Street  
Covington, KY 41011  
Attn: Patrick Hughes, Esq.

As to ODOT: Director  
Ohio Department of Transportation  
1980 West Broad Street  
Columbus, OH 43223

With copies to: Chief Legal Counsel  
Ohio Department of Transportation  
1980 W. Broad Street  
Columbus, OH 43223

Frost Brown Todd, LLC  
Great American Tower  
301 East Fourth Street, Suite 3300  
Cincinnati, OH 45202  
Attn: Thomas L. Gabelman, Esq.

**14.14 Reporting Requirements.** The Design-Build Agreement(s) shall require the applicable contractors and consultants to comply with reporting requirements applicable to their portion of the Project that may be imposed from time to time by FHWA, the Office of Management and Budget, and any other federal agency with oversight authority over the Project or its financing.

**14.15 State Sovereignty.** To the fullest extent permitted by law, ODOT and KYTC have entered into this Agreement as representatives of their respective sovereign states. Nothing herein shall be construed as consent by any Party to suit in the courts of the other state, or waiver of tort claim protections, or waiver of sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States. This Agreement does not grant any rights to any party except the Parties herein. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, any third party claiming to have suffered a loss, damage or injury by virtue of any alleged failure by any Party hereto to comply with the terms of this Agreement. ODOT shall be entitled to assert sovereign immunity and/or all other applicable protections in Kentucky courts to the same extent KYTC is able to assert sovereign immunity and all other such applicable protections in Kentucky courts, and KYTC shall be entitled to assert sovereign immunity and all other

applicable protections in Ohio courts to the same extent Ohio is able to assert sovereign immunity and/or all other such applicable protections in Ohio courts. This provision shall survive termination of this Agreement.

**14.16 Organizational Conflicts of Interest.**

14.16.1 The Parties agree to establish a policy to avoid organizational conflicts of interest. Such policies shall require application of the standards of 23 CFR §§ 636.103 and 636.116. The Parties shall independently have the discretion to waive nonmaterial conflicts of any person or entity previously under contract with ODOT or KYTC to prepare preliminary plans, planning reports or other project development products with respect to their respective procurements to allow such person or entity to participate on a proposer team.

14.16.2 Upon approval of the other Party, additional exceptions to this policy may be granted by either of the Parties upon written request from such person or entity, if it is determined that the involvement of such person or entity is in the best interest of the public and does not constitute an unfair advantage to such person or entity.

**14.17 Noncollusion.** Each of the undersigned attests that he/she is the properly authorized representative, agent, member or officer of the Party indicated, that he/she has not, nor has any other member, employee, representative, agent or officer of that Party directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

**14.18 Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue. This provision shall not be interpreted to materially alter the relationships of the Parties as set forth in this Agreement or materially affect the ability of the Parties to achieve the purpose of this Agreement.

**14.19 No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto, and to the extent provided herein, their respective directors, officers, employees, agents and representatives; and no provision in this Agreement shall be deemed to confer upon other persons any remedy, claim, reimbursement, cause of action or other right.

**14.20 Limitation on Recourse.** No recourse shall be had for the payment or performance of any obligation or covenant in this Agreement, or for any claim against a Party to this Agreement, personally against any past, present or future director, member, officer, employee, agent or official of any of the Parties under any rule of law or equity, statute, or

constitution or by the enforcement of any assessment or penalty or otherwise, and all such personal liability is hereby expressly waived.

- 14.21 Entire Understanding.** This Agreement sets forth the entire understanding and agreement of the Parties hereto with respect to the transactions contemplated hereby and supersedes any and all prior agreements, arrangements, and understandings among the Parties relating to the subject matter hereof, including without limitation the Prior Agreement as amended or supplemented through the date hereof.
- 14.22 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronically transmitted duplicate signature of any Party shall be considered to have the same binding effect as an original signature.
- 14.23 Non-Waiver of Rights.** The failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances.
- 14.24 Cooperation between the Parties.** Approvals and consents required by any Party shall not be unreasonably withheld, conditioned or delayed.
- 14.25 Time is of the Essence.** The times for performance provided for in this Agreement are essential due to the obligations and expenditures of the Parties. If a time is not specified, performance shall be required promptly and with due regard to the conditions of performance of other Parties in reliance thereon.
- 14.26 Continued Access to Consultants and Advisors.** The Parties will cooperate and put such arrangements or contracts in place to ensure their continued mutual access to consultants that are deemed to be shared resources of the Project. The costs of any such consultation shall be borne by the Party requesting the particular access. Nothing herein shall be construed to require a Party to provide access to its own consultants and advisors.
- 14.27 Term.** This Agreement shall remain in full force and effect until terminated per the terms of this Agreement, or by written agreement of the Parties.

*[signature page to follow]*



IN WITNESS WHEREOF, the State of Ohio and the Commonwealth of Kentucky have caused their names to be signed and their seals to be hereunto affixed by their respective Governors, the Ohio Department of Transportation has caused its name to be signed by its Director of Transportation, and the Kentucky Transportation Cabinet has caused its name to be signed by its Secretary of Transportation and all thereunto duly authorized.

STATE OF OHIO

COMMONWEALTH OF KENTUCKY

  
Governor Mike DeWine


  
Governor Andrew Beshear



OHIO  
DEPARTMENT OF TRANSPORTATION


KENTUCKY  
TRANSPORTATION CABINET

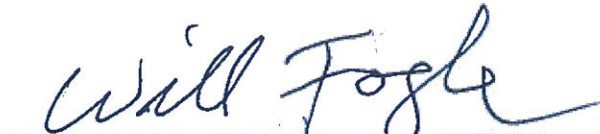
  
Director Jack Marchbanks

  
Secretary Jim Gray

\*\*\*\*\*

Approved as to Form and Legality:

  
Attorney General (Ohio)  
David Yost

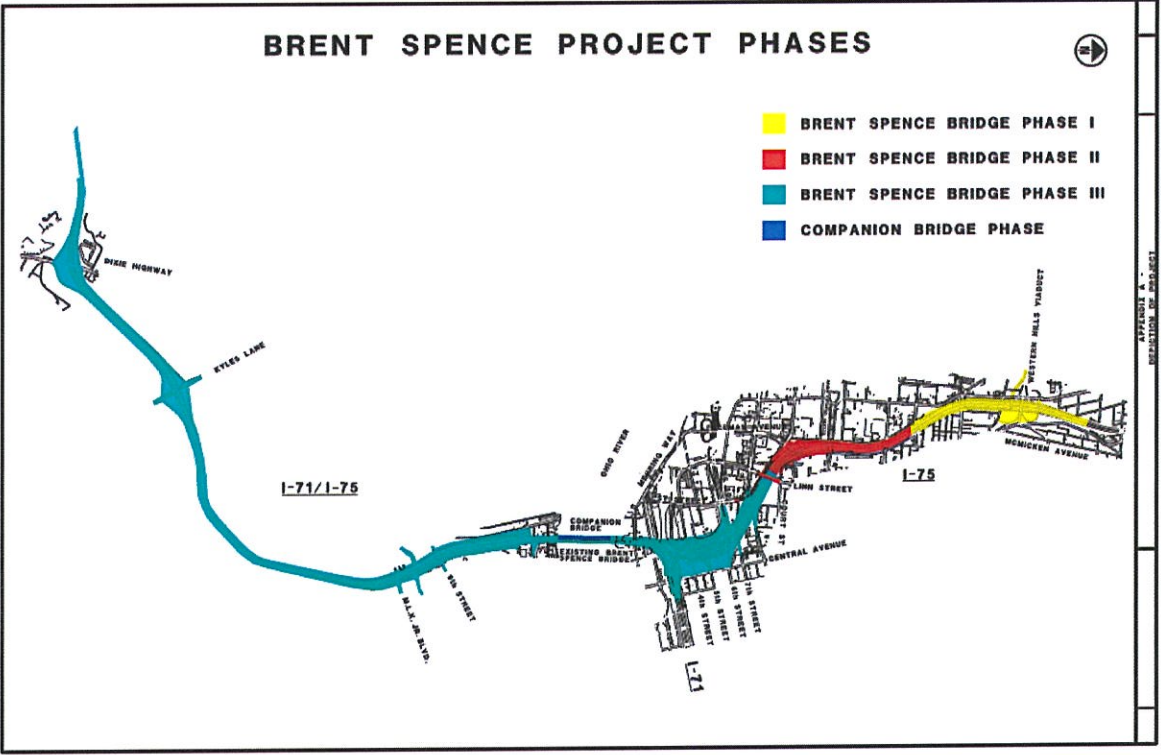
  
Office of Legal Services (Kentucky)

## **APPENDICES**

Appendix A: Depiction of Project

Appendix B: Project Development Schedule

Appendix C: Pending Litigation



DEPICTION OF PROJECT

APPENDIX A

**APPENDIX B**

**PROJECT DEVELOPMENT SCHEDULE**

Task	Anticipated / <b>Actual</b> Completion Date
Authorize Design Build Procurement Support Contract	August 2022
Cost Schedule and Risk Assessment Workshop	October 2022
Execute Interstate Cooperative Agreement	January 2023
Progressive Design Build RFP Release Date	February 2023
Progressive Design Build Proposals Due	March 2023
Design Build Team Interviews	April 2023
Design Build Team Selection Announcement	May 2023
Final Supplemental Environmental Assessment	May 2023
Progressive Design Build Contract Award	May 2023
Initial Financial Plan Submitted	June 2023
Project Management Plan Submitted	June 2023
Progressive Design Build Contract Phase 1A Notice to Proceed	July 2023
Authorize Independent Cost Estimator Contract	July 2023
Authorize Quality Assurance Manager (Owner's Representative.)	October 2023
Updated FONSI Issued by FHWA	October 2023
Authorize Construction Engineering and Inspection Contract	January 2024
Progressive Design Build Contract Phase 1B Notice to Proceed	April 2024
Ohio and Kentucky R/W Activities	December 2024
Progressive Design Build Contract Phase 2 Notice to Proceed	November 2024
Anticipated Progressive Design Build Contract End Construction	November 2030
Project Acceptance and Closeout	June 2030

Revision Date: 1/18/23

**APPENDIX C**

**PENDING LITIGATION**

N/A

## 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 and is the opinions of the BSMT.

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
3rdP	Drainage	FEMA - CLOMR / LOMR Floodplain Permit	Design Builder bridge final design impacts the FEMA flood elevation requiring CLOMR/LOMR	FEMA review of the effective model vs. the existing model is not consistent causing additional coordination and schedule delay.	Causes schedule delay and additional calculations to FEMA for permit approval.	<ol style="list-style-type: none"> <li>1. Define the no-net rise and what model does FEMA require. 1D vs. 2D model and the process approval.</li> <li>2. Define the existing and preliminary pier location model with FEMA prior to RFP release.</li> <li>3. Develop a FEMA floodplain task force.</li> </ol>				
BRG	Bridges	Unknown Soil Conditions near Structures	Design-Builder changes structure design/ location significantly from pre-award configuration  Natural variations in strata	Pre-award soil borings may not be in locations to support updated design, noise walls or other structures.	Design-Builder must price the project without adequate geotech information and then must obtain additional borings to support design  Potential site condition claims	<ol style="list-style-type: none"> <li>1. ID areas this could occur from borings, base configuration.</li> <li>2. Obtain additional borings prior to design completion and prices are due. Potential RFP language to request borings from ODOT/KYTC and to provide testing information to all teams.</li> <li>3. Review Risk geotech risk assignment language.</li> <li>4. Limit the river borings and set the navigable river envelope.</li> </ol>				
BRG	Construction	Ohio River Flooding	Climate	Original CER - Ohio River high water elevation - Flooding along the Ohio River during construction.	Construction project delays since the area may not be available for contractors to construct and/or require rework to cofferdams	<ol style="list-style-type: none"> <li>1. Structure the contract to allocate this risk so that flooding that exceeds a certain level will be compensable. Allows the contractors to cap their exposure to difficult to foresee flooding.</li> </ol>				
CN	Design	Design Quality Issues (complex bridge)	Quality process does not catch issue	Non-conforming design makes it to construction	Difficult to rectify construction issues	<ol style="list-style-type: none"> <li>1. Include robust design quality requirements, including Independent Quality Review for companion bridge and Independent Quality Firm for all design. DB team will provide independent peer review of erection model. (2 erection models will be developed using different software under ODOT/KYTC contract).</li> <li>2. Design risk assigned to DB through contract language, including permit revisions. BSMT quality audits performed.</li> <li>3. Potential service life requirements in RFP and identify solutions to put into the design. Will allow ATC options.</li> <li>4. Develop a service life, model requirements, and other requirements for RFP. (Stainless steel vs. other materials based on service life and structure type - deck, strains, foundations).</li> </ol>				
CN	Bridges	Settlement During Vibratory Construction Activities	Pile driving, sheeting, or other construction activities cause significant ground vibrations	There is a risk of unplanned settlement of existing mainline bridges, walls, noise walls, utilities due to soil collapse or settlement	Settlement could lead to additional cost or schedule impacts to analyze and resolve any structural damage	<ol style="list-style-type: none"> <li>1. Tracking using monitor surveys of existing utilities.</li> <li>2. Evaluate non-vibratory means at locations next to existing sanitary sewers.</li> </ol>				



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 and is the opinions of the BSMT.

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
CN	Utilities	Unknown/ Undisclosed Utilities	Presence of unknown or undisclosed underground utilities	Utilities may be in conflict with planned work but not identified on the plans	Unanticipated utility conflicts must be resolved during construction adding both cost and time	Complete utility investigation and conflict identification in pre-award phase. Use RFP to allocate and properly share risk with contractor.				
CN	Geotechnical	Differing Site Conditions- Geotechnical	Certain latent conditions, either natural or man-made, may be unknown or undisclosed in the design	There is a risk that restrictive conditions are discovered during construction, i.e., boulders, abandoned roads, etc.	Depending on where they are encountered could lead to increased cost and/or extra time.	1. Complete and review borings 2. Add appropriate mitigation for Contractor performance and provide relief, if appropriate.				
CN	Walls	Restricted Wall Construction Limits	Construction limits are very close to existing building(s)	Wall construction has potential of damage to adjacent buildings (vibration, etc.)	Project cost and schedule increase due to required remediation, repair, and/or relocation of building	Define tight locations, and inform the DBT.				
CN	Utilities	Operational Impacts to Utilities	Operations such as pile driving and compaction in close proximity to utilities	Damage to or failure of utilities due to vibration from construction activities	Construction schedule delay and cost impacts	1. Contractor required to monitor utilities. 2. Basement videotaping required before construction starts.				
CN	Requirements	Buy America	Compliance with Buy America requirements is not achieved during construction	Contractor does not provide Buy America certifications or does not include compliant materials/products. Federal Buy America Rules are currently under revision. Currently working under the current rules. Rules in place at the time the contract is executed.	Construction acceptance not granted until documentation is approved, or rework is required with Buy America-conforming elements, leading to overall schedule delay	Include Buy America requirements in the RFP. Clearly communicate these requirements during meetings with industry.				
DES	Railroad	Railroad Coordination and Agreements	Railroad review and approval process for work inside of RR ROW is lengthy and unpredictable	Certain work may occur in the RR ROW. Minimum coordination will include aerial easements.	Contractor is required to price the project without knowing what the RR will approve or how long it will take to obtain approval	1. Evaluate concept I-W railroad parcel locations for piers to be included in the railroad agreement. 2. Early coordination with railroads to better define expectations to prepare the RFP. 3. Railroad right of entry will be on the DBT.				
ENV	Approvals/ Permits	United States Coast Guard Section 9	Undefined Coast Guard requirements	Neither BSMT nor the bidders are clear on what the CG will require	Contractor is delayed with beginning work in this area or is unable to permit the approach that was included in the proposal.	1. Coordinate CG requirements and include them in the RFP to the extent possible. 2. Develop a Task Force Team to coordinate with the Coast Guard and determine risk profile.				



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 and is the opinions of the BSMT.

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
ENV	Approvals/ Permits	United States Army Corps of Engineers 408 Permit	Undefined USACOE requirements	Permit process cannot begin until design and means and methods are determined. Review periods have been known to take a substantial amount of time.	Contractor is delayed with beginning work in this area or is unable to permit the approach that was included in the proposal.	1. Coordinate in advance with executives and high-level staff at USACE.				
ENV	Haz Mat	Differing Site Conditions- HazMat	Urban area has been previously used. Environmental concerns, e.g., contaminated soils, LUST, within project limits are not known.	Contaminated materials are discovered during construction	Contamination must be remediated adding cost and time	Determine appropriate entity to complete environmental report. Assess risk after baseline cost/schedule are established.				
EXT	Utilities	Delayed Utility Relocations	Utility relocations must be completed prior to commencing construction	Utilities (or tenants) do not complete relocations in time	Contractor is delayed and must implement workarounds requiring remobilizations / resequencing.	1. Improve utility coordination / quality / accuracy by reviewing existing "Conflict Matrix" with latest design and getting new information from utilities. 2. Evaluate / establish relocation timelines based on complexity and criticality. 3. Consider Master Utility Agreements with Utility Owners that stipulate completion dates and liability for non-compliance				
MANAGEMENT	Program	Decision-Making Process	Critical Program decisions must be made promptly. A structured and effectively implemented approach, along with establishing proper delegations to avert bottlenecks, is essential to timely and effective decisions.	There is a risk that proactive decisions are not made, and the proper structure is not in place to allow for well-informed and timely decisions.	Delays, rework increase project cost and schedule, affecting design and/or construction milestones	1. Develop Project Management Plan to define roles and responsibilities and define approvals/coordination requirements. The agreed upon review / approval durations will be placed the RFP. 2. Establish a clear dispute resolution process.				
MANAGEMENT	Procurement	Too restrictive project scope	Too restrictive criteria prohibit innovation	Right balance between project scope and minimum criteria in order to allow innovation from DBT.	Less innovation leads to higher bids.	1. Consider opening typical requirements when developing the RFP. 2. Consider soliciting feedback to Scope prior to advertisement. 3. Actively engage the ATC process allowing alternative approaches.				

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 and is the opinions of the BSMT.

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
MANAGEMENT	Program	Failure To Attain DBE Goal/Lack of DBE availability	Letting contractor slide because they "tried" to get DBEs to bid and/or contractor didn't use DBE due to cost.	Not using DBEs and instead using "good faith effort"	Federal action, loss to construction community to develop and use talent, community loses jobs	<ol style="list-style-type: none"> <li>1. Outreach events.</li> <li>2. DBE utilization as part of proposal.</li> <li>3. DBE specific consultant.</li> <li>4. DBE reciprocity between Ohio and Kentucky.</li> <li>5. Consider DBE coordinator as key person on DBT.</li> </ol>				
MARKET	Other	Market Conditions - Labor	Saturated construction market or rising inflation	Necessary labor for the project is not available at typical costs	Contractor labor costs increase	<ol style="list-style-type: none"> <li>1. Allow flexibility on interim milestones.</li> <li>2. Allow flexibility to work during traditional seasonal/weather shutdown.</li> <li>3. Collaborate on a Workforce development plan.</li> </ol>				
MARKET	Construction	Market Conditions - Materials	Materials supply chain or rising inflation	Necessary materials for the project are not available at typical costs or prices	Material cost or procurement time increase	<ol style="list-style-type: none"> <li>1. Provide flexibility on interim milestones.</li> <li>2. Provide flexibility in materials where possible.</li> <li>3. Review potential material indexes. Consider using fuel and asphalt, cement, fuel, steel, and asphalt/binder. Review potential additional project specific indexes.</li> </ol>				
MARKET	Construction	Market Capacity Exceeded	Industry of regional contractors indicates that the market capacity for this type of work is less than the existing market once the project is added	There is a risk that this potential capacity constraint will jeopardize the planned 2029 completion date.	Schedule delay, high pricing, or potentially limited competition.	<ol style="list-style-type: none"> <li>1. Closely monitor other major ODOT / KYTC programs to watch market trends.</li> </ol>				
MARKET	Procurement	Market Conditions - Contractor Interest	Saturated construction market or other project competition	Number of contractors capable of delivering large projects is limited. Project may not attract adequate competition	Higher prices and limited competition	<ol style="list-style-type: none"> <li>1. Early outreach and press releases.</li> <li>2. Balancing contractor input and accommodation on risk profile with BSMT needs.</li> <li>3. Allow follow up one on one meetings with interested offerors prior to RFQ release to address their risk concerns and provide a status update. Also through website notices / updates.</li> <li>4. Deliver on the procurement schedule dates.</li> </ol>				
MARKET	Procurement	Delayed Steel Fabrication	Schedule includes minimal time for steel procurement and/or steel plant has capacity issues	Structural steel fabrication duration is longer than planned for in schedule	Delay completion of bridge	<ol style="list-style-type: none"> <li>1. Consider potential structural steel design hold point release criteria to allow more fabrication time or early steel fabrication.</li> <li>2. RFP language includes project management plan requirements for partnering with fabricators and ODOT/KYTC to address supply chain risk early.</li> </ol>				

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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
RDWY	Traffic/Mobility	Maintenance of traffic	High traffic volume and tight urban setting	Ingress/egress into the construction area	Safety and travel delay for the traveling public	<ol style="list-style-type: none"> <li>As part of the TMP include the requirements to be pulled into the maintenance of traffic plans.</li> <li>Incident management to support quick clearance of accidents. Consider Design Build team to provide wrecker services and EMS/fire/police communication protocols when accident occurs.</li> <li>Engage local EMS/ team to develop requirements prior to RFP.</li> </ol>				
RW	Schedule	Kentucky ROW	Concept required ROW takes in Kentucky	New ROW must be acquired	ROW acquisition cost and schedule increase	<ol style="list-style-type: none"> <li>BSMT will develop a right of way clearance schedule to be included in the RFP.</li> <li>Consider having Design Builder place the parcel numbers in their CPM to define their schedule.</li> <li>Allow ATCs which increase right of way. For these, clearly define the environmental reevaluation and the right of way procurement process for new parcels by allowing DBT assumption of the risk.</li> </ol>				
RW	Construction	Longworth Hall Delay	Building owner delay.	Longworth Hall demolition and area made available for approach bridge construction. The current plan is to acquire and give the owner "cost to cure" and let them manage design, demolition and reconstruction.	Construction project delays since the area may not be available for contractors to construct approach spans to companion bridge.	<ol style="list-style-type: none"> <li>Include schedule delay relief to the Design Build team within the RFP.</li> </ol>				

## EXHIBIT AA: WORKSITE TRAFFIC SUPERVISOR DISINCENTIVE

Subject to approval of the Department, the Contractor shall employ and identify (someone other than the superintendent) a Worksite Traffic Supervisor (WTS) before starting work in the field. The WTS shall be trained in accordance with ODOT CMS 614.03, shall have successfully completed ODOT administered WTS testing (and re-testing when applicable) and be listed on the ODOT prequalified WTS roster. Prequalification expires every 5 years. Re-testing shall be successfully repeated every 5 years to remain prequalified. The WTS shall also have two (2) years' experience in establishing, inspecting and maintaining temporary traffic control in work zones and be familiar with both ODOT and KYTC traffic control standards and specifications.

The name of the WTS and related 24-hour contact information shall be provided to the Department. If the designated WTS will not be available full time (24/7), the Contractor may designate an alternate (secondary) WTS to be available when the primary is off duty; however the primary WTS shall remain the point of contact at all times. Any alternate (secondary) WTS is subject to the same training, prequalification and other requirements outlined within this plan note. At all times the Department, or Department's representatives, must be informed of who the primary WTS (and secondary WTS, if applicable) is at the current time.

The WTS position has the primary responsibility of implementing the Traffic Management Plan (TMP), monitoring the safety and mobility of the entire work zone, and correcting Temporary Traffic Control (TTC) deficiencies for the entire work zone. The WTS, and alternate WTS when on duty, shall have sufficient authority to effectively carry out the identified WTS responsibilities and duties. The duties of the WTS are as follows:

1. Be available on a 24-hour per day basis.
2. Be on site for all emergency TTC needs within one hour of notification by police or project staff, and effect corrective measures immediately on existing work zone TTC devices.
3. Attend preconstruction meeting and all project meetings where TTC management is discussed.
4. Be available on site for other meetings or discussions with the Department upon request.
5. Be aware of all existing and proposed TTC operations of the contractor, subcontractors and suppliers, and ensure coordination occurs between them to eliminate conflicting temporary and/or permanent traffic control.
6. Coordinate project activities with all Law Enforcement Officers (LEOs). The WTS shall also be the main contact person with the LEOs while LEOs are on the project.
7. Coordinate and facilitate meetings with ODOT personnel, LEOs and other applicable entities before each plan phase switch to discuss the work zone TTC for implementing the phase switch. Submit a written detail of MOT operations and schedule of events to implement the switch between phase plans to the Department 5 calendar days prior to this meeting.
8. Be present, on site for, and involved with, each TTC set up/take down and each phase change in accordance with CMS 614.03.

9. On a continual basis ensure that the TTC zone and all related devices are installed, maintained, and removed in compliance with the contract documents.
10. On a continual basis facilitate corrective action(s) necessary to bring deficient TTC zones and all related devices into compliance with contract documents in the timeframe determined by the Department.
11. Inspect, evaluate, propose necessary modifications to, and document the effectiveness of, the TTC devices and traffic operations on a DAILY BASIS (7 days a week). In addition, perform one weekly night inspection of the work zone setup for daytime work operations; and one daytime inspection per week for nighttime projects. This shall include (but not be limited to) documentation on the following project events:
  - a. Initial TTC setup (day and night review).
  - b. Daily TTC setup and removal.
  - c. When construction staging causes a change in the TTC setup.
  - d. Crash occurrences within the construction area and within the influence area(s) approaching the work zone.
  - e. Removal of TTC devices at the end of a phase or project.
  - f. All other emergency TTC needs.
12. Complete the Department approved (CA-D-8) within GoFormz after each inspection as required in # 11 and submit it to the Department by the end of the workday in which the inspection occurred. The CA-D-8 includes a checklist of all TTC maintenance items to be reviewed. Contact [GoFormz.Help@dot.ohio.gov](mailto:GoFormz.Help@dot.ohio.gov) to obtain a user account. Any deficiencies observed shall be noted on the CA-D-8, along with recommended or completed corrective actions and the dates by which such corrections were, or will be, completed. A copy of the current CA-D-8 document can be found on the Office of Construction Administration's Inspection Forms website.
13. Have copies of the ODOT Temporary Traffic Control Manual and contract documents available at all times on the project.

The Department will deduct:

- A. The amount of (\$1,000) for any day in which the WTS fails to perform the duties set forth above.
- B. The amount of (\$1,000) for any day that a TTC issue is identified in the field and is not corrected in the given timeframe per the Department. Deduction B shall not apply to situations covered by Deduction C.
- C. The amount of (\$5,000) for any day that a lane or ramp is blocked (fully or partially) without TTC, as determined by the Department. This deduction shall be in addition to any other disincentives established for unauthorized lane use.

For days in which more than one deduction listed above occur, the highest deduction amount will apply.

If three or more total days result in TTC issues described in Deduction B or C above, the primary WTS shall be immediately removed from the work in accordance with C&MS 108.05. Upon removal the Department shall notify ODOT Central Office

(WTSPrequalification@dot.ohio.gov) to register a removal against the statewide prequalification for the primary WTS. Three removals shall cause statewide disqualification for any previously prequalified WTS.