

Design-Build Contract

BOOK 1

MICHIGAN DEPARTMENT OF TRANSPORTATION
Metro Region
Design-Build Project

Ambassador Bridge Plaza – Gateway Completion

Job Number: 116071A
Control Section: 82194



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Exhibits

- Exhibit 1-A Acronyms and Definitions
- Exhibit 1-B Notice to Bidders
- Exhibit 1-C Not Used
- Exhibit 1-D Disadvantaged Business Enterprise (DBE) Special Provisions for Design-Build Projects
- Exhibit 1-E Not Used
- Exhibit 1-F Modifications to the MDOT Standard Specifications for Construction
- Exhibit 1-G MDOT Special Provision – Execution and Award of Contract for Expedited Projects

THIS Design-Build Contract is entered into by and between the State of Michigan (“MDOT”) and Contractor, effective as of the last date set forth on the signature page hereto, with reference to the definitions contained in Exhibit 1-A hereto and the following facts:

Recitals

- A. MDOT wishes to expedite design and construction of the Ambassador Bridge Plaza – Gateway Completion project (CS 82194 and JN 116071A).
- B. MDOT will use a design-build approach to deliver the Project. Payments to the Contractor will be made in accordance with the Contract.
- C. The parties intend for the Contract to be a lump-sum design-build contract obligating Contractor to perform all work necessary to complete the Project by the deadlines specified herein, for the Contract Price, subject only to certain specified limited exceptions. To allow MDOT to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting Contractor’s ability to make claims for an increase to the Contract Price or an extension of the Completion Deadlines.
- D. If Contractor fails to complete the Project within the time limitations set forth in the Contract Documents, then the public will suffer substantial losses and damages from not receiving the benefits of this Project. The Contract Documents therefore provide that Contractor shall pay MDOT substantial Liquidated Damages if such completion is delayed.
- E. MDOT has provided the Basic Configuration to the Contractor for the purpose of defining certain aspects of the Project. MDOT has also provided Reference Information Documents (RID) to Contractor. Contractor has no right to rely on the RID except to the extent specifically permitted in the Contract Documents. MDOT and Contractor both intend for Contractor to assume full responsibility and liability with respect to the design of the Project, including correction of any Errors in the Basic Configuration or RID, and MDOT and Contractor both intend for Contractor to indemnify and hold harmless MDOT and others with respect to any defects in the Project which may relate to Errors in the Basic Configuration or RID.

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

1 CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

Exhibit 1-A hereto contains the meaning of various terms used in the Contract Documents.

1.2 Contract Documents

The term “Contract Documents” shall mean the documents listed in Book 1, Section 1.3, including all exhibits thereto.

1.3 Order of Precedence

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

- (a) Change Orders and Contract Amendments
- (b) Contract, as executed by MDOT and Contractor
- (c) Book 1 (Design-Build Contract)
- (d) Book 2 (Project Requirements)
- (e) Book 3 (Applicable Standards)
- (f) The Proposal, except if the Proposal includes statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to MDOT than the requirements of the Contract Documents, as determined by MDOT, Contractor’s obligations hereunder shall include compliance with all such statements, offers and terms.
- (g) Instructions to Proposers

In the event of conflicting requirements involving any requirement established by reference contained in the Contract Documents, MDOT shall have the right to determine, in its sole discretion, which requirement applies. Contractor shall request MDOT’s determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4 Interpretations

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to; the words “including,” “included,” “includes,” and “include” are deemed to be followed by the words “without limitation”; unless the context requires otherwise, in phrases involving performance by a Person, the word “shall” indicates a requirement imposed on the Person; unless otherwise indicated, references to sections, appendices and exhibits are to the document which contains such references; words such as “herein,” “hereof,” and “hereunder” refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and

capacities; and words of any gender used herein include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. Contractor further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person who prepared them, and instead other rules of interpretation shall be used. MDOT's final answers to the questions posed during the proposal process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

1.5 Referenced Standards and Specifications

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

1.6 Omission of Details; Clarification by MDOT

Contractor shall not take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Contractor shall apply to MDOT in writing for such further written explanations as may be necessary and shall conform to the explanation provided. Contractor shall promptly notify MDOT of all Errors which it may discover in the Contract Documents, and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed under similar circumstances, shall not relieve Contractor from performing such omitted Work or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Book 1, Section 13.

1.7 Computation of Periods

References to “days” or “Days” contained in the Contract Documents shall mean Calendar Days unless otherwise specified, provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Working Day, such act or notice may be timely performed on the next succeeding day which is a Working Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Book 1, Section 5.3 and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, shall be required to be performed as specified, even though the date in question may fall on a non-Working Day.

2 OBLIGATIONS OF CONTRACTOR

2.1 Performance Requirements

2.1.1 Performance of Work

All materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the applicable Completion Deadline shall be Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Book 1, Section 13, the costs of all such materials, services and efforts are included in the Contract Price.

2.1.2 Performance Standards

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

2.1.3 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Contractor shall perform as directed by MDOT in a diligent manner and without delay, shall abide by MDOT's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Book 1, Section 19.

2.2 General Obligations of Contractor

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

- (a) Furnish all design and other services, provide all materials and labor and undertake all efforts necessary or appropriate (excluding only those services, materials and efforts which the Contract Documents specify will be undertaken by other Persons): (i) to construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, all Governmental Rules, all Governmental Approvals, and all other applicable safety, environmental, licensing and other requirements, taking into account the Right-of-Way (ROW) and other constraints affecting the Project, so as to achieve, Substantial Completion and Final Acceptance by the applicable Completion Deadlines; and (ii) otherwise to do everything required by and in accordance with the Contract Documents.
- (b) Accept the payment terms in accordance with Book 1, Section 11.
- (c) At all times provide Contractor's Project Manager, Approved by MDOT, who (i) will have full responsibility for the prosecution of the Work, (ii) will act as agent and be a single point of contact in all matters on behalf of Contractor, (iii) will be present (or its Approved designee will be present) at the Site at all times that Work is performed, and (iv) will have authority to bind Contractor on all matters relating to the Project.
- (d) Obtain all Governmental Approvals (other than the Environmental Approvals and certain New Environmental Approvals as provided in Book 1, Section 6.3),
- (e) Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, including implementation of all environmental mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.

- (f) Provide such assistance as is reasonably requested by MDOT in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require Contractor to provide legal services.
- (g) Comply with all requirements of all Governmental Rules, Federal and State laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority.
- (h) Cooperate with MDOT and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work;
- (i) Supervise and be responsible to MDOT for acts and omissions of all Contractor-Related Entities, as though all such Persons were directly employed by Contractor;
- (j) Mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating or redeploying Contractor's forces to other work, as appropriate.
- (k) Pay all applicable federal, State and local sales, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Person, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

The Contractor shall include, and will be deemed to have included, all applicable Michigan Sales and Use Taxes which have been enacted into law as of the date the bid is submitted, including the 2 percent increase in sales and use tax enacted pursuant to ballot Proposal A.

2.3 Representations, Warranties and Covenants

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

2.3.1 Maintenance of Professional Qualifications

Contractor and its design Subcontractor(s) have maintained, and throughout the term of the Contract and its design Subcontract(s) shall maintain, all required authority, license status, professional ability, skills and capacity to perform the Work.

2.3.2 Evaluation of Constraints

Contractor has evaluated the constraints affecting delivery of the Project, including the ROW and Basic Configuration as well as the conditions of the Environmental Approvals and has reasonable grounds for believing and does believe that the Project can be delivered within such constraints.

2.3.3 Feasibility of Performance

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

2.3.4 Review of Site Information

Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, reviewed the boring logs provided by MDOT in Book 2 and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Project, to the extent Contractor deemed necessary or advisable for submittal of a Proposal. Said activities have

included inspection and examination of the Site and surrounding locations. Based on its review, inspection, examination and other activities, Contractor is familiar with and accepts the physical requirements of the Work. Before commencing any Work on a particular aspect of the Project, Contractor shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work which may have an impact on such Work. Contractor shall be responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 Governmental Approvals

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

2.3.6 Progression of Work

Contractor shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines and in accordance with the Contract Schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts and overtime operations) as may be necessary to achieve such goals, all at Contractor's own expense, except as otherwise specifically provided in Book 1, Section 13.

2.3.7 Design and Engineering Personnel

All design and engineering Work furnished by Contractor shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State of Michigan, and by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents prepared or checked by them.

2.3.8 Authorization

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

2.3.9 Legal, Valid and Binding Obligation

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

2.3.10 False or Fraudulent Statements and Claims

Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and the USDOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions hereunder. Accordingly, by signing the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, 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 Contractor to the extent the federal government deems appropriate.

2.4 Design Requirements

2.4.1 Required Approvals

Approval by MDOT, through a Change Order, is required prior to commencing any Work that would necessitate a modification in the Basic Configuration, regardless of whether the modification is required by a Governmental Approval, is desired by Contractor for its benefit or for any other reason. Contractor acknowledges and agrees that constraints set forth in the Contract Documents, as well as Site conditions, the ROW and the requirement to obtain Approval, will impact Contractor’s ability to revise the Basic Configuration.

2.4.1.1 Design Review Process

Contractor shall notify MDOT in writing within five Days after receipt of any review comments if Contractor believes incorporation of the comments would cause the Released for Construction Documents, other Design Documents or any Contract Documents to contain Errors in any respect or which would otherwise adversely affect in any manner the design or construction of the Project or the Contract Schedule, and MDOT shall have the right to modify its comments. Any failure of Contractor to so notify MDOT shall constitute Contractor’s full acceptance of all responsibility for changes made to the Released for Construction Documents and other Design Documents in response to such MDOT comments and will be treated for all purposes hereunder as if Contractor had initiated such changes.

2.4.1.2 Design Reviews Required by Third Parties

Contractor shall be responsible for giving and obtaining all design reviews required by Utility Owners and any other Persons other than MDOT, as applicable.

2.4.1.3 Compliance with Contract Documents and Design

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

2.4.2 Ownership of Design

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

3 INFORMATION SUPPLIED TO CONTRACTOR; RESPONSIBILITY FOR DESIGN; DISCLAIMER

3.1 Information Supplied

MDOT has made available to Contractor information which is described in the Contract Documents and certain Reference Information Documents (RID) regarding the Project, and has allowed Contractor access to the Site prior to the Proposal Due Date as specified in the RFP.

3.2 Responsibility for Design

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

- (a) The Basic Configuration is preliminary and conceptual in nature.
- (b) Contractor is not entitled to rely on and has not relied on (i) the RID or (ii) any other documents or information provided by MDOT, except to the extent specifically permitted in the Contract Documents.
- (c) The Contractor is responsible for correcting any Errors in the Basic Configuration through the design and/or construction process as set forth in Book 2 without any increase in the Contract Price or extension of a Completion Deadline, subject only to the right to a Change Order for necessary Basic Configuration Changes.
- (d) Contractor's Warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors in the RID.

3.3 Reliance on Specified RID Information

3.3.1 Not Used

3.3.2 No Other Liability Regarding RID

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

3.3.3 No Representation or Warranty Regarding Basic Configuration and RID

MDOT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE BASIC CONFIGURATION OR RID IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION CONFORMS WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. THE FOREGOING SHALL IN NO WAY AFFECT MDOT'S AGREEMENT HEREIN TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH BOOK 1, SECTION 13.

3.4 Professional Licensing Laws

MDOT does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Contract, Contractor acknowledges that MDOT has no such intent. It is the intent of the parties that Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to Contractor's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that Contractor shall "furnish" the design for the Project. The terms and provisions of this Section 3.4 shall control and supersede every other provision of the Contract Documents.

4 TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; SCHEDULING

4.1 Time of Essence

Time is of the essence of the Contract.

4.2 Notices to Proceed

4.2.1 Execution of Contract

The processing of this Contract will be expedited. Processing and Award of the Contract shall be carried out as specified in the Special Provision for Execution and Award of Contract for Expedited Projects, provided as Exhibit I-G.

4.3 Completion Deadlines

4.3.1 Substantial Completion Deadline

Contractor shall achieve Substantial Completion on or before September 15, 2012. Said deadline for Substantial Completion, is referred to herein as the “Substantial Completion Deadline.”

4.3.2 Final Acceptance Deadline

Contractor shall achieve Final Acceptance on or before September 30, 2012. Said deadline for Final Acceptance, as it may be extended hereunder, is referred to herein as the “Final Acceptance Deadline.”

4.3.3 Intermediate Completion Deadlines

Contractor shall achieve each Intermediate Completion on or before the date specified below:

Truck Road Completion as described in Book 1, Section 12.1.1 – May 20, 2012

Open to Traffic as described in Book 1, Section 12.1.2 – September 9, 2012

Each said deadline for Intermediate Completion, as it may be extended hereunder, is referred to herein as an “Intermediate Completion Deadline.”

4.4 Contract Schedule

Contractor shall deliver the Project, including planning, design, construction, management, development and completion, in accordance with the CPM Schedule, as described in Section 2.3 of Book 2.

4.5 Prerequisites for Start of Construction

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

- (a) MDOT has issued a Notice to Proceed authorizing such Work.
- (b) Contractor shall proceed with all Work in conformance with the requirements of the Design Quality Manual as described in Book 2, Section 2.
- (c) Contractor has furnished the Released for Construction Documents to MDOT and has received MDOT’s Acceptance thereof in accordance with Book 2, Section 2.4 relating to such portion of the Project.

- (d) All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals or the application to the Government entities which allow construction to proceed during the application process, that are a prerequisite to commencement of such construction have been performed.
- (e) All necessary rights of access for such portion of the Project have been obtained.
- (f) Any additional conditions for construction set forth in the Contract Documents have been met.

4.6 Limitation of Operations

Contractor shall comply with all limitations as identified elsewhere within this Contract.

No construction Work that impacts traffic may be undertaken until April 16, 2012, or as Approved by the MDOT Project Manager after Award of Contract.

5 CONTROL OF WORK

5.1 Control and Coordination of Work

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

5.2 Safety and Health

The Contractor shall meet all Safety and Health provisions of the Standard Specifications.

5.3 Process to be Followed for Discovery of Certain Site Conditions

5.3.1 Discovery of Certain Site Conditions

If Contractor becomes aware of (a) any on-Site material that Contractor believes may contain Contaminated Materials requiring removal or treatment, (b) any paleontological, cultural or biological resources, or (c) any Differing Site Conditions, Contractor shall immediately notify MDOT via telephone or in person, to be followed immediately by written notification. In such event, Contractor shall immediately stop Work in the affected area and secure the affected area pending receipt of direction from MDOT. A provision of said notice by Contractor constitutes a condition precedent to MDOT's consideration of a Change Order with respect to the conditions in question.

5.3.2 Further Investigation & Remediation Work

MDOT will view the location within one Working Day of receipt of notification from Contractor, and may advise Contractor at that time whether to resume Work or whether further investigation is required. Contractor shall promptly conduct such further investigation as MDOT deems appropriate. Within one Working Day after viewing the locations, MDOT will advise the Contractor of the recommended action plan regarding the situation. Any delay in prosecution of the Work due to suspension of Work during the two Working Day period following MDOT's receipt of notification from Contractor shall not be considered a MDOT-Caused Delay. Any delay for contaminated materials relating to temporary Work shall not be considered a MDOT-Caused Delay.

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

5.3.3 Recommence Work

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

5.3.4 Alternative Procedure

Notwithstanding the foregoing, to the extent that any Governmental Approval specifies a procedure to be followed which differs from the procedure set forth herein, Contractor shall follow the procedure set forth in the Governmental Approval. This work may be considered a MDOT-Directed Change per Book 1, Section 13.

5.4 Obligation to Minimize Impacts

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

5.5 Consent to Oversight; Obligation to Uncover Work

5.5.1 Not Used

5.5.2 Oversight, Inspection, and Testing by MDOT and Others

All materials and each part or detail of the Work shall also be subject to oversight, inspection and testing by MDOT and other Persons designated by MDOT. When any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect and test the Work. Such oversight, inspection and/or testing do not make such Person a party to the Contract nor will they change the rights of the parties hereto. Contractor hereby consents to such oversight, inspection and testing. Upon request from MDOT, Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.5.3 Obligation to Uncover Finished Work

At all times before Final Acceptance, Contractor shall remove or uncover such portions of the finished construction Work as directed by MDOT. After examination by MDOT and any other Persons designated by MDOT, Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to the Critical Path occasioned thereby shall be at Contractor's expense and Contractor shall not be entitled to a time extension. Furthermore, any Work done or materials used without notice to and opportunity for prior inspection by MDOT may be ordered uncovered, removed or restored at Contractor's expense and without a time extension, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing and restoring Work shall be considered a MDOT-Caused Delay, and Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to the Critical Path occasioned thereby, subject to the provisions of Book 1, Section 13.

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

5.6.1 Oversight and Acceptance

Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, audits, reviews, tests, inspections, acceptances and approvals by any Person do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. MDOT may reject or require Contractor to remedy any Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were conducted by any Person.

5.6.2 No Estoppel

MDOT shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment. This includes showing that any such measurement, estimate or certificate is incorrectly made or untrue, from showing the true amount and character of the Work performed and materials furnished by Contractor, or from showing that the work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, MDOT shall not be precluded or estopped from recovering from Contractor and its Sureties such damages as MDOT may sustain by reason of Contractor's failure to comply or to have complied with the terms of the Contract Documents.

5.7 Nonconforming Work

5.7.1 Rejection, Removal and Replacement of Work

Subject to MDOT's right, in its sole discretion, to Accept or reject Nonconforming Work, Contractor shall remove and replace rejected Nonconforming Work so as to conform with the requirements of the Contract Documents, at Contractor's expense and without any time extension; and Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that MDOT may not have discovered the Nonconforming Work shall not constitute an Acceptance of such Nonconforming Work. If Contractor fails to correct any Nonconforming Work within five Days of receipt of notice from MDOT requesting correction (or, for Nonconforming Work which cannot be corrected within five Days, if Contractor fails to provide to MDOT a schedule for correcting any such Nonconforming Work Approved by MDOT within such five-Day period, begin correction within such five-Day period and thereafter diligently prosecute such correction in accordance with such Approved schedule to completion), then MDOT may cause the Nonconforming Work to be remedied or removed and replaced, and may deduct the cost of doing so from any moneys due or to become due Contractor and/or obtain reimbursement from Contractor for such cost.

5.7.2 Acceptance of Nonconforming Work

MDOT may, in its sole discretion, Accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment (or reimbursement of a portion of the Contract Price, if applicable). In certain events, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, without limiting the foregoing, administrative Work to be performed during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at MDOT's election, (a) Contractor's cost savings associated with its failure to perform the Work in accordance with the Contract requirements or (b) the amount deemed appropriate by MDOT to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work. In certain events, MDOT shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents.

6 ACCESS TO SITE; UTILITY RELOCATIONS; ENVIRONMENTAL MITIGATION

6.1 Access to Site

6.1.1 Access to Right of Way Identified in Book 2, Section 7

6.1.1.1 Obligation to Provide Access to Right of Way

MDOT will provide access to the Right of Way identified in Book 2, Section 7..

6.1.1.2 Right of Way Access Requirements

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

6.1.1.3 Delay in Providing Access

If MDOT at any time determines it will be unable to provide access to a particular parcel by the scheduled date, MDOT shall notify Contractor regarding the revised projected date for delivery of access. Contractor shall take appropriate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. To the extent that a delay to the Critical Path cannot be avoided, such delay to the Critical Path shall be considered a MDOT-Caused Delay.

6.1.2 Access to Right of Way Not Identified in Book 2 Section 7

6.1.2.1 Unidentified Right of Way as a Result of a MDOT-Directed Change or Necessary Basic Configuration Change

Any Right of Way not identified in Book 2, Section 7 that is required as the result of a MDOT-Directed Change or Necessary Basic Configuration Change will be addressed in the respective MDOT-Directed Change or Necessary Basic Configuration Change Order.

6.1.2.2 Right of Way Associated with a Contractor Initiated Work Order

The cost of obtaining any Right of Way not identified in Book 2, Section 7 associated with a Contractor Initiated Work Order will be considered in determining the Contract Price adjustment under Book 1, Section 13.

6.1.2.3 Reimbursement of MDOT Costs

Contractor shall reimburse MDOT for any costs (including attorneys', accountants' and expert witness fees and costs) of acquiring any real property that is not MDOT's responsibility under Book 1, Sections 6.1.1.1, 6.1.2.1 or 6.1.2.2, which Contractor determines is necessary or advisable in order to complete the Project, including obtaining any Construction Easements and use permits. MDOT may deduct such amounts from payments otherwise owing hereunder.

6.1.2.4 Additional Requirements

Additional requirements applicable to Contractor are set forth in Book 2, Section 7.

6.2 Utility Relocations

See Book 2, Section 6.

6.3 Environmental Compliance

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

6.3.1 Mitigation Requirements

Contractor shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project. The Contract Price includes compensation for Contractor's performance of all such mitigation measures and for performance of all mitigation measures arising from New Environmental Approvals which Book 1, Section 6.3.2 designates as Contractor's responsibility as well as the cost of all activities to be performed by Contractor as described in Book 2, Section 4.

6.3.2 New Environmental Approvals

6.3.2.1 Approvals To Be Obtained by MDOT

MDOT shall be responsible for obtaining any New Environmental Approvals necessitated by a MDOT-Directed Change, MDOT-Caused Delay, change in a Governmental Rule under Book 1, Section 13.3.1.2(d)(v), Force Majeure event or Necessary Basic Configuration Change. Contractor shall provide support services to MDOT with respect to obtaining any such New Environmental Approval. Any Change Order covering a MDOT-Directed Change, MDOT-Caused Delay, Force Majeure event or Necessary Basic Configuration Change may include compensation to Contractor for any changes in the Work (including performance of additional mitigation measures but excluding performance of such support services) resulting from such New Environmental Approvals, as well as any time extension necessitated by the MDOT-Directed Change, or Force Majeure event or Necessary Basic Configuration Change, subject to the conditions and limitations contained in Book 1, Section 13.

6.3.2.2 Approvals Required by Contractor

If a New Environmental Approval becomes necessary for any reason other than those specified in Book 1, Section 6.3.2.1, Contractor shall be fully responsible for cost and schedule impacts of obtaining the New Environmental Approval and any other environmental approvals that may be necessary, and for all requirements resulting there from, as well as for any litigation arising in connection therewith. MDOT will obtain any New Environmental Approvals. Contractor shall provide support services to MDOT with respect to obtaining any such New Environmental Approval. If the New Environmental Approval is associated with a Contractor Initiated Work Order, the Contractor shall be responsible for the costs and schedule impacts of obtaining and complying with the terms of the New Environmental Approval.

7 EQUAL EMPLOYMENT OPPORTUNITY; SUBCONTRACTS; LABOR

7.1 Equal Employment Opportunity

7.1.1 *Not Used*

7.1.2 *Inclusion in Subcontracts*

Contractor shall include Book 1, Section 7.1.1 in every Subcontract over \$10,000 (including purchase orders), and shall require that they be included in all Subcontracts over \$10,000 at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.2 Disadvantaged Business Enterprises

7.2.1 *Disadvantaged Business Enterprises Policy*

Contractor shall comply with the requirements set forth in Exhibit 1-D. Contractor is encouraged to include DBE participation.

7.2.2 *Inclusion in Subcontracts*

Contractor shall include Exhibit 1-D in every Subcontract (including purchase orders), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.3 Subcontracting Requirements

Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts, and shall ensure that its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents relating to subcontracting (including Exhibit 1-D).

7.3.1 *Major Participants*

Contractor shall not add, delete, or change the role of any Major Participant as set forth in its Proposal without the prior Approval of MDOT.

7.3.2 *Subcontracting of Contract Work*

Contract work amounting to not less than 40 percent of the original total Contract Price shall be performed by the Contractor's own organization. All items identified as Designated or as Specialty Classifications may be performed by subcontract. The amount of Specialty Classification work performed may be deducted from the original total Contract Price before computing the amount of work required to be performed by the Contractor's own organization. The Contractor's "own organization" shall be construed to include only workers employed and paid directly by the Contractor and equipment owned or rented by the Contractor, with or without operators. The 60 percent available for subletting shall include work identified in the Contract as "Designated Classification" and all other work except Specialty Classification.

The value of the subcontracted work will be determined by the value of the subcontract. MDOT will determine if the subdivision of the item subcontracted and is reasonable.

The Contractor shall not subcontract any portion of the Work, other than the furnishing of necessary materials, except as provided for in the MDOT procedures for subcontracting. Subcontracting any portion of the Work shall not relieve the Contractor of full responsibility for the performance of the Work. The Contractor shall not sell or assign any portion of the Work without the written consent of MDOT.

Any bonds furnished by the Subcontractor shall not reduce the Contractor's bonding requirements.

No Subcontract will be issued unless the Subcontractor is prequalified by MDOT to perform the classification of Work Proposed, when applicable. The Contractor shall submit the Subcontract cover page and Work items to MDOT prior to the start of the Work associated with the Subcontract. It is understood and agreed that MDOT's prequalification of the Subcontractor is for the benefit of MDOT and is not for the benefit of the Contractor or any other person. MDOT's prequalification is not a guarantee or warranty of the Subcontractor's ability to perform or complete the Work subcontracted. The Contractor shall certify, on MDOT Form 1386, prior to Final Acceptance, that all subcontracting requirements have been met. The Contractor shall itemize the name of each Subcontractor, dollar amount of each Subcontract, as well as the actual amount paid for each Subcontract.

The Contractor remains fully responsible to MDOT for completion of the Work according to the contract as if no portion of it had been subcontracted.

No Subcontractor or supplier may maintain an action against MDOT for payment relating to goods or services provided in connection with the Contract; any such action must be brought against the Contractor or other responsible party.

A Subcontractor shall perform not less than 50 percent of the total value of the subcontracted work with the Subcontractor's own organization. This requirement is also applicable to and binding upon successive subcontracts.

MDOT may direct the immediate removal of any Subcontractor working or of any Subcontractor's equipment being operated in violation of this subsection. Any costs or damages incurred are assumed by the Contractor by the acceptance of the Contract. It is further understood that the Contractor's responsibilities in the performance of the Contract, in case of a Subcontract, are the same as if the Contractor had handled the work with the Contractor's own organization.

7.3.3 Subcontract Terms

Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents.

7.4 Character of Workers

7.4.1 Employee Performance Requirements

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

8 SURETY BONDS

8.1 Performance and Lien Bond

Contractor has provided to MDOT and shall maintain in full force and effect the performance and lien bonds, each for not less than 100 percent of the total Contract Price. The bonds shall be in the form provided by MDOT. The bonds shall meet the requirements of Michigan law and of MDOT and include other items such as the powers of Attorney and Endorsement as specified by MDOT.

In addition to the security required by 1905 PA 187, MCLA 570.101 et seq.; and MSA 26.321 et seq.; the Contractor shall furnish and maintain a satisfactory lien bond written by the same surety as the standard statutory performance bond, in an amount not less than the Contract Price, which additional bond shall secure the payment of all claims:

- (1) Lienable under the terms of said statute.
- (2) Notice of which is not given by subcontractors within the statutory period, but
 - (a) Notice of which is given by subcontractors within 60 Days after notice of the payment of the final estimate having been made by MDOT; or
 - (b) In the case of a supplier to the Contractor or a Subcontractor, within 120 Days after the materials are last furnished.

Said additional bond shall conform with the terms of 1905 PA 187, supra, in all respects except the time within which the notice of lien claims must be given, as provided herein.

8.2 Utility Work

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

8.3 No Relief of Liability

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

9 INSURANCE

9.1 Contractor Provided Insurance

Contractor shall procure, at its own expense, insurance acceptable to MDOT, as described herein, and shall maintain such insurance, as specified herein, in accordance with the requirements stated in this Section 9.1, or as otherwise Approved by MDOT at its sole discretion.

The Contractor, prior to execution of the Contract, shall file with MDOT a Certificate or Certificates of Insurance in form satisfactory to MDOT, showing that the Contractor has complied with the insurance requirements set forth in this Section 9.1, and Form 1304A. The Contractor shall comply with Standard Specification 107.10 and the following:

9.1.1 *Indemnification, Damage Liability and Insurance*

Add the following after the first paragraph, to subsection 107.10.C.4 of the Standard Specifications:

In lieu of Owners Protective Liability, the Contractor shall add to their Bodily Injury and Property Damage Policy:

a. Additionally Insured:

The Bodily Injury and Property Damage Policy shall name as additional insured the State, MDOT, the Commission and all agents and employees thereof, the City of Detroit, DIBC, and, where indicated by the identity of the contracting parties, the protection shall be extended to all participating political subdivisions and public corporations.

b. Per Project Aggregate:

The Bodily Injury and Property Damage Policy shall be endorsed with an endorsement that provides the General Aggregate Limit to each designated construction project.

c. Umbrella Policy:

An umbrella policy with a \$2,000,000 limit shall be provided.

9.1.2 *Professional Liability Insurance*

All Contractor representatives providing professional services shall provide Professional Liability Coverage of the type and in the amounts provided in the MDOT prequalification requirements.

10 RISK OF LOSS

10.1 Site Security

Site Security shall be in accordance with Section 107.11 of the Standard Specifications.

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Contractor

In addition to Section 107.11 of the Standard Specifications, the Contractor shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether MDOT has title thereto under the Contract Documents) that is injured or damaged prior to the date of acceptance of maintenance liability by MDOT or third parties as specified in Book 1, Section 10.2.2. All such work shall be at no additional cost to MDOT except to the extent that MDOT is responsible for such costs as provided in Book 1, Section 13. Contractor shall also have full responsibility during such period for rebuilding, repairing and restoring all other property at the Site, whether owned by Contractor, MDOT or any other Person. Additional requirements regarding maintenance of highways during construction are set forth in Book 2, Section 19.

10.2.2 Relief from Liability for Maintenance

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

10.3 Damage to Off-Site Property

In addition to Section 107.11 of the Standard Specifications, the Contractor shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. Contractor shall restore damaged, injured or lost property caused by an act or omission of any Contractor-Related Entity to a condition similar or equal to that existing before the damage, injury or loss occurred.

10.4 Title

Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for MDOT for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Site shall pass to MDOT, free and clear of all Liens, upon incorporation into the Project. Notwithstanding any such passage of title, and subject to Book 1, Section 10.1, Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until Contractor is removed from the Project.

11 PAYMENT

11.1 Contract Price

11.1.1 Contract Price

As full compensation for the Work and all other obligations to be performed by Contractor under the Contract Documents, MDOT shall pay to Contractor the Proposal Price determined by the Contractor on ITP Form 4 and as submitted through MDOT's E-Proposal Bid Express System (such amount, as it may be adjusted from time to time to account for Change Orders, is referred to herein as the "Contract Price") in accordance with this Book 1, Section 11. The Contract Price shall be increased or decreased only by a Change Order issued in accordance with Book 1, Section 13, by a Contract amendment or as specifically provided elsewhere in the Contract Documents. Payment of the Truck Road Incentive and Open to Traffic Incentive shall be according to Book 1, Section 12. If the Contractor fails to achieve full Payment of the Truck Road Incentive or the Open to Traffic Incentive, unpaid portions shall be deducted from the Contract by a Change Order.

11.1.2 Items Included in Contract Price

Contractor acknowledges and agrees that, subject only to Contractor's rights under Book 1, Section 13, the Contract Price includes:

- (a) Performance of each and every portion of the Work.
- (b) All designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to Contractor's performance of its obligations under the Contract Documents (including all Work, Warranties, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work).
- (c) The cost of obtaining all Governmental Approvals (except for approvals which are the responsibility of MDOT, as specifically provided elsewhere in the Contract Documents).
- (d) All costs of compliance with and maintenance of the Governmental Approvals and compliance with Governmental Rules, payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor, or services included therein (except for permits which are the responsibility of MDOT, as specifically provided elsewhere in the Contract Documents).

11.1.3 Delay in Issuance of Award

11.1.3.1 Delays beyond 30 Days after E-Proposal Bid Opening Date

If MDOT has not issued award on or before 30 Days after the E-Proposal Bid Opening Date due to no fault of Contractor, Contractor may agree to extend the terms of the Proposal, or the Contractor may withdraw its Proposal without payment of the Proposal Guaranty. The Contractor may stipulate the length of the extended period of time for award.

11.1.3.2 Allocation of Price Increase

Any price increase under this Section 11.1.3 shall be added to the final payment and shall be evidenced by a Change Order.

11.1.4 Price Adjustments

Except where specified in the Contract, the Contractor acknowledges that unit prices have not been established under the lump sum Contract Price. In the absence of unit prices, the unit prices in Table 11-1 shall be used to calculate price adjustments for certain Work, as described in the

Standard Specifications. The amount of price adjustments shall be in accordance with the Standard Specifications, as amended. Price adjustment will be calculated by grade or mix type at the end of the project, if applicable. The individual positive item adjustment(s) and individual negative item adjustment(s), if applicable, will be totaled to determine the overall item adjustment for the Project. Price adjustments will be deducted from the Contract Price. Price adjustments that result in an increase to the Contract Price will not be applied.

Table 11-1

ITEM	UNIT	UNIT PRICE (for price adjustments only)
Concrete Pavement	Square Yard	\$50.00
HMA	Ton	\$65.00
Concrete Curb and Gutter	Foot	\$15.00
Substructure Concrete	Cubic Yard	\$350.00
Superstructure Concrete	Cubic Yard	\$175.00
Superstructure Concrete, Night Casting	Cubic Yard	\$150.00
Traffic Control Items		
Lighted Arrow, Type C, Oper	Each	\$200.00
Plastic Drum, High Intensity, Oper	Each	\$4.00
Sign, Portable Changeable Message, Oper	Each	\$500.00
Sign, Type B, Oper	Each	\$2.00
Minor Traffic Devices	Lump Sum	\$57,500.00
Flag Control	Lump Sum	\$57,500.00

11.1.5 Defined Quantity Prices

Except where specified in the Contract, the Contractor acknowledges that unit prices have not been established under the lump sum Contract Price. In the absence of unit prices, the unit prices in Table 11-2 shall be used to calculate the amount of Change Orders for certain Work.

Table 11-2

ITEM	UNIT	UNIT PRICE
Non-Hazardous Contaminated Material Disposal	Cubic Yard	\$30.00

Non-Hazardous Contaminated Material Disposal will be eligible for a Change Order to the extent that the quantity exceeds the amount included in the Work as per Book 2, Section 4.

11.2 Progress Invoices and Payment

Funding for this Contract is with private funds. MDOT agrees to make payments to the Contractor in accordance with the terms of this Contract.

Requirements relating to invoicing are set forth in Book 2, Section 2.2. Within five Working Days after receipt by MDOT of each invoice, MDOT will provide comments to the Contractor or submit payment to the MDOT payment unit for the amount of the invoice Approved for payment less any amounts which MDOT is entitled to withhold. Withheld payments will not accrue interest.

11.3 Limitations on Payment

11.3.1 Progress Payment Limitation

In no event shall MDOT have any obligation to pay Contractor any amount which would result in (a) payment for any activity in excess of the value of the activity times the completion percentage of such activity, (b) aggregate payments hereunder in excess of the overall completion percentage for the Project times the Contract Price or (c) payment for Materials incorporated into the work that are not properly documented with testing orders and appropriate material certifications.

11.3.2 Unincorporated Materials

11.3.2.1 Delivery of Materials

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

11.3.2.2 Title to Materials

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

11.4 Deductions

MDOT may deduct from any amounts otherwise owing to Contractor in the final payment, the following:

- (a) Any anticipated or accrued losses, liability, Liquidated Damages or other damages for which Contractor is responsible hereunder. MDOT will notify the Contractor of the estimated cost of any proposed deductions associated with Book 1, Section 11.4 (a) prior to Final

Acceptance. The final deduction associated with this Section 11.4(a) may not be known until after Final Acceptance.

- (b) The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of contract by Contractor. Nonconforming Work and any costs associated with a breach of contract by the Contractor must be addressed by the Contractor prior to achieving Final Acceptance. MDOT will notify the Contractor of the estimated cost of any proposed deductions associated with this Section 11.4 (b) prior to Final Acceptance.
- (c) Any amounts that MDOT deems advisable, in its sole discretion, to cover any existing claims or liens by Subcontractors, Suppliers, laborers, Utility Owners or other third parties relating to the Project. MDOT will notify the Contractor as soon as the estimated costs for these items are known.
- (d) Any sums expended by MDOT in performing any of Contractor's obligations under the Contract which Contractor has failed to perform. MDOT will notify the Contractor of the estimated cost of any deductions associated with 11.4(d) prior to Final Acceptance.
- (e) A sum of \$500 per hour for Contractor's failure to facilitate satisfactory progress or ensure completion of the Work. Hourly charges will be applied during periods in which MDOT determines that the Contractor has not satisfactorily responded to documented nonconforming Work. No deduction will accrue if the nonconforming Work is corrected within one hour of notification. MDOT will notify the Contractor of any deductions associated with 11.4(e) prior to Final Acceptance.
- (f) Any other sums which MDOT is entitled to recover from Contractor under the terms of the Contract. MDOT will notify the Contractor of any deductions associated with 11.4(f) prior to Final Acceptance.

MDOT's failure to deduct from a payment any amount which MDOT is entitled to recover from Contractor under the Contract shall not constitute a waiver of MDOT's right to such amounts. Contractor shall be entitled to any excess amounts being withheld by MDOT at the time of Contractor's final payment.

11.5 Payments to Subcontractors

The Contractor is responsible to ensure that all Subcontractors and suppliers at every tier are promptly paid in accordance with the FUSP 03SP109(A) for Prompt Payment. The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to the Subcontractors and suppliers must be included in all subcontracts at every tier. If the Contractor fails to comply with this requirement, the MDOT Project Manager may withhold the amount due from any bi-weekly or monthly progress payment until the required payment(s) have been made.

12 CONTRACT INCENTIVES

12.1 Early Completion Incentives

12.1.1 Requirement to Achieve and Payment for Truck Road Completion Incentive

In order to receive an early completion incentive payment hereunder, Contractor shall achieve Truck Road Completion, by May 20, 2012, herein after the “Truck Road Incentive Date”. Truck Road Completion shall be defined as follows:

- (a) The Truck Road is complete with all lanes open for use in the final and permanent configuration, and no further Work is required which would involve any lane closure. Shoulder closures will be allowed after Truck Road Completion only to complete barrier wall and emergency gate construction in front of the Cargo Inspection Facility, provided that two lanes of truck traffic are maintained at all times.
- (b) The Southern Special Return Route is complete and operational, including security gate construction.
- (c) The Northern Special Return Route is complete and operational, including security gate construction.
- (d) The Truck Return to Canada Lane is complete and operational, including security gate construction.
- (e) All truck traffic exiting the Cargo Inspection Facility is utilizing the Truck Road to access the Interstate Freeway System and is not directly accessing the local roadway network.

The amount of the incentive payment shall be determined as follows:

- (a) Subject to the conditions set forth below, MDOT will pay the Contractor a lump sum incentive of \$358,430 (Truck Road Incentive) if the Work specified in this Section is completed on or before the Truck Road Incentive Date.
- (b) In the event that the Contractor satisfies the requirements of this Section earlier than the Truck Road Incentive Date, the Contractor shall receive an additional incentive as part of the Truck Road Incentive in accordance with the following schedule:

\$71,686 – Completed 1 Calendar Day in advance

\$143,372 – Completed 2 Calendar Days in advance

\$215,058 – Completed 3 Calendar Days in advance

\$286,744 – Completed 4 Calendar Days in advance

\$358,430 – Completed 5 Calendar Days in advance

The above values are not cumulative values, and the incentives will not be prorated between dates shown on this schedule. In no event shall the total Truck Road Incentive exceed \$716,860.

12.1.2 Requirement to Achieve and Payment for Open to Traffic Incentive

In order to receive an early completion incentive payment hereunder, Contractor shall have the Project fully Open to Traffic by September 9, 2012, herein after the “Open to Traffic Incentive Date”. Open to Traffic shall be defined as follows:

- (a) All Project Work is complete, with no further Work required that would involve any lane closure or shoulder closure, except for the Punch List. Shoulder and lane closures may be allowed only for Punch List work, during non-peak hours as defined in Book 2, Section 18.3.2, as Approved by the MDOT Project Manager.

The amount of the incentive payment shall be determined as follows:

- (a) Subject to the conditions set forth below, MDOT will pay the Contractor a lump sum incentive of \$28,000 (Open to Traffic Incentive), for each Day the Work specified in this Section is completed in advance of the Open to Traffic Incentive Date, up to a maximum of 10 Days.

The incentives will not be prorated between days. In no event shall the total Open to Traffic Incentive for the Project exceed \$280,000.

12.1.3 Limitations of Incentive Payments to Contractor

- (a) The Truck Road Incentive Date shall not be adjusted for any reason, cause or circumstance whatsoever, regardless of the cause of the delay, and even though it may have been caused by MDOT, Contractor acknowledges and agrees that delays may be caused by or arise from any number of events during the course of the Contract. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract and shall not result in an extension of the Truck Road Incentive Date.

Except for MDOT-Caused Delays, delays due to Force Majeure events, and delays related to Utility conflicts requiring relocation as defined in Book 2, Section 6, any and all costs or impacts incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays in an effort to complete the work by the Truck Road Incentive Date, regardless of whether the Contractor successfully meets the incentive date or not, shall be the sole responsibility of the Contractor in every instance. MDOT shall pay Acceleration Costs for efforts related to mitigation of MDOT-Caused Delays, delays due to Force Majeure events, and delays related to Utility conflicts requiring relocation as defined in Book 2, Section 6.

- (b) The Open to Traffic Incentive Date may be extended, per Book 1, Section 13.3.1.1. MDOT, at its sole discretion, may elect to compensate the Contractor for Acceleration Costs in accordance with Book 1, Section 13.5.2.1, as an alternative to allowing an extension to the Open to Traffic Incentive Date.
- (c) If the Contractor completes the Work by the respective incentive date, the following shall apply:
1. The Contractor must promptly request written verification from MDOT that the required Work was completed on or before the respective incentive date. The Contractor shall request this verification from MDOT in writing on or before the respective incentive date.
 2. Payment of the incentive shall be made on the first partial estimate voucher processed after MDOT receives the Contractor's written request to accept the incentive.
- (d) Should this provision conflict with any other provision of the Contract, this provision shall prevail and the Contract shall be interpreted in accordance with it.

13 CHANGES IN THE WORK

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

13.1 Circumstances under which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Change Orders

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. Work Orders and resolved claims may result in a Change Order if such Work Orders and resolved claims necessitate a written amendment to the Contract Documents. A Change Order shall not be effective for any purpose unless executed by MDOT, as specified herein. As used herein, execution of a Change Order by MDOT shall mean that the Change Order has been fully executed with all the required signatures by MDOT and any other necessary parties of the State. Change Orders may be requested by Contractor only pursuant to Book 1, Section 13.3. Change Orders may be issued for the following purposes (or combination thereof):

- (a) To modify the scope of the Work
- (b) To revise a Completion Deadline
- (c) To revise the Contract Price
- (d) To revise other terms and conditions of the Contract Documents.

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

13.1.2 Significant Changes in the Character of Work

If a MDOT-Directed Change significantly changes the character of the Work, whether the alterations or changes included in such direction are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to performance of such Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against Contractor in such amount as MDOT may determine to be fair and equitable, subject to resolving the Dispute in accordance with Book 1, Section 19. The term “significant change” shall be construed to apply only when (a) the changes materially modify the general definition of the Project or the design-build character of the Work, or (b) MDOT requires Work to be performed that is physically remote from the original Project and not necessary for completion of the original Project. Changes that are specifically contemplated by the Contract shall not be considered significant changes in the character of the Work. If the changes do not significantly change the character of

the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract.

13.2 Procedure for Work Orders

MDOT may issue a Work Order that increases or decreases the Work in accordance with Standard Specification 103.04.

13.3 Procedure for Claims

13.3.1 Eligible Changes

This section outlines instances whereby Contractor may submit a claim.

13.3.1.1 Time Extension

Contractor may submit a claim to extend a Completion Deadline, subject to certain limitations, only for the following excusable delays changing the duration of the Critical Path:

- (a) MDOT-Caused Delays;
- (b) Delays directly attributable to Force Majeure events, to the extent permitted by Book 1, Section 13.10
- (c) Certain delays relating to Utilities, as described in Standard Specification 109.03.A.2. Incentive dates may only be extended in accordance with Book 1, Section 12.1.3.

13.3.1.2 Contract Price Increase

Contractor may submit a claim to increase the Contract Price, subject to certain limitations, including with respect to delay damages, as specified in Book 1, Section 13.5.2, only for increased costs in the Work as follows:

- (a) Additional costs directly attributable to additional Work resulting from MDOT-Directed Changes.
- (b) Additional costs directly attributable to MDOT-Caused Delays
- (c) Additional costs directly attributable to Necessary Basic Configuration Changes, to the extent provided in Book 1, Section 13.8.
- (c) Additional costs directly attributable to Differing Site Conditions, to the extent provided in Book 1, Section 13.8.
- (d) Additional costs directly attributable to the following, to the extent provided in Book 1, Section 13.9:
 - (i) An earthquake;
 - (ii) Any rebellion, war, riot, sabotage, terrorism or civil commotion;
 - (iii) The discovery at, near, or on the Site of any paleontological, cultural or biological resources or any species presently or in the future listed as threatened or endangered under the federal or state endangered species act, provided that the existence of such resources was not disclosed in the RFP documents;
 - (iv) The suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval or New Environmental Approval, except as otherwise provided in Book 1, Section 6.3; and
 - (v) Any change in a Governmental Rule, change in the judicial interpretation of a Governmental Rule, or adoption of any new Governmental Rule, which is

materially inconsistent with Governmental Rules in effect on the Proposal Due Date (excluding any such change or new Governmental Rule which was passed or adopted but not yet effective as of the Proposal Due Date), and which (A) requires a material modification in the Project design, (B) requires Contractor to obtain a major State or federal environmental approval not previously required for the Project or (C) specifically targets the Project or Contractor;

- (e) Certain additional costs relating to Contaminated Materials, as described in Book 1, Section 13.11, to the extent provided therein and;
- (f) Additional costs directly attributable to uncovering, removing, and restoring Work, to the extent provided in Book 1, Section 5.5.3.
- (g) Certain additional costs relating to Utilities, as described in Standard Specification 109.03.A.2.

13.3.1.3 Contractor Initiated Work Orders

Contractor at any time may initiate a Work Order from MDOT that proposes changes to the scope of work of the Contract. Proposals can include changes to add or reduce the scope of work or implement changes to the Contract.

13.3.2 Claims Review Process

The claims review process shall be in accordance with 03SP104(C) – Special Provision for Claims Review Process, Standard Specification 104.09 and Standard Specification 108.10.

Standard Specification 109.09 and references to Standard Specification 109.09 shall not apply. Substantial Completion and Final Acceptance procedures are defined in Book 1, Section 20.

13.3.3 Performance of Disputed Work

If MDOT refuses to issue a Change Order based on Contractor's claim, Contractor shall nevertheless perform all work as specified in an appropriate Work Order, with the right to submit the issue of entitlement to a Change Order to Dispute Resolution in accordance with Book 1, Section 19. Contractor shall maintain and deliver to MDOT, upon request, contemporaneous records, meeting the requirements of Book 1, Section 13.7, for all work performed which Contractor believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Not Used

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

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

13.4.2.1 Scope of Work

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

13.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless MDOT agrees otherwise. The estimate shall include costs allowable under Book 1, Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Contractor's estimate. No mark-up shall be allowed in excess of the amounts allowed under Book 1, Sections 13.5.2 and 13.7. Contractor shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

13.4.2.3 Impacted Delay Analysis

If Contractor claims that such event, situation or change affects the Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to MDOT, which compares the proposed new schedule to the CPM Schedule, as appropriate. The revision to the Contract Schedule associated with the time extension shall not modify the "early and late start cost curves" of the CPM Schedule, except with respect to activities which have been impacted by the event which justifies the extension. Contractor may reschedule activities not otherwise affected by the event, in order to take advantage of additional Float available as the result of the time extension. Any such rescheduling shall be reflected in the CPM Schedule.

13.4.2.4 Other Supporting Documentation

Contractor shall provide such other supporting documentation as may be required by MDOT.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude:

- (a) Costs caused by the breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity.
- (b) Costs which could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).
- (c) Costs for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by MDOT as an alternative to allowing an extension of a Completion Deadline as contemplated by Book 1, Sections 13.3.1.1. Other delay and disruption damages shall be compensable hereunder only in the case of a delay which qualifies as a MDOT-Caused Delay to the extent that it entitles Contractor to an extension of a Completion Deadline. Without limiting the generality of the foregoing, costs of rearranging Contractor's work plan to accommodate MDOT-Directed

Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Book 1, Section 13.5.2.1 and mark-ups thereon in accordance with Book 1, Section 13.7 and any additional field office and jobsite overhead costs incurred by Contractor directly attributable to such delays. In addition, before Contractor may obtain any increase in the Contract Price to compensate for extended overhead, Acceleration Costs or other damages relating to delay, Contractor shall have demonstrated to MDOT's satisfaction that:

- (a) Its schedule which defines the affected Critical Path in fact set forth a reasonable method for completion of the Work.
- (b) The change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity.
- (c) The delay or damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).
- (d) The delay for which compensation is sought is not concurrent with any other delay excluding MDOT-Caused Delays.
- (e) Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to MDOT.

13.5.3 Limitation on Time Extensions

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

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

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

13.6 Negotiated Price Change Orders

MDOT and Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. In general, the price of a Change Order shall be negotiated in accordance with this Section 13.6 or shall be based on time and materials records pursuant to Book 1, Section 13.7.

13.6.1 Not Used

13.6.2 Unit Price Change Orders

Instead of negotiating the price for a Change Order in accordance with Book 1, Section 13.6.3, 13.6.4 or 13.6.5, MDOT and Contractor may agree to negotiate unit prices for changed Work. Measurement of unit-priced quantities will be as specified in the Change Order. The unit prices shall be deemed to include all costs for the Work, including labor, equipment, material, overhead, markups and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. The final price of a Change Order may be lump sum or may be based upon a final determination of the quantities.

13.6.3 Added Work

When the Change Order adds Work to Contractor's scope, the increase in the Contract Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be estimated based on costs in accordance with Book 1, Section 13.7. Mark-ups for profit and overhead shall be as provided in Book 1, Section 13.7.

13.6.4 Deleted Work

When the Change Order deletes Work from Contractor's scope (including deletion of any Work contained in the Contract that is found to be unnecessary), the amount of the reduction in the Contract Price shall be based upon a current estimate including a bill of material, a breakdown of labor and equipment costs and overhead and profit associated with the deleted work. Credits for mark-up for profit and overhead shall be as provided in Book 1, Section 13.7. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

13.6.5 Work Both Added and Deleted

When the Change Order includes both added and deleted Work, Contractor shall prepare separate cost breakdowns for Added Work and Deleted Work in accordance with Book 1, Section 13.6.3 and 13.6.4.

- (a) The cost (or credit) amount of the Change Order shall be the difference between the cost Added Work and Deleted Work cost breakdowns.
- (b) If the change results in a net change of zero, there will be no change in the Contract Price.

13.7 Time and Materials Change Orders (Force Account)

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

13.7.1 Determination of Costs

Compensation for Time and Materials Change Orders shall be in accordance with Standard Specification 109.07 – Force Account and this Section 13.7.

13.7.1.1 Non-Construction Labor Costs

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

- (a) Actual unburdened wages (i.e., the base wage paid to the employee exclusive of any fringe benefits).
- (b) Unless already included in the wage rates paid, the actual MDOT Approved labor-related costs incurred by reason of subsistence and travel allowances.
- (c) A labor surcharge of 150 percent of actual unburdened wages, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance and bond premiums, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the worker, as well as overhead and profit.

13.8 Changes in Basic Configuration

13.8.1 Increase in Contract Price and/or Extension of Completion Deadlines

Upon Contractor's fulfillment of all applicable requirements of Section 13, and subject to the limitations contained therein, if a Necessary Basic Configuration Change increases the cost to perform the Work, Contractor shall be entitled to an increase in the Contract Price, excluding any costs that could have been avoided by Contractor.

13.8.2 Decrease in Contract Price and/or Extension of Completion Deadlines

If a Necessary Basic Configuration Change decreases the cost and/or time to perform the Work, the Contract Price and/or Completion Deadlines shall be decreased accordingly.

13.8.3 Change in Basic Configuration Resulting From VECP

If a VECP results in a material change in Basic Configuration, any cost savings from such VECP shall be shared in accordance with Section 13.17.

13.8.4 Non-Material Change in Basic Configuration

Contractor shall be responsible for any cost increases and/or delays resulting from changes in requirements and obligations of Contractor relating to the Project due to inaccuracies in the Basic Configuration which do not necessitate a material change in the Basic Configuration. In such event, no change in the Work shall be deemed to have occurred and no Change Order shall be issued for any such cost increases and/or delays.

13.9 Differing Site Conditions

13.9.1 Responsibilities of MDOT

Upon Contractor's fulfillment of all applicable requirements of Book 1, Sections 5.3 and 13, and subject to the limitations contained therein, MDOT shall be responsible for, and agrees to issue Change Orders, (a) to compensate Contractor for additional costs directly attributable to changes in the scope of the Work arising from Differing Site Conditions.

13.9.2 Burden of Proof

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

13.10 Certain Events

Upon Contractor's fulfillment of all applicable requirements of Book 1, Section 13, and subject to the limitations contained therein, MDOT shall be responsible for, and agrees to issue Change Orders, (a) to compensate Contractor for additional costs directly attributable to the events set forth in Book 1, Section 13.3.1.2(d) and/or (b) to extend the applicable Completion Deadlines as the result of any delay in the Critical Path caused by a Force Majeure event.

13.11 Contaminated Materials Management

13.11.1 Price Increase

Subject to Book 1, Section 13.11.3, Contractor shall be entitled to payment for Remediation Work (excluding those conditions for which Contractor has agreed to be responsible as described in Book 1, Section 5.3, Book 2, Section 4, and Book 2, Section 10 and excluding any spill or release attributable to any Contractor Related Entity) through a Change Order priced in accordance with Book 1, Section 13.6 or 13.7 and Section 11.1.5.

13.11.2 Not Used

13.11.3 Limitations on Change Orders

All Change Orders authorized by this Section 13.11 shall be subject to the restrictions, limitations and procedures set forth in Book 1, Section 13. Allowable costs shall be limited to the incremental costs associated with the fact that Contaminated Materials subject to Remediation Work compensable under Book 1, Section 13.11.1 are present (deducting any avoided costs such as re-use and/or disposal of non-Contaminated Materials) after completion of the testing process to determine whether Contaminated Materials are present. Contractor shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under Book 1, Section 13.11.1 will not be allowed unless Contractor demonstrates to MDOT's satisfaction that (a) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques and (b) Contractor's plan for the Remediation Work represents the approach which is most beneficial to the Project and the public. Contractor shall provide MDOT with such information, analyses and certificates as may be requested by MDOT in order to enable a determination regarding eligibility for payment.

13.12 Matters Not Eligible for Change Orders

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

- (a) Errors in the Design Documents and Construction Documents (including Errors directly attributable to Errors in the RID which are not guaranteed in Book 1, Section 3.3).
- (b) Subject to Book 1, Sections 13.3.1.2(d)(iv) and (v), any design changes required by MDOT as part of the process of Accepting the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals and/or Governmental Rules.
- (c) Defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (except to the extent arising from causes which otherwise give rise to a right to a Change Order).
- (d) Action or inaction of Contractor's employees, Suppliers, Subcontractors or any Contractor-Related Party (unless arising from causes which otherwise give rise to a right to a Change Order).
- (e) Groundwater levels or subsurface moisture content.
- (f) Untimely delivery of equipment or material, or unavailability, defectiveness, or increases in costs of material, equipment or products specified by the Contract Documents (except to the extent arising from causes which otherwise give rise to a right to a Change Order).
- (g) Delays not on the Critical Path.
- (h) Costs covered by insurance proceeds received by or on behalf of Contractor.
- (i) Correction of Nonconforming Work and oversight and related activities in connection therewith by MDOT (including rejected design submittals).
- (j) Failure by Contractor to comply with Contract requirements.
- (k) All other events beyond the control of MDOT for which MDOT has not agreed to assume liability hereunder.
- (l) Any situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract or arise out of the nature of the Work.

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

13.14 Waiver

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

13.15 No Release or Waiver

13.15.1 Extension of Time for Performance

No extension of time granted hereunder shall release Contractor's Surety or any Guarantor from its obligations. MDOT shall not be deemed to have waived any rights under the Contract (including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Work, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to Contractor after such date.

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

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

13.16 Contract Price Change

All Change Orders that modify the Contract Price will be paid in accordance with Book 1, Section 11.

13.17 Value Engineering Change Proposal (VECP)

The parties desire for Contractor to have significant flexibility in determining how best to deliver the Project within the parameters established by the Contract Documents. Notwithstanding the foregoing, MDOT Approval is required with respect to any proposed value engineering changes to the Contract. This Section 13.17 sets forth the requirements applicable to requests for modifications in Contract Requirements submitted by Contractor provided the request qualifies as a VECP as provided herein.

A proposed change based on an ATC by a Proposer other than the Contractor or based on an idea by MDOT shall be deemed a MDOT Directed Change Order and not a VECP.

Contractor is encouraged to submit VECPs for the purpose of enabling Contractor and MDOT to take advantage of potential estimated net saving from changes in the Contract requirements but which do not adversely impact essential characteristics of the Project.

13.17.1 Description of a VECP

A VECP is a proposal developed and documented by the Contractor which:

- (a) Would modify or require a change in any of the requirements of or constraints set forth in the Contract Documents in order to be implemented (including any changes to the Basic Configuration); and
- (b) Results in reduced construction cost, a higher quality product, improved safety, or a shorter contract time without impairing essential functions or characteristics of the Project (including service life, economy of operation, operating costs, ease of maintenance, desired

appearance, impact on Utilities and ROW, mobility and safety of the motorist, bicyclist and pedestrian; design standards, and safety standards) as determined by MDOT in its sole discretion, and provided that it is not based solely upon a change in quantities, performance or reliability or a relaxation of the Contract requirements.

The estimated net savings must be quantifiable in relation to the Contract Price. No work shall begin before an executed Change Order is provided to the Contractor. The proposed change must not significantly delay the completion of the Project. A VECP or conceptual VECP will only be considered after Project Award.

This section does not restrict the Contractor from proposing improvements to the Project that may not result in estimated net savings. A conceptual VECP stating the basic concept and estimated net savings may be submitted for preliminary consideration.

13.17.2 Submittal of Conceptual VECP

The Contractor may submit a conceptual VECP for preliminary MDOT evaluation. Upon review by MDOT, one of the following actions will be taken:

- Conceptual approval and a request for the Contractor to submit a formal VECP.
- Request for additional information
- Denial of the VECP

Preliminary review of a conceptual VECP reduces the Contractor's risk of subsequent denial but does not commit MDOT to eventual Approval of the full VECP. Submit one electronic copy of the following information for each conceptual VECP using the Value Engineering Change Proposal Form (Form # 1962), available on the MDOT website, marked "Conceptual VECP".

The submittal shall include:

1. A description of the difference between the existing Contract requirements and the proposed changes, and expected benefits.
2. A set of conceptual plans.
3. Anticipated estimated net savings or increase.
4. A date by which MDOT must make a decision to avoid delays to the existing Contract and capture the estimated net savings. Also include information on the amount of time necessary to develop the full VECP and impacts to the Project's schedule.
5. If impacting maintenance of traffic provisions, identify proposed changes and impacts to Book 2 Section 18.
6. After Approval of conceptual VECP, the Contractor must follow Book 1, Section 13.17.3 for the Final VECP.

13.17.3 Submittal of Final Value Engineering Change Proposal

Submit one electronic copy of the following information for each VECP using the Value Engineering Change Proposal Form (Form # 1962), available on the MDOT website, marked "Final VECP". The submittal shall include:

1. A description of the difference between the existing Contract and the proposed change, and the advantages and disadvantages of each, including effects on service life, operating costs, ease of maintenance, desired appearance, impact on Utilities and ROW, mobility

- and safety of the motorist, bicyclist and pedestrian; design standards, and safety standards.
2. A complete set of plans, if necessary, and specifications showing the revisions relative to the original Contract Documents and/or RFC plans and specifications. This portion of the submittal shall include design notes and construction details. If the VECP requires a design, the plans and specifications shall be signed and sealed by the Contractor's engineer licensed in the State of Michigan.
 3. All costs that make up the estimated net savings must be documented in a spreadsheet by the Contractor and must include a cost comparison summarizing all the items the VECP replaces, reduces, eliminates, adds, or otherwise changes from the original Contract.
 4. A date by which MDOT must make a decision to avoid delays to the existing Contract and capture the estimated net savings.
 5. If impacting maintenance of traffic provisions, identify proposed changes and impacts to Book 2 Section 18. If the submitted revisions to the maintaining traffic provision are initially Approved as part of the VECP Approval process and require any corrections to become Accepted, the Contractor is responsible for all additional costs related to corrective measures.
 6. A statement detailing the affect the VECP will have on the time for completing the Contract and impacts to the Project's schedule.
 7. A description of any known uses or testing of the proposed changes and the conditions and the results.
 8. If the VECP submittal includes items associated with a warranty, include the latest version of the warranty specification and discussion on the impacts to the warranty.

The Contractor must provide any additional information requested by MDOT in a timely manner. Additional information could include results of field investigations and surveys, design computations and field change sheets and could also extend the date by which MDOT is to respond to the VECP.

13.17.4 VECP Evaluation

MDOT will follow the VECP process outlined in the Bureau of Highways Instructional Memorandum in place at the time the VECP is submitted.

By submitting the VECP, the Contractor agrees not to hold MDOT liable for its decision or for any delays to the work attributable to the VECP. Decisions on a VECP are not subject to appeal. Work on the project shall continue in accordance with the requirements of the Contract until a Change Order is issued which incorporates the VECP changes. MDOT has final authority of the acceptability of a VECP and of the estimated net savings attributable to the adoption of all or any part of the VECP. If, in the judgment of MDOT, the net savings do not represent a fair measure the estimated net savings.

MDOT may modify a VECP, with the concurrence of the Contractor, in order to make it acceptable. The Contractor's share of the savings will be based on the modified VECP.

If the VECP is Approved, in whole or in part, the written Approval will be issued by a Change Order. The Change Order will include the necessary changes in the plans and specifications and

any conditions upon which the Approval is based. Approval of a VECP must not extend the time of Contract completion unless specifically provided for in the Change Order.

VECP will be evaluated in accordance with the following:

1. MDOT will determine if a VECP qualifies for consideration and evaluation. MDOT may deny any VECP that requires excessive time or costs for review, evaluation or investigation. MDOT may deny any VECP that are not consistent with MDOT's design policies and criteria for the project.
2. MDOT will not accept a VECP that is:
 - Similar to a change in plans or specifications, concept, or idea under consideration by MDOT for the project at the time the VECP is submitted
 - Based upon, or similar to, Standard Specifications, general use special provisions, materials specifications or standard drawings adopted by MDOT after the Proposal Due Date. MDOT reserves the right to use the Change Order process to make such changes to the Contract.
3. The Contractor will have no claim against MDOT for additional costs or delays resulting from denial or untimely Approval of a VECP or Acceptance of the plans or specifications that result from moving forward with a VECP. These costs include, but are not limited to: development costs, loss of anticipated profits, increased material or labor costs, or untimely response.
4. A VECP will be denied if equivalent options are already provided in the Contract.
5. An estimated net saving resulting solely from the elimination or reduction in quantities will not be considered as a VECP. An estimated net saving resulting from the elimination or reduction in quantity of Contract item(s) specified as part of a VECP may be considered.
6. In calculating the value of estimated net savings, MDOT has the right to disregard the use of historical average unit prices, if such prices do not represent the value of the work to be performed or to be deleted, and has the right to calculate the savings based on reasonable cost for such work.
7. A VECP will be denied if the design consultant for the Contractor is also the design consultant for MDOT or other apparent conflicts of interest exist.
8. Suggestions and recommendations from a Value Engineering Study incorporated into the Work are not eligible for a VECP.

Approval of a VECP shall not be considered Approval of the Contractor's design. Design Documents related to the VECP shall be submitted for Acceptance as RFC documents according to the Contract.

13.17.5 Time Frame for VECP Evaluation

The Contractor will be notified of MDOT's decision to Approve or deny a conceptual or final VECP within 10 Working Days of receipt of the VECP. If the Contractor does not receive a written Approval within this time frame, and the date has not been extended by mutual agreement of MDOT and the Contractor, the VECP is denied. MDOT's decision is final and there is no opportunity for appeal.

13.17.6 Not Used**13.17.7 Future Use of a VECP**

MDOT reserves the right to use all or any part of a VECP on other contracts without obligation or compensation to the Contractor.

13.17.8 VECP Contract Price Adjustments

MDOT may reject all or any portion of work performed under an Approved VECP if results are unsatisfactory. MDOT will direct the removal of rejected Work and construction will proceed under the original Contract requirements. There will be no payment for work performed under the VECP, or for its removal.

No work related to a VECP will be performed under force account.

The VECP changes will be incorporated into the Contract by a Change Order. Unless there are Differing Site Conditions, the Contractor will not receive additional compensation for quantity overruns, design errors, supplemental surveys, geotechnical investigations, additional items or other increases in cost that were not foreseen in the Approved VECP, unless otherwise Approved by MDOT.

The Change Order authorizing implementation of a VECP will include the price for performing all affected items of work and the estimated net savings of performing the Work directly attributable to the VECP. VECP payments only involve direct savings or costs. Indirect savings or costs (time, user delay, contract delay, etc.) are not to be included in VECP payment calculations. The calculations of VECP payments are independent from the payments or penalties for Contract time related issues. The Contractor will be paid 50 percent of this estimated net savings based on as constructed or plan quantities whichever is in the best interests of MDOT. The amount specified in the Change Order constitutes full compensation to the Contractor for the VECP and the performance of that Work.

The Contractor's development costs for the proposed VECP, including all costs associated with design, are not reimbursable.

MDOT reserved the right to review the EPD in order to verify the cost adjustment of the VECP.

13.17.8.1 VECP Affecting ROW

In a case where a VECP involves an adjustment to the ROW (such as a VECP that additional real property be purchased to reduce construction costs), the VECP shall compare:

- (a) The incremental reduction in costs (such as for not designing and building a wall); and
- (b) The costs involved in adjusting the ROW or environmental approvals (which shall be based on Contractor's additional costs, such as for providing real property acquisition support services, including profit, plus MDOT's additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of MDOT personnel involved in the acquisition); or (as appropriate) shall compare:
- (c) The incremental reduction in costs (if any) for not acquiring the unnecessary real property; and
- (d) The additional construction costs to be incurred.

The Contractor will be paid 50 percent of this estimated net savings. Reimbursements for Relocation expenses owed to Utility Owners shall be addressed in calculating estimated net savings to be shared between MDOT and Contractor. Contractor shall include in its VECP an analysis of any impacts on Utility Owners for consideration by MDOT. If Contractor wishes to propose such a VECP, Contractor shall provide a separate notification to MDOT describing the proposed impact concurrently with delivery of the VECP to MDOT.

The following example concerns a VECP by a contractor to acquire additional right of way in lieu of wall construction.

Estimated Net Savings from VECP	
Cost of wall	\$250,000
Less Contractor’s additional expenses	(15,000)
Less cost of preparing VECP	(10,000)
Less additional costs incurred by MDOT:	
MDOT’s cost of personnel	10,000
MDOT’s cost of property	<u>150,000</u>
Subtotal	(160,000)
Total Estimated Net Savings from VECP	\$65,000
Adjustment in Contract Price	
MDOT’s total cost	\$160,000
Plus 50 percent of Estimated Net Savings	<u>32,500</u>
Total Reduction in Contract Price	\$192,500

13.17.8.2 Estimated Net Savings

The term “estimated net savings” as used in this Section 13.17 shall mean:

- (a) The difference between the cost of performing the Work according to the Contract Documents using current estimates and the actual cost to perform it according to the proposed change, less
- (b) The costs of studying and preparing the VECP as prepared by Contractor and Approved by MDOT in accordance with the Change Order procedures set forth herein, less
- (c) Any additional costs incurred by MDOT (including the cost of MDOT’s review of the VECP, costs relating to any Relocations and Right of Way and implementation costs) resulting from the VECP. Contractor’s profit shall not be considered part of the cost.

14 SUSPENSION OF WORK

Suspension of Work shall be in accordance with Standard Specification 104.01 B – Authority of the Engineer to Suspend Work.

15 TERMINATION OF CONTRACT

Termination of Contract shall be in accordance with Standard Specification 108.13 – Termination of Contract.

16 DEFAULT

Default of Contract shall be in accordance with Standard Specification 108.12 – Default of Contract.

17 DAMAGES

17.1 Liquidated Damages

17.1.1 Failure to Meet Completion Deadlines

Contractor understands and agrees that if Contractor fails to complete the Work in accordance with the Contract Documents, the public will suffer substantial losses and damages from not receiving the benefits of this Project. Contractor agrees that it shall be liable for all such losses and damages. Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to MDOT and the public in the event of Contractor's failure to achieve Substantial Completion and/or Final Acceptance by the applicable Completion Deadlines. Therefore, Contractor and MDOT have agreed to stipulate the amount payable by Contractor in the event of its failure to meet a Completion Deadline. Contractor acknowledges and agrees that such Liquidated Damages are intended to compensate MDOT solely for Contractor's failure to meet the Completion Deadlines, and shall not excuse Contractor from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that MDOT has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude MDOT from exercising its other rights and remedies respecting the delay set forth in Book 1, Section 16 other than the right to collect other damages due to the delay, except that MDOT agrees not to exercise such other rights and remedies respecting the delay so long as (a) the Contract Schedule demonstrates that Contractor is capable of meeting such Completion Deadline within 180 Days after the Completion Deadline and (b) Contractor diligently performs the Work in accordance with said schedule.

If Contractor fails to achieve Truck Road Completion, Open to Traffic, Substantial Completion and/or Final Acceptance by the applicable Completion Deadline, Contractor agrees to pay MDOT Liquidated Damages in the following amounts:

- (a) \$71,686 per Day for Contractor's failure to achieve Truck Road Completion by the Truck Road Completion Intermediate Completion Deadline as defined in Book 1, Section 4.3.3, until the date Contractor achieves Truck Road Completion;
- (b) \$28,000 per Day for Contractor's failure to achieve Open to Traffic by the Open to Traffic Intermediate Completion Deadline as defined in Book 1, Section 4.3.3, until the date Contractor achieves Open to Traffic;
- (c) \$3,000 per Day for Contractor's failure to achieve Substantial Completion by the Substantial Completion Deadline as defined in Book 1, Section 4.3.1, until the date Contractor achieves Substantial Completion;
- (d) \$1,500 per Day for Contractor's failure to achieve Final Acceptance by the Final Acceptance Deadline as defined in Book 1, Section 4.3.2, until the date Contractor achieves Final Acceptance;

Multiple Liquidated Damages may be assessed at the same time if one or more conditions exist.

17.1.2 Reasonableness of Liquidated Damage Amounts

Contractor understands and agrees that any Liquidated Damages payable in accordance with this Section 17.1 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of the

Contract. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

17.2 Offset; Waiver

17.2.1 Offset

MDOT shall have the right to deduct any amount owed by Contractor to MDOT hereunder from any amounts owed by MDOT to Contractor.

17.2.2 No Waiver

Permitting or requiring Contractor to continue and finish the Work or any part thereof after a Completion Deadline shall not act as a waiver of MDOT's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to MDOT.

18 INDEMNIFICATION

18.1 Indemnifications by Contractor

18.1.1 General Indemnities

Subject to Book 1, Section 18.1.3, Indemnification shall be in accordance with Standard Specification 107.10 A. – Indemnification and this Section 18.

18.1.2 Design Defects

Subject to Book 1, Section 18.1.3, Contractor shall release, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from Errors in the Design Documents, regardless of whether such Errors were also included in the RID. Contractor agrees that, because the RID are subject to review and modification by Contractor, it is appropriate for Contractor to assume liability for Errors in the completed Project even though they may be related to Errors in the RID.

18.1.3 Losses Due to Negligence of Indemnified Parties

Contractor's indemnity obligation under Book 1, Sections 18.1.1 and 18.1.2 shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party (in other words, a comparative negligence standard shall apply).

18.2 Responsibility of MDOT for Certain Contaminated Materials

18.2.1 Pre-Existing Site Contamination

It is recognized that MDOT may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Contaminated Materials which may currently be present on the Site. It is further recognized that certain state and federal statutes provide that individuals and firms may be held liable for damages and claims related to Contaminated Materials under such doctrines as joint and several liability and/or strict liability. It is not the intention of the parties that Contractor be exposed to any such liability to the extent arising out of (a) pre-existing Site contamination, whether known or unknown, (b) the performance not attributable to the negligence, willful misconduct or breach of contract by any Contractor-Related Entity in the handling of such Contaminated Materials, and/or (c) the activities of any Persons not described in clause (b) above, including MDOT.

18.2.2 Generator Number for Hazardous Waste Remediation

Except for Contaminated Materials for which Contractor is responsible and without contradiction of any assertion by MDOT of third-party liability:

- (a) Contractor shall not be required to execute any hazardous waste manifests as a "generator." and
- (b) Contaminated Materials encountered in the performance of the Work shall be in accordance with Book 2, Section 4.

18.3 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge or reduce other rights or obligations which would otherwise exist in favor of a party indemnified hereunder.

18.4 CERCLA Agreement

Without limiting their generality, the indemnities concerning pre-existing site contamination are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the Indemnified Parties.

19 PARTNERING, CLAIMS FOR ADJUSTMENT AND DISPUTES

19.1 Partnering

Partnering is not required on this Project

19.2 Claims for Compensation Adjustment and Disputes

Disputes shall be resolved through MDOT'S written claim procedures in effect at the time the disputes are made.

20 ACCEPTANCE OF PROJECT

20.1 Substantial Completion

20.1.1 Notice by Contractor

Contractor shall provide written notice to MDOT when all of the following have occurred with respect to the Project:

- (a) Contractor has completed all Work (except for items only included in the requirements for Final Acceptance).
- (b) Contractor has ensured that the Work has been performed in accordance with the requirements of the Contract Documents.
- (c) Contractor has received all applicable Governmental Approvals required for Project use.
- (d) Contractor has furnished to MDOT certifications from Contractor's Design Manager, in form and substance satisfactory to MDOT, certifying conformity of the Design Documents with the requirements of the Contract Documents.
- (e) Contractor has furnished to MDOT certifications from Contractor's Project Manager, in form and substance satisfactory to MDOT, certifying conformity of the construction with the Design Documents.
- (f) Contractor has furnished to MDOT certifications, in form and substance satisfactory to MDOT, certifying that there are no outstanding nonconformances other than those identified on the Punch List.
- (g) Contractor has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person.
- (h) Contractor has obtained all applicable third party approvals relating to the Work (including Utility Owners as required under any applicable utility agreements and Section 6 of Book 2), and all third parties have completed all work that involves obligations by Contractor (including Utility Owners under any utility agreements and Section 6 of Book 2).
- (i) Contractor has ensured that the Project is fully opened to traffic, the Fort Street staging area has been returned to its original condition, and that no further work is required which would involve any lane or shoulder closure.

20.1.2 Correction of Defects

Upon receipt of Contractor's notice under Book 1, Section 20.1.1, MDOT will conduct such inspections, surveys and/or testing as MDOT deems desirable. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, MDOT will promptly advise Contractor as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Substantial Completion, Nonconforming Work (including incomplete Work) which may be corrected as Punch List items and/or whether Contractor shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Substantial Completion, Contractor shall provide written notification to MDOT and MDOT will conduct additional inspections, surveys and/or tests as MDOT deems desirable. This procedure shall be repeated until MDOT finds that all prerequisites to Substantial Completion have been met.

20.1.3 Notice of Substantial Completion

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

- (a) MDOT determines that all conditions set forth in Book 1, Section 20.1.1 have been satisfied.

- (b) MDOT determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Substantial Completion has been corrected.
- (c) MDOT has prepared a Punch List.

20.2 Final Acceptance

20.2.1 Conditions to Final Acceptance

20.2.1.1 Performance of Work after Substantial Completion

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

20.2.1.2 Conditions to Affidavit of Final Completion

Contractor shall provide to MDOT an executed sworn Affidavit of Final Completion in accordance with Book 1, Section 20.2.1.3 when all of the following have occurred:

- (a) All requirements for Substantial Completion have been fully satisfied.
- (b) MDOT has received all Released for Construction Documents, Design Documents, As-Built Documents, right-of-way record maps, surveys, material certifications, test data and other deliverables required under the Contract Documents;
- (c) All special tools, equipment, furnishings and supplies purchased by and/or used by Contractor as provided in the Contract Documents have been delivered to MDOT and all replacement spare parts have been purchased and delivered to MDOT free and clear of Liens.
- (d) All of Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Site, Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of MDOT and the Site is in good working order and condition.
- (e) Contractor has furnished to MDOT certifications from Contractor's Design Manager, in form and substance satisfactory to MDOT, certifying conformity of the Design Documents with the requirements of the Contract Documents.
- (f) Contractor has furnished to MDOT certifications from Contractor's Project Manager, in form and substance satisfactory to MDOT, certifying conformity of the construction with the Design Documents.
- (g) Contractor has furnished to MDOT certifications, in form and substance satisfactory to MDOT, certifying that there are no outstanding nonconformances.
- (h) Contractor has delivered to MDOT a notice of completion for the Project in recordable form and meeting all statutory requirements.
- (i) The Punch List items have been completed to the satisfaction of MDOT.
- (j) Contractor has delivered a maintenance bond for landscaping in accordance with Book 1, Section 21.

- (k) All of Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by MDOT) have been satisfied in full or waived in writing by MDOT.

20.2.1.3 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion referred to in Book 1, Section 20.2.1.2 shall include the following statement:

To the best of Contractor's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed work under the Contract, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued thereunder for said undisputed work; there are no outstanding claims, Liens or stop notices relating to the Project, including claims by Utility Owners; there is no existing default by Contractor under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or event of default under any Utility Agreement; and upon receipt of Final Acceptance, Contractor and Subcontractors acknowledge that MDOT and any and all employees of MDOT and their authorized representatives will thereby be released, discharged and acquitted from any and all claims or liability for additional sums on account of undisputed work performed under the Contract.

If Contractor is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by MDOT. The affidavit shall include a representation of Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter.

20.2.2 Inspection and Issuance of Notice of Final Acceptance

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

20.2.3 Overpayments; No Relief from Continuing Obligations

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

20.3 Opening of Sections of Project to Traffic

20.3.1 Plan for Opening to Traffic

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

20.3.2 Direction to Open Following Contractor Failure to Perform

If Contractor is delinquent in completing shoulders, drainage structures or other features of the Work, MDOT may, but is not obligated to, order all or a portion of the Project opened to traffic notwithstanding such incomplete elements. Contractor shall then conduct the remainder of the construction operations, minimizing obstruction to traffic. Except as provided in Book 1, Section 20.3.1, Contractor shall not receive any added compensation due to the added costs attributable to the opening of the Project to traffic.

20.3.3 No Waiver

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

20.4 Assignment of Causes of Action

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

21 WARRANTY AND MAINTENANCE

21.1 Warranty and Maintenance Bonds

Contractor shall provide warranty and maintenance bonds that guarantee performance of all Warranty and maintenance obligations of Contractor under the Contract Documents.

21.1.1 Maintenance Bond

Not applicable.

21.1.2 Pavement Warranty Bond

Not applicable.

21.1.2 Bridge Coating Warranty Bond

Not applicable.

21.2 Project Warranty and Maintenance Term

Warranties shall remain in effect for the time period specified in the applicable Special Provisions.

22 DOCUMENTS AND RECORDS

22.1 Escrowed Proposal Documents

Contractor shall submit the escrowed proposal documents (EPD) to MDOT (Van Wagoner Building, 425 West Ottawa Street, Lansing, MI 48909) in a container suitable for sealing no later than five Calendar Days following award of the Contract by MDOT.

The container shall be clearly marked "Bid Documentation" and shall have entered on the face of the container, Contractor's name, the date of submittal, and the State Project Number. Failure to submit the EPD may result in cancellation of the Award.

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

MDOT will retain the EPD for placement in a safety deposit box, vault or other secure accommodation. The cost of accommodation will be borne by MDOT. Payment for compilation of the data, container, cost of verification of the EPD or any other costs that may be incurred by Contractor in fulfilling these requirements shall be considered incidental to the Contract. The EPD will be returned to the Contractor following final acceptance of the Project by the Federal Highway Administration.

22.1.1 Review of EPD

The EPD shall be available during business hours for joint review by Contractor and MDOT in connection with the resolution of Disputes, an audit under Book 1, Section 22.3.5 (if the EPD are the subject of an audit) and as described in Book 1, Section 22.1.6. Subject to Book 1, Section 22.1.7, MDOT shall be entitled to review all or any part of the EPD in order to satisfy itself regarding the applicability of the individual documents to the matter at issue and shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters. The foregoing shall in no way be deemed a limitation on MDOT's discovery rights with respect to such documents.

22.1.2 Property of Contractor

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

22.1.3 Representation and Warranty

Contractor represents and warrants that the EPD constitute all of the information used in the preparation of its Proposal and agrees that no other Proposal preparation information will be considered in resolving Disputes or Claims. Contractor also agrees that the EPD are not part of the Contract and that nothing in the EPD shall change or modify the Contract.

22.1.4 Contents of EPD

The EPD shall, at a minimum, clearly detail how the components of the Proposal Price were determined and shall be adequate to enable a complete understanding and interpretation of how Contractor arrived at the Proposal Price. The EPD provided in connection with quotations and Change Orders shall, at a minimum, clearly detail how the total price and individual components of that price were determined and shall be adequate to enable a complete understanding and interpretation of how Contractor arrives at its quotation and/or Change Order price. All Work shall be separated into subitems as required to present a complete and detailed estimate of all costs. Crews, equipment, quantities and rates of production shall be detailed. Estimates of costs shall be further divided into Contractor's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Contractor's usual format. Contractor's allocation of plant and equipment, indirect costs, contingencies, mark-up and other items to each direct cost item shall be clearly identified. The EPD shall itemize the estimated costs of the Performance and Lien Bond and the insurance premiums for each coverage required to be provided by Contractor under Book 1, Section 9. The EPD shall include all assumptions, quantity takeoffs, rates of production, Contractor internal equipment rental rates and progress calculations, quotes from Subcontractors (including Suppliers), memoranda, narratives and all other information used by Contractor to arrive at the Proposal Price or Change Order price, as applicable. For each item of Work, the EPD shall itemize any related amounts not included in the stated price for such item such as any amount allocated for contingency.

22.1.5 Format of EPD

Contractor shall submit the EPD in the format actually used by Contractor in preparing its Proposal. It is not intended that Contractor perform any significant extra work in the preparation of these documents. However, Contractor represents and warrants that the EPD related to the Proposal have been personally examined prior to delivery to MDOT by an authorized officer of Contractor and that they meet the requirements of Book 1, Section 22.1.4 and are adequate to enable a complete understanding and interpretation of how Contractor arrived at its Proposal Price. Contractor further represents, warrants and covenants that the EPD related to each Change Order will be personally examined prior to delivery to escrow by an authorized officer of Contractor and that they meet the requirements of Book 1, Section 22.1.4 and will be adequate to enable a complete understanding and interpretation of how Contractor arrived at its Change Order price.

22.1.6 Review by MDOT

MDOT may, at any time, conduct a review of the EPD to determine whether it is complete. If MDOT determines that the EPD are incomplete, MDOT may request Contractor to supply data to make the EPD complete. Contractor shall provide all such data within three Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. Contractor shall have no right to add documents to the EPD except upon MDOT's request.

22.1.7 Confidentiality Agreement

At Contractor's request, confidentiality agreements prepared by MDOT in MDOT's sole discretion shall be executed and delivered to Contractor by MDOT's employees or agents who review or have access to the EPD.

22.1.8 Return of EPD

The EPD and container will be returned to the Contractor within 20 days of Final Acceptance, settlement of any and all claims, and final payment to the Contractor.

22.2 Subcontractor Pricing Documents

The Subcontracts for this contract will follow the same review and audit process and requirements as in the current subcontracting process for MDOT construction contracts. No additional information needs to be provided.

22.3 Project Records

22.3.1 Maintenance of Records

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

22.3.2 Audit and Inspection Rights

Contractor shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract, said records to be hereinafter referred to as the "Records." Separate accounts will be established and maintained for all costs incurred under this Contract.

Contractor shall maintain the Records for seven years after the earlier to occur of (a) the date Final Acceptance is achieved or (b) the termination date. (Also, see Book 1, Section 22.4.) In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the Contractor will thereafter continue to maintain the Records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

MDOT or its representative may inspect, copy, or audit the Records at any reasonable time after giving reasonable notice.

If any part of the Work is Subcontracted, Contractor shall assure compliance with this Section 22.3.2 for all Subcontracted Work.

22.3.3 Audit of Time and Materials Work

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

22.3.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation,

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

22.3.5 Claims Audits

All Claims filed against MDOT shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of MDOT or by an auditor under contract with MDOT. No notice is required before commencing any audit. Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to MDOT, for the audit during normal business hours. Contractor, Subcontractors and their agents shall cooperate with the auditors. Failure of 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 Contractor, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

- (a) Daily time sheets and supervisor's daily reports
- (b) Union agreements
- (c) Insurance, welfare and benefits records.
- (d) Payroll registers
- (e) Earnings records
- (f) Payroll tax forms
- (g) Material invoices and requisitions
- (h) Material cost distribution worksheet
- (i) Equipment records (list of company equipment, rates, etc.)
- (j) Subcontractors' (including Suppliers) and agents' invoices
- (k) Subcontractors' and agents' payment certificates
- (l) Canceled checks (payroll and Suppliers)
- (m) Job cost report
- (n) Job payroll ledger
- (o) General ledger
- (p) Cash disbursements journal
- (q) e-mail, letters and correspondence
- (r) network servers, data storage devices, backup media
- (s) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim.
- (t) Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals and the rates for the individuals.

Full compliance by Contractor with the provisions of this Section 22.3.5 is a contractual condition precedent to Contractor's right to seek relief under Book 1, Section 19. Contractor represents and

warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 22.3.

22.4 Retention of Records

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

Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books and other evidence bearing on Contractor's costs and expenses under the Contract Documents. Contractor shall make these records and documents available for audit and inspection to MDOT, at Contractor's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to Contractor).

22.5 Freedom of Information Act

22.5.1 Applicability of Act

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

22.5.2 Confidential Materials

If any of the materials submitted by Contractor to MDOT are clearly and prominently labeled "trade secret" or "non-public" by Contractor, MDOT will endeavor to advise Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will MDOT be responsible or liable to 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 MDOT, except for any disclosure of trade secrets or proprietary information in violation of the confidentiality agreement described in Book 1, Section 22.1.7.

22.5.3 Contractor to Defend Against Disclosure Request

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

23 NOT USED

EXHIBIT 1-A – ACRONYMS AND DEFINITIONS

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

A.1 Acronyms

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

ASNT	American Society for Non Destructive Testing
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATMS	advanced traffic management system
ATSSA	American Traffic Safety Services Association
ATR	Automatic Traffic Recorder
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
BLSF	Bordering Land Subject to Flooding
BMP	Best Management Practices
CADD	Computer-assisted drafting and design
CCTV	Closed Circuit Television
CD-ROM	Compact Disc – Read Only Memory
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, <i>et seq.</i>
CFR	Code of Federal Regulations
CFS	Cubic Feet Per Second
CIA	Construction Influence Area
CMS	Changeable Message Sign
CMP	Communications Plenum Cable or Corrugated Metal Pipe
COAX	Radio Frequency Transmission Cable (Coaxial Cable)
COE	(U.S.) Army Corps of Engineers
COM	Communications
CPM	Critical Path Method
CRSI	Concrete Reinforcing Steel Institute
CRT	Console Monitor (Cathode Ray Tube)
CSAH	County State Aid Highway
CSI	Construction Specifications Institute
CV	Compacted Volume
CWA	Clean Water Act
dB	Decibels
DBE	Disadvantaged Business Enterprise
DB	Design-Build
DIBC	Detroit International Bridge Company
DQM	Design Quality Manual
DNR	Michigan Department of Natural Resources

DTM	digital terrain model
DWG	Drawing
ECM	Environmental Compliance Manager
ECP	Emissions Control Plan
ECS	Erosion Control Supervisor
EEO	Equal Employment Opportunity
EIP	Environmental Investigation Plan
EIS	Environmental Impact Statement
EMI	Environmental Monitoring Inspector
EMR	Environmental Monitoring Report
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents
EQPT	Equipment
ESA	Endangered Species Act
EV	Excavated Volume
EVP	Emergency Vehicle Pre-Emption
F	Fahrenheit
FAR	Federal Acquisition Regulation
FCC	Federal Communications Commission
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards
FUSP	MDOT Frequently Used Special Provisions
FUSS	MDOT Supplemental Specifications, 2003
GAAP	Generally Accepted Accounting Principles
GEC	General Engineering Consultant
GFI	Ground Fault Interrupter
HH	Handhole
HMA	Hot Mix Asphalt
HOV	High Occupancy Vehicle
ICEA	Insulated Cable Engineers Association
IDF	Intensity, duration, and frequency
IEEE	Institute of Electrical and Electronics Engineers
IEQM	independent environmental quality manager
IES	Illuminating Engineers Society
IIMS	Incident Information Management System
IMC	Intermediate Metal Conduit

IMP	Incident Management Plan
IMSA	International Municipal Signal Association
IPS	Iron Pipe Size
IRI	International Roughness Index
ISA	Initial Site Assessment
ISDN	Integrated services digital network
ISO	International Standards Organization
ISP	Information or Internet Service Providers
ISSA	International Slurry Surface Association
ITC	Information Transmission Capacity
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
JEDEC	Joint Electronic Device Engineering Council
JIC	Joint Industrial Council
JMF	Job Mix Formula used in the Bituminous Specifications
Kph	Kilometers per hour
KV	Kilovolt
KVA	Kilovolt Ampere
KW	Kilowatt
LAN	Local Area Network
LAPB	Link Access Protocol, Balanced
Lc	Length of Simple Curve
Ls	Length of Spiral Curve
LED	Light Emitting Diode
LGU	Local Government Unit
LLRU	Lowest Level Replaceable Unit
LS	Line Section
LV	Loose Volume for Measurements, or Leveling Course for Bituminous
MACM	Maximum Achievable Control Measures
Mb	Megabit
Mbps	megabits per Second
MBTA	Migratory Bird Treaty Act
MCBF	Mean Cycles Between Failures
MCCP	Maintenance Catenary Control Panel
MCL	Michigan Compiled Laws
MDEQ	Michigan Department of Environmental Quality
MDNR	Michigan Department of Natural Resources

MDOT	Michigan Department of Transportation
MIOSHA	Michigan Occupational Safety and Health Act
MIS	Management Information System
MMIS	Maintenance Management Information System
MMP	Materials Management Plan
MMU	Malfunction Management Unit
MMUTCD	Michigan Manual of Uniform Traffic Control Devices
MOT	maintenance of traffic
mph	miles per hour
MSA	Mine Safety Administration
MSA	Michigan Statutes Annotated (number always follows)
MSE	Mechanically Stabilized Earth
MTM	Michigan Test Method
MUTCD	Manual on Uniform Traffic Control Devices
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NBS	National Bureau of Standards
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report
NEC	National Electrical Code
NELMA	Northeastern Lumber Manufacturer's Association
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NHPMA	Northern Hardwood and Pine Manufacturer's Association
NHS	National Highway System
NICET	National Institute for Certification in Engineering Technologies
NIST	National Institute of Standards and Technology
NMC	Non-Metallic Conduit
No.	When reference is to wire, it is the AWG Gauge number
NPDES	National Pollutant Discharge Elimination System
NRMCA	National Ready Mix Concrete Association
NTP	Notice to Proceed
NTS	Not to Scale
OEM	Original Equipment Manufacturer
OPX	Off-Premises Extension
OSHA	Occupational Safety & Health Administration

OSM	Office of Surface Mining
PCCP	Portland Cement Concrete Pavement
PCI	Prestressed Concrete Institute
PDA	pile-driving analyzer
PE	Professional Engineer
PG	performance grade
PIV	Peak Invert Voltage
PLS	Pure Live Seed
PM	Project Manager
POB	Point of Beginning
POE	Point of Ending
PQCI	process quality control inspection
PQCT	process quality control testing
PQI	Pavement Quality Index
PRI	Pavement Rutting Index
PSI	Pavement Serviceability Index
PSR	Pavement Serviceability Rating
Pvc	Point of Vertical Curvature
PVC	Polyvinyl Chloride
PVI	Point of Vertical Intersection
Pvt	Point of Vertical Tangency
PWR	Power
QA	Quality Assurance
QC	Quality Control
QCP	Quality Checkpoint
R	Radius
RACM	Reasonable Achievable Control Measures
RCRA	Federal Resource Conservation Recovery Act
RCS	Ramp Control Signal
REA	Rural Electrification Association
RECs	Recognized Environmental Conditions
RF	Radio Frequency
RFP	Request for Proposals
RFQ	Request for Qualifications
RGS	Rigid Galvanized Steel Conduit
RHA	River and Harbor Act
RHW	Moisture and Heat Resistant or Cross Linked Synthetic Polymer
RID	Reference Information Documents

RMS	Root Mean Square
ROD	Record of Decision
R/W, ROW	Right-of-Way
RSC	Rigid Steel Conduit
RWIS	Roadway and Weather Information System
SAE	Society of Automotive Engineers
SAP	Sampling Analysis Plan
SBA	Small Business Administration
SHPO	State Historic Preservation Officer
SI	International System of Units (The Modernized Metric System)
SIC	Standard Industrial Code, U.S. Department of Labor
SI&A	Structural Inventory and Appraisal
SMP	Stormwater Management Plan
SMS	Stormwater Management Standards
SOQ	Statement of Qualifications
SP	State Project
SPCS	State Plane Coordinate System
SPDT	Single Pole Double Throw
SPIB	Southern Pine Inspection Bureau
SPST	Single Pole Single Throw
SSPC	Steel Structures Painting Council
SV	Stockpiled Volume
SWPPP	Stormwater Pollution Prevention Plan
TCP	Traffic Control Plan
TDM	Transportation Demand Management
TH	Trunk Highway
THHN	Heat Resistant Thermoplastic
THW	Moisture and Heat Resistant Thermoplastic
THWN	Moisture and Heat Resistant Thermoplastic
TMS	Traffic Management System
TMSRs	Traffic Management Strategy Reports
TSM	Traffic System Management
UBC	Uniform Building Code
UD&FCD	Urban Drainage and Flood Control District
UDS	Utility Design Sheet
UIS	Utility Information Sheet
UL	Underwriters Laboratories, Inc.
UPS	Uninterruptible Power Supply

USASI	United States of America Standards Institute
U.S.C.	United States Code
USCG	United States Coast Guard
USCS	Unified Soil Classification System
USDA	United States Department of Agriculture
USDOT	United States Department of Transportation
USGS	United States Geological Survey
USFWS	U.S. Fish and Wildlife Service
UV	Ultra Violet
VAC	Volt Alternating Current (60 Hz)
VC	Vertical Curve
VDC	Volt Direct Current
VE	Value Engineering
VECP	Value Engineering Change Proposal
WBS	Work Breakdown Structure
WCLIB	West Coast Lumber Inspection Bureau
WWPA	Western Wood Products Association
XHHW	Moisture and Heat Resistant Cross Linked Synthetic Polymer

A.2 Definitions

Acceleration Costs	Those fully documented increased costs reasonably incurred by Contractor (i.e., costs over and above what Contractor would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.
Accept or Acceptance	Formal conditional determination in writing by MDOT that a particular matter or item appears to meet the requirements of the Contract Documents.
Addendum	Graphic or written revisions to the Request for Proposals issued by MDOT after the advertisement but before the opening of the proposals.
Adjustment	See Change Order
Advertisement	See Request for Proposals
Affidavit of Final Completion	The affidavit described in Book 1, Section 20.2.1.
Affiliate	<p>(a) Any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Contractor or any Major Participant; and</p> <p>(b) any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by, [i] Contractor, [ii] any Major Participant, or [iii] any Affiliate of Contractor under clause (a) of this definition.</p> <p>For purposes of this definition, the term “control” means the possession directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relation, or otherwise.</p>
Aggregate	Natural materials such as sand, gravel, crushed rock, or taconite tailings, and crushed concrete or salvaged bituminous mixtures, usually with a specified particle size, for use in base course construction, paving mixtures, and other specified applications.
Alley	An established passageway for vehicles and pedestrians affording a secondary means of access to properties abutting on a Street or Highway.
Approve or Approval	Formal conditional determination in writing by MDOT that a particular matter or item is good or satisfactory for the Project. Such determination may be based on requirements beyond those set forth in the Contract Documents without payment of additional compensation or a time extension and may reflect preferences of MDOT.
As-Built Documents	The as-built documents described in Book 2, Section 2.4.
Authorization	MDOT’s written approval of a Change Order.
Auxiliary Lane	The portion of the Roadway adjoining the Traveled Way for parking, speed-change, or other purposes supplementary to through traffic movement.

Average Daily Traffic (ADT)	The total volume of traffic during a given time period, greater than one day and less than one year, divided by the number of days in the time period.
Award	MDOT's formal execution of the Contract.
Base Course	The layer or layers of specified material placed on a subbase or subgrade to support a surface course.
Basic Configuration	The elements defining the Project as set forth in Book 2, Section 1, subject to any permitted modifications thereto contained in the Proposal.
Betterment	The upgrading (e.g., increase in capacity) of a Utility being relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Owner (not including a technological improvement which can be implemented at a cost equal to or less than the cost of a "like for like" replacement or relocation). The use of new materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.
Bid	See Proposal
Bidder	See Proposer
Book 1	The Contract Document designated as Book 1 in the RFP.
Book 2	The Contract Document designated as Book 2 in the RFP.
Book 3	The Contract Document designated as Book 3 in the RFP.
Bridge	A structure, including supports, built over a depression, water course, highway, railroad or other obstruction, with a clear span of more than 20 feet measured along the center of roadway.
Brush	Shrubs, trees, and other plant life having a diameter of 100 mm (4 inches) or less at a point 600 mm (12 inches) above ground surface as well as fallen trees and branches.
Calendar Day	Every day shown on the calendar, beginning and ending at midnight.
Carbonate	Sedimentary rock composed primarily of carbonate minerals, including dolostone (dolomite, $\text{CaMg}(\text{CO}_3)_2$), limestone (calcite, CaCO_3) and mixtures of dolostone and limestone.
Certificate of Compliance	A certification provided by a manufacturer, producer, or supplier of a product that the product, as furnished to Contractor, complies with the pertinent specification or Contract requirements. The certification shall be signed by a person who is authorized to bind the company supplying the material covered by the certification.
Certification of DBE Contractors	The process by which MDOT establishes that a Contractor meets the federal requirements as a DBE.
Certified Test Report	A test report provided by a manufacturer, producer, or supplier of a product indicating actual results of tests or analyses, covering elements of the specification requirements for the product or workmanship, and including validated certification.
Change Order	The meaning set forth in Book 1, Section 13.1.1.1.

Claim	A separate demand by Contractor for (a) a time extension which is disputed by MDOT, or (b) payment of money or damages arising from work done by or on behalf of Contractor in connection with the Contract which is disputed by MDOT. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Contract amendment signed by all parties.
Commission	The Michigan State Transportation Commission
Completion Deadline	Each Intermediate Completion Deadline, Substantial Completion Deadline and/or Final Acceptance Deadline, depending on the context.
Construction Documents	All Working Drawings and samples necessary for construction of the Project in accordance with the Contract Documents.
Construction Easement	Non-permanent easements, other than those provided by MDOT in accordance with the R/W Work Map, that Contractor determines are desirable to perform the Work.
Contaminated Groundwater	Extracted groundwater including contaminants above legally-permitted discharge levels so as to require treatment prior to re-use or disposal. Contaminated groundwater which may legally be re-used without treatment, including use for dust control, or which merely requires dilution prior to re-use or disposal, shall specifically be excluded from the definition.
Contaminated Materials	<p>(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,</p> <p>(b) any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Governmental Rule,</p> <p>(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,</p> <p>(d) petroleum hydrocarbons excluding petroleum hydrocarbon products contained within regularly operated motor vehicles,</p> <p>(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</p> <p>(f) lead or lead-containing materials in Structures and/or other improvements on or in the Site.</p> <p>The term “Contaminated Materials” includes Hazardous Waste.</p>
Contract	Depending on the context, (a) the Design-Build Contract, or (b) collectively, the Contract Documents.
Contract Documents	The meaning set forth in Book 1, Section 1.2.
Contract Modification	The regulation form prepared as a recommendation for changes in, adjustments or extras to the Contract. The Contract modification becomes a Change Order when signed by the duly authorized MDOT representative.
Contract Price	The meaning set forth in Book 1, Section 11.1.1.

Contracting Authority	The political subdivision, governmental body, board, department, commission, or officer making the award and execution of Contract as the party of the first part.
Contractor	The party with whom MDOT has entered into a contract to complete the Project.
Contractor-Related Entities	Contractor, Major Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Contractor may be legally or contractually responsible.
Contractor’s Project Manager	The person designated by Contractor to supervise the Project and to receive delivery of notices.
Controlling Operation	An operation that, if the Contractor’s expected rate of performance is not met or the scheduled start date is delayed, would delay the opening to traffic or completion of the entire Project. The operation may be on or off the job Site. The size of the operation is not a factor.
Coordination Clause	A clause in the Contract that requires the Contractor to coordinate construction activities with other agencies, Utilities or contractors.
County	The county in which the Work is to be done; a subdivision of the State, acting through its duly elected Board of County Commissioners.
CPM Schedule	The Project schedule required in Book 2, Section 2.
Critical Path	The precedence of activities with total Float less than or equal to zero on each applicable Contract Schedule.
Culvert	A Structure constructed entirely below the elevation of the Roadway surface and not a part of the Roadway surface, which provides an opening under the Roadway for the passage of water or traffic.
Day	The meaning set forth in Book 1, Section 1.7.
Department	The Department of Transportation of the State of Michigan, or the political subdivision, governmental body, board, commission, office, department, division, or agency constituted for administration of the Work within its jurisdiction.
Designated Classifications	Work classifications that MDOT lists in the proposal as the major work classifications required to construct the Project, requiring appropriate prequalification to perform the specified work.
Design-Build Contract	The Design-Build Contract, as executed by MDOT and Contractor and any and all amendments thereto.
Design Manager	Contractor’s principal engineer in charge of the Project. The Design Manager shall initially be the individual designated in the Proposal and is considered a Key Personnel for the Project.
Design Documents	All drawings, specifications, reports, calculations, records or submittals at any stage of development or revision relating to the Project.
Determined Low Bidder	The bidder who is determined to have the lowest responsible proposal on a project when all necessary requirements have been satisfied.
Detour	A Road or system of Roads, usually existing, designated as a temporary route to divert through traffic from a section of Roadway being improved.

Differing Site Conditions	<p>(a) subsurface or latent physical conditions that differ from those reasonably assumed by Contractor based on incorrect boring logs provided in Book 2 to the extent that correct boring logs would have resulted in accurate assumptions, or</p> <p>(b) physical conditions of an unusual nature, differing materially from those ordinarily encountered at the Site and generally recognized as inherent in the Work provided for in the Contract, provided in all cases that Contractor had no actual or constructive knowledge of such conditions as of the Proposal Due Date.</p> <p>The foregoing definition shall not apply to Utilities, or Force Majeure events, nor shall it include any differences in groundwater depth or subsurface moisture content from that identified in the RFP. Clause (a) of this definition shall specifically exclude situations in which accurately reported boring data does not represent prevailing conditions in the area.</p>
Director	The person, as provided by law, to serve as the principal executive officer of MDOT and responsible for executing the policy of the Commission.
Disadvantaged Business Enterprise	The meaning set forth in Book 1, Exhibit D.
Dispute	The meaning set forth in Book 1, Section 19.
Divided Highway	A Highway with separated Traveled Ways for traffic in opposite directions.
Dormant Seeding	Seeding allowed in the late fall when the ground temperature is too low to cause seed germination so that the seed remains in a dormant condition until spring.
Dormant Sodding	Sodding allowed in the late fall when the ground temperature is too low so that normal rooting does not take place until spring.
Earth Grade	The elevation of the completely graded roadway before placing the pavement structure.
Effective Date	The date of execution of the Contract by MDOT.
Engineer	See Design Manager. Contractor acknowledges and agrees that MDOT will be responsible for certain oversight and other matters with respect to the Project, and that as a result certain rights in favor of the Engineer may be exercised by and inure to the benefit of MDOT rather than the Design Manager. In the event any question arises regarding whether any such rights are applicable to MDOT or how to apply such rights, MDOT's interpretation regarding such matter shall control.
Environmental Approvals	The Governmental Approvals listed in Book 2, Section 4, that are identified as being MDOT's responsibility to obtain.

Environmental Laws	All Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic or dangerous waste, substance or material into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of Contaminated Materials or otherwise relating to the protection of public health, public welfare, or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air), including CERCLA; RCRA; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 <i>et seq.</i> ; the National Environmental Policy Act, 42 U.S.C. §§ 4321 <i>et seq.</i> ; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 <i>et seq.</i> ; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 <i>et seq.</i> ; the Endangered Species Act, 16 U.S.C. §§ 1531 <i>et seq.</i> ; the Clean Water Act, 33 U.S.C. §§ 1251 <i>et seq.</i> ; the Clean Air Act, 42 U.S.C. §§ 7401 <i>et seq.</i> ; the Safe Drinking Water Act, 42 U.S.C. §§ 300f <i>et seq.</i> ; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 <i>et seq.</i> ; and the Bald Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Environmental Management Plan	The environmental management plan provided by Contractor and Approved by MDOT as described in Book 2, Section 4.
Equipment	All machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the proper construction and/or completion of the Work.
Error	An error, omission, inconsistency, inaccuracy, deficiency or other defect.
Escrowed Proposal Documents	All documentary information used in preparation of the Proposal Price.
Event of Default	A default as described in Book 1, Section 16.
Falsework	Any temporary facility/device used to support the permanent structure until it becomes self-supporting. Falsework would include, but not be limited to, steel or timber beams, girders, columns, piles and foundations, and any propriety equipment including modular shoring frames, post shores, and adjustable horizontal shoring.
Federal Requirements	All Governmental Rules applicable to work financed with federal funds and the provisions required to be included in contracts therefor, including the provisions set forth in Book 1, Exhibits C, D, and E.
Final Acceptance	Acceptance of the Project as described in Book 1, Section 20.2.
Final Acceptance Deadline	The meaning set forth in Book 1, Section 4.3.2.
Float	The total available time to complete a non-controlling operation or sequence of non-controlling operations, as designated by the Contractor in the progress schedule, minus the total planned duration associated with the non-controlling operation or sequence of non-controlling operations. Float is a shared commodity. Either MDOT or the Contractor has full use of the Float until it is depleted.
Force Account	The basis of payment set forth in Book 1, Section 13.7.

Force Majeure	An event beyond the control of Contractor, not due to an act or omission of any Contractor-Related Entity, which materially and adversely affects Contractor’s ability to meet its obligations under the Contract, to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Contractor. Notwithstanding the foregoing, the term “Force Majeure” shall not include normal weather, Differing Site Conditions, MDOT-Directed Changes, Utility Delays or any other matter for which the Contract Documents specify how liability or risk is to be allocated between MDOT and Contractor, regardless of whether such matter is beyond Contractor’s control.
Forms	A facility device or mold used to retain plastic or fluid concrete in its designated shape until it hardens.
Freeway	A high-speed multi-lane Highway with full access control.
Frequently Used Special Provision	MDOT approved special provisions that are frequently used on projects.
Frontage Road (or Street)	A local Road or Street auxiliary to and located on the side of a Highway for service to abutting property and adjacent areas and for control of access.
Geotechnical Instrumentation Plan	The plan provided by Contractor as described in Book 2, Section 8.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling required by or with any Governmental Person (other than a Governmental Person in its capacity as a Utility Owner) in order to perform the Work.
Governmental Person	Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the State and agencies and subdivisions thereof, other than MDOT.
Governmental Rule	All applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term “Governmental Rule” does not include Governmental Approvals.
Grade Separation	A structure that provides for highway traffic, pedestrian traffic, or utilities to pass over or under another highway or the tracks of a railway.
Gravel	Naturally occurring rock or mineral particles produced by glacial and water action. Particle size ranges from 76 mm (3 inch) diameter to the size retained on a 2.0 mm diameter (No. 10 Sieve).
Guaranteed Analysis	A guarantee from a manufacturer, producer, or supplier of a product that the product complies with the ingredients or specifications indicated on the product label.
Guarantor	Each entity (if any) providing a Guaranty.
Guaranty	Each guaranty of Contractor’s obligations under the Contract Documents (if any).
Hazardous Waste	Waste as defined in 40 C.F.R. 261 <u>et seq.</u>

Highway, Street, or Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.
Holidays	The days of each year set aside by legal authority for public commemoration of special events, and on which no public business shall be transacted except as specifically provided in cases of necessity.
In-Place/Out-of-Service	The work necessary for each Utility (including appurtenances) to decommission a Utility which Utility is not removed. The Utility must be taken out of use using proper Utility Owner and/or industry procedures (e.g., flushing, capping, filling with grout or sand, etc.) or other procedures Approved by MDOT.
Incidental Utility Work	All of the following Work that is necessary or determined by Contactor to be convenient for the construction and/or accommodation of the Project: (a) Protection of Existing Utilities, and (b) In-Place/Out-of-Service of Public Utilities.
Incremental Costs	Those costs, if any, which Contractor incurs as a result of a particular circumstance which Contractor would not have incurred but for the circumstance. In determining such costs, one would determine the total cost which Contractor would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred; the difference is the “increment.” (For example, if Contractor originally has to relocate three water lines, and a fourth water line is discovered in the same general area which can be relocated by the same crew, then if Contractor is entitled to a Change Order increasing the Contract Price on account of such newly discovered water line, MDOT will be charged with only the costs of keeping the crew working the additional time to relocate the fourth water line, and will not be charged any portion of the expense of moving the crew to the site in the first place.)
Industry Standard	An acknowledged and acceptable measure of quantitative or qualitative value or an established procedure to be followed for a given operation within the given industry. This will generally be in the form of a written code, standard, or specification by a creditable association.
Inspection	The act of viewing or looking carefully at the Work to verify whether the practices, processes, and products comply with the quality requirements contained in the Contract Documents.
Inspector	MDOT or Contractor’s authorized representative assigned to make inspection of Contract performance, as applicable.
Instructions to Proposers	The RFP document identified as Instructions to Proposers.
Interchange	A grade-separated Intersection with one or more turning Roadways for travel between Intersection legs.
Intersection	The general area where two or more Highways join or cross, within which are included the Roadway and roadside facilities for traffic movements in the area.
Key Personnel	The persons listed on Book 2 Section 2, subject to revision in accordance with the Contract.
Laboratory	A testing laboratory operated by or designated by MDOT.

Labor Dispute	A controversy between the Contractor and the Contractor’s employees, union, bargaining agents, suppliers, or suppliers’ bargaining agents, or between unions which results in a work stoppage.
Late Finish Cost Schedule	The late start dates set forth on each applicable Contract Schedule, subject to revision in connection with any Change Orders which revise the Contract Schedules.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Lien Bond	The security furnished by the Contractor and the Contractor’s Surety to guarantee payment of the debts covered by the bond.
Limestone	See Carbonate.
Liquidated Damages	The damages described in Book 1, Section 17.1.
Load Rating	The performance of a load capacity analysis to determine the load carrying capacity of a bridge. The load capacity analysis is completed according to the MDOT <i>Bridge Analysis Guide</i> , <i>AASHTO Manual for Bridge Evaluation</i> , and the MDOT <i>Michigan Structure Inventory and Appraisal Coding Guide</i> . The requirement to perform load ratings on highway bridges stems from federal law and can specifically be found in the National Bridge Inspection Standards, October 1988, within the Code of Federal Regulations, Title 23, Part 650, Subpart C.
Local Traffic	Traffic that has origin or destination within the CIA.
Loop	A one-way turning Roadway that curves about 270 degrees to the right, primarily to accommodate a left-turning movement, but which may also include provisions for another turning movement.
Major Participant	Any of the following entities: all general partners or joint venture members of Proposer; all individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 10 percent or greater interest in Proposer; any Subcontractor that will perform Work valued at 10 percent or more of the overall Contract amount; the lead engineering/design firm(s); and each engineering/design subconsultant that will perform 20 percent or more of the design Work.
Materials	Any substances required for use in the completion of the Project and its appurtenances.
Materials Design Recommendation	A summary of the Project geotechnical and pavement survey information, as well as the information used to develop the Project design, including design and construction recommendations developed for the Project.
Materials Laboratory	A MDOT Materials Laboratory.
Maximum Unit Weight or Maximum Density	The value of the weight per unit volume established for a material.

Median	The portion of a divided highway separating the traveled ways.
Metric	The International System of Units (SI) (the Modernized Metric System) according to ASTM E 380. ASTM E 380 also provides conversion factors and commentary.
Metric Ton (t)	A mass of 1000 kg.
MDOT-Caused Delays	<p>Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others:</p> <ul style="list-style-type: none"> (a) A suspension order pursuant to Book 1, Section 14, to the extent provided therein; (b) MDOT-Directed Changes; (c) Failure or inability of MDOT to provide Contractor with access to Right-of-Way identified on the R/W Work Map that has not been obtained prior to the Proposal Due Date on or before the deadline for such access. (d) Material errors in the R/W Work Map; (e) Failure or inability of MDOT to provide responses to proposed schedules, design submittals and other submittals and matters for which response by MDOT is required, within the time periods indicated in the Contract Documents; (f) Uncovering, removing, and restoring Work, to the extent provided in Book 1, Section 5.5.3; (g) Any improper action by MDOT’s designated representative with binding authority or improper failure to act by MDOT within a reasonable time after delivery of notice by Contractor to MDOT requesting such action; (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work, except if [i] such risk has been assumed by Contractor under Book 1, Section 6.3.2 or [ii] arising out of, related to, or caused by the negligent or improper act, failure to act or omission, willful misconduct, recklessness, or breach of contract or Governmental Rule by any Contractor-Related Entity; and
MDOT-Directed Changes	Any changes in the Work which MDOT has directed Contractor to perform.
MDOT’s Project Manager	The person designated by MDOT, on MDOT’s behalf, to direct the Project, or designee. References to MDOT regarding submittals and communication shall mean MDOT’s Project Manager unless otherwise noted.
Net Prequalification	The current balance of the Bidder’s established prequalification rating. This is obtained by subtracting the uncompleted work on hand from the established rating.
New Environmental Approval	<p>Any of the following:</p> <ul style="list-style-type: none"> (a) a new Governmental Approval of the same type as an Environmental Approval; and (b) a revision, modification or amendment to one or more of the Environmental Approvals.

Nominal	The intended, named, or stated value, as opposed to the actual value. The nominal value of something is the value that it is supposed or intended to have, or the value by which it is commonly known. The actual value may differ from these statements by a greater or lesser amount depending on the accuracy and precision of the process used to determine the actual value.
Nonconforming Work	Work performed that does not meet requirements of the Contract Documents.
Non-Controlling Operation	An operation that, if the Contractor’s expected rate of performance is not met or the scheduled start date is delayed, would not delay the opening to traffic or completion of the entire Project. The operation may be on or off the Project site. The size of the operation is not a factor.
Notice of Final Acceptance	The written notice issued by MDOT to Contractor under Book 1, Section 20.2.2.
Notice of Substantial Completion	The written notice issued by MDOT to Contractor under Book 1, Section 20.1.3.
Notice of (Partial) Termination	A written notice issued by MDOT to terminate the Contract and the performance of the Work by Contractor, either in whole or in part, pursuant to Book 1, Section 15.
Notice to Proceed	A written notice issued by MDOT to Contractor to proceed with the Work.
Optimum Moisture	The moisture content of a particular soil at maximum dry density as determined by the method prescribed in the MDOT standards.
Pavement Structure	The combination of subbase, base course, and surface course placed on a Subgrade to support the traffic load and distribute it to the Roadbed.
Performance Bond	The security furnished by the Contractor and the Contractor’s Surety to guarantee performance of the Work in accordance with the Contract.
Permanent Erosion Control Measures	Soil-erosion control measures such as curbing, Culvert aprons, riprap, flumes, sodding, erosion mats and other means to permanently minimize erosion on the completed Project.
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Governmental Person, including MDOT.
Plan	The plan, profiles, typical cross-sections, and supplemental drawings that show the locations, character, dimensions, and details of the Work to be done.
Prequalification of Contractors	A process used by MDOT to determine the work classifications a Contractor is eligible to perform and the maximum contract amount which the Contractor’s resources enables it to manage. This is done in accordance with the “Administrative Rules Governing the Prequalification of Bidders for Highway and Transportation Construction Work.”
Private Utility	A Utility owned by a Private Utility Owner.
Private Utility Owner	Any owner or operator of a Utility that is not a Public Utility Owner.
Profile Grade	The trace of a vertical plane intersecting the top surface of the Roadbed or Pavement Structure, usually along the longitudinal centerline of the Traveled Way. Profile Grade means either elevation or gradient of such trace according to the context.

Project	The Ambassador Bridge Plaza – Gateway Completion project, as more specifically described in Book 2, Section 1, and all other Work product to be provided by Contractor as a condition to Final Acceptance in accordance with the Contract Documents.
Project Limits	The physical limits given in the Contract Documents showing the points of beginning and ending of the Work included in the Project.
Proposal	Those documents constituting Contractor’s response to the RFP, including any supplements to proposals as may have been requested by MDOT.
Proposal Appeal Committee	The committee that performs the final administrative review of appeals of Proposal rejections except for contracts that require approval by the Commission.
Proposal Form	See Request for Proposals.
Proposal Guaranty	The security furnished by the Proposer as a guaranty of good faith to enter into the Contract for the work proposed.
Proposal Price	The “Proposal Price” offered for the Work.
Proposal Review Committee	The committee that reviews all proposals for adherence to procedures.
Proposer	An individual, firm, partnership, corporation, joint venture or combination thereof that submits a proposal in response to the RFP.
Protection of Existing Utilities	Any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility’s location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection of Existing Utilities; whereas temporarily moving power lines to another location after cutting them would be considered a temporary Utility Relocation.
Public Information Plan	The public information plan provided by Contractor and Approved by MDOT as described in Book 2, Section 3.
Public Opening Date	The date the Price Proposal was opened as specified in the Instructions to Proposers.
Public Utility	A Utility owned by a Public Utility Owner.
Public Utility Owner	An owner or operator of a Utility which is a municipality, county, or other political subdivision of the State.
Punch List	The list of Work items with respect to the Project which remain to be completed after achievement of each Intermediate Completion or Substantial Completion, as applicable, limited to minor incidental items of Work which have no adverse effect on the safety or operability of the Project. Painting of steel members (except for the outside web faces of the exterior girders and the bottom of all bottom flanges to be field painted) and application of the special surface finish on concrete members shall <u>not</u> be considered as Punch List work.
Pure Live Seed (Percentage)	A percentage determined by the percent of seed germination times the percent of seed purity.
Qualified Products List	A listing of specific materials which have been prequalified for use on projects.

Quality Assurance	The meaning set forth in ISO 8402.
Quality Control	The meaning set forth in ISO 8402.
Railroad	Depending on the context, either the right of way, tracks, and systems used for rail traffic in the vicinity of the Project, or the owners and/or operators of such rail systems.
Ramp	A connecting Roadway for travel between Intersection legs at or leading to an Interchange.
Reference Information Documents	The documents designated as Reference Information Documents in the RFP.
Released for Construction Documents	The meaning set forth in Book 2, Section 2.4.
Relocation or Relocate	As related to Utilities, each removal, transfer of location, In-Place/Out-of-Service and/or Protection of Existing Utilities (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.
Remediation Work	Investigating, monitoring, characterizing, testing, sampling, stock-piling, storage, backfilling in place, recycling, treatment, and/or off-Site disposal of Contaminated Materials and materials containing Contaminated Materials, as Approved by MDOT and in accordance with the Environmental Management Plan and Book 2, Section 4.
Request for Proposals	The Request for Proposals for the Project issued by MDOT including all addenda and clarifications thereto.
Right of Way or Right-of-Way	<p>The real property (which term is inclusive of all estates and interests in real property) that is necessary for ownership and operation of the Project (includes permits). The term specifically excludes any Construction Easements.</p> <p>The term “Right of Way” is sometimes used to indicate MDOT Right-of-Way and is sometimes used to indicate rights of way for other facilities.</p>
Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.
Roadbed	The graded portion of a Highway within top and side slopes, prepared as a foundation for the Pavement Structure and Shoulders.
Roadside	The portion of the Right-of-Way outside the roadway.
Roadway	The portion of the Right-of-Way required for construction, limited by the outside edges of slopes and including ditches, channels, and all structures pertaining to the Work.
Scale	A device used to measure the mass or the proportion of a liquid or solid. This definition includes metering devices.
Seasonal Limitation	The time during which construction of work items will be suspended unless otherwise specified in the Contract.
Seasonal Suspension	The period between November 14 and April 16 unless otherwise specified in the Contract.

Segregation	Areas of non-uniform distribution of coarse and fine aggregate particles in a pavement that are visually identifiable or can be determined by other methods.
Service Line	A Utility line, the function of which is to connect an individual service location (e.g., a single family residence or an industrial warehouse) to another Utility line which other Utility line connects more than one such individual line to a larger system. The term “Service Line” also includes any Utility on public or private property that services structures located on such property.
Shoulder	The portion of the Roadway contiguous with the Traveled Way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.
Sidewalk	That portion of the Roadway primarily constructed for the use of pedestrians.
Sieve	A woven wire screen meeting the requirements of AASHTO M-92 for the size specified.
Site	The parcels of Right-of-Way identified on the ROW Work Map or on which the Project is to be constructed and installed as well as all other areas in the vicinity used by Contractor for construction Work.
Specialty Classifications	Work classifications that MDOT considers to require specialized equipment or crafts to an extent warranting being listed separately from the Designated Classification in the proposals.
Special Provisions	Revisions and additions to the Standard and Supplemental Specifications applicable to an individual project.
Specifications	A general term applied to all written directions, provisions and requirements concerning the performance of the Work.
Standard Drawings	Plans issued by MDOT for general application and repetitive use in connection with MDOT projects.
Standard Specifications	Michigan Department of Transportation Standard Specifications for Construction 2003, as modified in the other Contract Documents.
State	The State of Michigan acting through its elected officials and their authorized representative, or the State of Michigan in the geographic sense, depending on the context.
Street	A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.
Structures	Bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other man-made features.
Subbase	The layer of specified material placed on the subgrade as a part of the pavement structure.
Subcontract	Any subcontract to perform any part of the Work or provide any Materials, equipment or supplies for any part of the Work between Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor	Any Person with whom Contractor has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.

Subgrade	The top surface of a Roadbed upon which the Pavement Structure and Shoulders are constructed. Also, a general term denoting the foundation upon which a base course, surface course, or other construction is to be placed, in which case reference to Subgrade operations may imply depth as well as top surface.
Substantial Completion	Completion of the Project as described in Book 1, Section 20.1.
Substantial Completion Deadline	The meaning set forth in Book 1, Section 4.3.1.
Substructure	The part of a Bridge below the bearings of simple and continuous spans, skewbacks, or arches and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.
Superintendent	Contractor’s authorized representative in responsible charge of the construction Work.
Superstructure	The entire Bridge except the Substructure.
Supplemental Specifications	MDOT approved additions and revisions to the Standard Specifications.
Supplier	Any Person other than employees of Contractor not performing Work at the Site that supplies machinery, equipment, Materials or systems to 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	Each properly licensed surety company approved by MDOT which has issued the Payment and Performance Bond.
Surface Course	The top layer of pavement structure.
Temporary Easement	Any temporary easement identified in the ROW Work Map.
Temporary By-Pass	A section of Roadway, usually within existing Right-of-Way, provided to temporarily carry all traffic around a specific work site.
Temporary Erosion Control Measures	Soil-erosion control measures such as bale checks, silt curtains, sediment traps, and other means to temporarily protect the Project from erosion before and during the installation of permanent erosion control measures. Temporary erosion control measures may also be used to supplement the permanent measures.
Temporary Road	A section of Roadway, usually within existing Right-of-Way, provided to temporarily carry all traffic around a specific work site.
Temporary Route	An existing road over which the traffic is temporarily detoured around a construction operation.
Temporary Structure	A bridge, culvert, or grade separation constructed to maintain traffic during the construction of reconstruction of a bridge, grade separation, or culvert.
Time and Materials Change Order	A Change Order issued under Book 1, Section 13.7.
Traffic Control Devices	Signs, signals, lighting devices, barricades, delineators, pavement markings, traffic regulators and all other equipment for protecting and regulating traffic in accordance with the MMUTCD, unless otherwise specified in the Contract.

Traffic Lane	The portion of a Traveled Way for the movement of a single line of vehicles.
Traffic Regulator	A person assigned to direct traffic, dressed and equipped as specified in the MMUTCD.
Traveled Way	The portion of the Roadway for the movement of vehicles, exclusive of Shoulders and Auxiliary Lanes.
Turn Lane	An Auxiliary Lane for left or right turning vehicles.
Utility	A privately, publicly or cooperatively owned line, facility and/or system for supplying power, light, gas, telecommunications, telegraph, telephone, water, pipeline or sewer service if such systems are authorized by law to use public highways for the location of their facilities. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line. The term “Utility” is sometimes also used to refer to a “Utility Owner.” The term “Utility” shall specifically exclude existing storm water facilities connected with drainage of the roadway.
Utility Agreement	An agreement made between MDOT and a Utility Owner for addressing one or more Utility conflicts associated with the Project.
Utility Delay	Any failure by a Utility Owner to meet any time parameters for performance by such Utility Owner, which failure by the Utility Owner delays the Critical Path so as to impair Contractor’s ability to meet a Completion Deadline.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.
Utility Owner	The owner or operator of any Utility.
Utility Permit	All appropriate approvals, exemptions, filings, licenses, permits and registrations and any other Governmental Approvals required by or with any Governmental Person or Utility Owner necessary for any Utility Relocation.
Utility Relocation Plans	The design plans for Relocation of a Utility impacted by the Project to be prepared by Contractor or the Utility Owner.
Utility Removal Work	Work necessary to remove any Utilities for which leaving the Utilities in-place is not feasible or not permitted, or which Contractor otherwise proposes to be removed in order to accommodate or permit construction of the Project, regardless of whether or not replacements for such Utilities are being installed in other locations.
Utility Work	(a) The Work associated with Relocation of Utilities, including the design, construction, installation, manufacture, supply, testing and inspection, adjustments (including manholes and valves), and otherwise required by the Contract Documents, including all labor, Materials, equipment, supplies, utilities and subcontracted services provided or to be provided by Contractor and/or the Utility Owners, and (b) any Betterments added to the Work pursuant to Book 2, Section 6..
Vibration Monitoring and Control Plan	The plan provided by Contractor as described in Book 2, Section 8.

Work	All duties and services to be furnished and provided by Contractor as required by the Contract Documents, including the administrative, design, engineering, quality control, quality assurance, Relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Materials, equipment, documentation and all other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by MDOT or other Persons. In certain cases the term is also used to mean the products of the Work.
Working Day	Any Calendar Day other than Saturday, Sunday, or a Holiday.
Working Drawings	Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which illustrate the construction of the Work.
Work Order	A written order by MDOT requiring performance by the Contractor.

EXHIBIT 1-B – NOTICE TO BIDDERS

03NB00 – Report Forms

03NB01 – Insurance

03NB10 – Certified Payrolls

03NB14 – Labor Compliance

03NB17 – Contractors/Consultants Fraud and Abuse Hotline

03NB18 – Road Construction Apprenticeship Readiness (RCAR) Program

03NB25 – Asbestos – Metro Region Only

03NB35 – Pass-Through Warranty Bonds

NOTICE TO BIDDERS

REPORT FORMS

Form Number:

1366 – “Contractor’s Affidavit of Indebtedness”

1367 – “Consent of Surety to Payment to Contractor”

The above listed forms will originate with the Construction Contract Section (Payment Unit of the Contract Services Division). They are sent out to the Contractor upon receipt of a final estimate.

The Contractor must execute form 1366 and forward along with form 1367 to their surety company for the surety’s consent. Both of these forms are then returned to Michigan Department of Transportation’s Contract Services Division. These forms must be submitted to Agreements/Payments/Purchasing Section before a final estimate is paid.

1120 – “Final Inspection/Acceptance and Certification Report”

This form will be initiated and submitted by the Region Engineer

1199 – “Employment Report”

Employment Report form 1199 is to be submitted by the Contractor annually when work is performed the last week of July. Send form 1199 directly to the MDOT Business Development Division website. A shorter alternative to this report may be completed electronically through the Business Development Division website at the following address: <http://mdotwas1.mdot.state.mi.us/public/sblar/>. If the website is used, the paper form need not be completed.

0125 – “Monthly OJT Program Report and Training Log”

Form 0125 shall be submitted by the Contractor to MDOT, Small Business Liaison Office, and a copy to the Engineer when reporting the training record for the on-the-job training.

Biweekly progress payments for work completed by the Prime Contractor and/or Subcontractor may be withheld, upon written notice from the Engineer, for failure to comply with the contract prevailing wage requirements (Davis-Bacon and/or Michigan Prevailing Wage Rate Schedule) and for failure to submit weekly certified payrolls.

These requirements are supplemental to other required contract provisions contained within this proposal.

07/13/07

Notice to Bidders

Insurance

The Contractor shall provide for and in behalf of the State, the Commission, the Department and its officials, agents and employees, and all agencies and their employees, specifically named below, or as stated on the Insurance Requirements (Form 1304, dated 01/2006), **an Owner's Protective Public Liability Insurance or the alternative option described in the FUSP 107(G), Indemnification, Damage Liability and Insurance.**

The agencies are the:

Michigan Department of Transportation,

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NOTICE TO BIDDERS

CERTIFIED PAYROLLS

Federal Prevailing Wage

Certified payrolls covering the contractor's and subcontractor's work forces shall be submitted to the engineer on federally funded projects as set forth in Title 29 of the Code of Federal Regulations, Part 3 (29 CFR 3), except these requirements shall not apply to any contract of \$2,000 or less, local force account projects, projects located on roadways classified as local or rural minor collectors, or projects located off the federal-aid highway system. Certified payrolls may be submitted in any form desired provided that all information requested on form WH-347 is included, and the statement of compliance has an original signature. The department has adopted a policy that requires only the last four digits of the employee's social security number to be reported on the certified payroll. Form WH-347 is available on the MDOT forms website.

State Prevailing Wage

Certified payrolls covering the contractor's and subcontractor's work forces shall be submitted to the engineer on all state funded projects as set forth in the Michigan Prevailing Wage Law, Public Act 166 of 1965, except on contracts involving two or more projects and job numbers where the type of funding is mixed, and where one source of funding is federal, the department puts only the wage rates issued by the U.S. Department of Labor in the proposal and the federal requirements apply to all work. The same payroll information is required on state funded projects as is required on federally funded projects, except only the last four digits of the employee's social security number are required to be reported.

Certified Payroll Submittal Requirements – Federal and State Prevailing Wage

Subcontractors and all lower tier subcontractors shall submit their certified payrolls to the prime contractor. The prime contractor will review all certified payrolls prior to submission to the engineer. The review will ensure the certified payroll complies with submittal requirements as set forth in the current written MDOT procedure for prevailing wage compliance oversight. The prime contractor shall complete the Contractor Certified Payroll Report Form 1955 and submit to the engineer along with the certified payrolls on a weekly basis. Form 1955 is available on the MDOT forms website.

NOTICE TO BIDDERS

Multiple Wage Decisions

This proposal may contain multiple Davis-Bacon Wage Decisions. In order to clarify the work covered by each decision, the following explanations are offered:

General Decision MIO_0007 covers all airport construction, bridge construction, highway construction, and sewer and watermain work that are incidental to highway projects. The construction type indicated on this decision is "AIRPORT & BRIDGE, HIGHWAY, SEWER/INCID. TO HWY." This wage decision is the most commonly used wage decision in MDOT's federally funded projects.

In accordance with the U.S. Department of Labor's All Agency Memorandums No. 130 and No. 131, multiple wage decisions will be included in those projects in which a second category of work is substantial in relation to project cost – more than approximately 20% (or \$1,000,000). Sewer and watermain work (MDOT prequalification classification K) is considered to fall under the Heavy Construction work classification by the DOL, therefore when that work type is more than 20% of the engineer's estimate or \$1,000,000, the wage decision with the construction type "HEAVY" will also be included in the proposal and is to be used for the sewer and watermain work in the proposal. All other work performed on the project will be covered by the "AIRPORT & BRIDGE, HIGHWAY, SEWER/INCID. TO HWY" wage decision.

Also, when the landscape work (MDOT prequalification classification H) is more than 20% of the project cost or \$1,000,000, the "Heavy" wage decision will be included in the proposal to cover all landscape work. All other work performed on the project will be covered by the "AIRPORT & BRIDGE, HIGHWAY, SEWER/INCID. TO HWY" wage decision. If the project is a total landscape project, only the "HEAVY" wage decision will be in the proposal.

Rest area building projects will include the construction type "BUILDING" wage decision when the building portion of the work is more than 20% of the project cost or \$1,000,000. The other work performed on the project will be covered by the "AIRPORT & BRIDGE, HIGHWAY, SEWER/INCID. TO HWY" wage decision and/or the "HEAVY" wage decision (landscape and/or sewer and watermain work) if either or both are greater than 20% or \$1,000,000.

Although there is only one wage decision for "AIRPORT & BRIDGE, HIGHWAY, SEWER/INCID. TO HWY" work (MIO_0007), the "HEAVY" and "BUILDING" wage decisions vary from county to county.

NOTICE TO BIDDERS **LABOR COMPLIANCE**

Each prime contractor and all tiers of subcontractors shall comply with all labor compliance provisions in the contract and as specified in the current written MDOT procedure for prevailing wage compliance oversight. The prime contractor shall take responsibility for subcontractor and lower tier subcontractor labor compliance.

Prime contractors and all tiers of subcontractors are required to pay no less than the wage rates and fringe benefits required by federal or state law, as applicable. The rates of wages and fringe benefits to be paid to each class of construction laborers and mechanics (each employee covered by the prevailing wage requirements) by the prime contractor and by all tiers of subcontractors, shall not be less than the total combination of the wage and fringe benefit rates in the attached wage schedule(s) for the locality in which the work is to be performed. This notice shall be included in every subcontract and every subcontractor shall require that this notice be included in each succeeding tier of subcontracts.

Every prime contractor shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates included in the contract.

The prime contractor and every subcontractor shall actively pursue resolution of contract labor compliance issues and attend all contract labor compliance meetings and hearings. The prime contractor and subcontractor shall submit all department requested documentation within the time frame the department specifies in the written notice. All labor compliance issues are to be resolved within 60 days after receiving the department's first written notice. The department and the contractor can mutually agree in writing to extend this 60 day requirement.

The prime contractor and every subcontractor shall keep an accurate record indicating the name and classification and the actual wages and benefits paid to each employee in connection with the contract. This record shall be available for inspection by the department or its representative. The prime contractor and subcontractor must permit the department or its representative to interview employees during working hours on the project and they must advise employees that they must cooperate with department representatives during wage rate interviews.

The prime contractor is responsible for advising all subcontractors of the requirement to pay the prevailing rate prior to commencement of work and that all employees must cooperate during wage rate interviews.

Each subcontractor is liable for the payment of the prevailing rates to its employees.

The prime contractor is liable for the payment of the prevailing rates to its employees. The prime contractor shall also be liable for payment of prevailing rates that are not paid by their subcontractors.

A violation of state and/or federal prevailing wage laws may result in the debarment of a contractor from being awarded a contract or subcontract for the provision of goods and services to the State of Michigan for a period of up to eight (8) years. Furthermore, other actions, including, but not limited to reconciliation of records, and restitution of employees, included in state and federal laws, may be required of the contractor/subcontractor.

NOTICE TO CONTRACTORS/CONSULTANTS

Fraud and Abuse Hotline

The Michigan Department of Transportation (MDOT) has established a Fraud and Abuse Hotline for employees, contractors, consultants, and others to report suspected fraud or abuse, such as: prevailing wage non-compliance, theft, kickbacks, wrongful claims, contract fraud, use of materials that do not comply with specifications, unapproved substitution of materials, commodities, or test samples, or failure to follow contract procedures.

Anyone with knowledge of any activity involving the potential for fraud or abuse is requested to call the Hotline at (toll free) **1-866-460-6368** or **517-241-2256**.

Every prime contractor shall keep posted on the construction site, in a conspicuous place, a copy of this Notice.

MICHIGAN DEPARTMENT OF TRANSPORTATION

NOTICE TO BIDDERS

ROAD CONSTRUCTION APPRENTICESHIP READINESS (RCAR) PROGRAM

All bidders are advised of Section 1920(b) of SAFETEA-LU, which states:

“It is the sense of Congress that Federal transportation projects should facilitate and encourage the collaboration between interested persons, including Federal, State, and local governments, community colleges, apprentice programs, local high schools, and other community-based organizations that have an interest in improving the job skills of low-income individuals, to help leverage scarce training and community resources and to help ensure local participation in the building of transportation projects.”

In an effort to improve the job skills of women, minorities and low-income individuals and to help ensure local participation in the building of transportation projects, MDOT and the Department of Labor & Economic Growth in cooperation with local Michigan Works! Agencies have implemented a Road Construction Apprenticeship Readiness (RCAR) program.

The RCAR program, launched in April 2008, is a new and ambitious program designed to equip a diverse pool of Michigan residents with skills for sustainable employment in the road construction industry. The RCAR program includes a rigorous training component designed to teach and prepare individuals for road construction apprenticeships. This construction season over 150 RCAR graduates will be available for hire for work on federal-aid projects.

All bidders are hereby informed that a pool of RCAR graduates are available from which to draw potential employees for work on this federal-aid project. RCAR graduates are prescreened, ready to work and can be used to fill MDOT assigned On-the-Job Training slots.

For information regarding RCAR graduates, contact:

METRO DETROIT

Clarence Burton
Michigan Works!One Stop
455 W. Fort St.
Detroit, MI 48226
(313) 962-9675 Ext. 527
(313) 962-4884 FAX
cburton@detroitmi.gov

Cheryl Sanford
Michigan HRDI
13700 Woodward, Highland Park.
(313) 826-0299.
(313) 866-1601 FAX
csanford@semca.org

Robert E. Shimkoski Jr.
Detroit Workforce Development Department, a Michigan Works! Agency
707 W. Milwaukee Detroit, MI 48202
(313) 876-0584 Ext. 217
(313) 876-0585 FAX
Rshimkoski@detroitmi.gov

Margaret Kelly
Joblink Service Center
1847 North Perry
Pontiac, MI 48340
(248) 276-1756
(248) 276-1778 FAX
Margaret.kelly@oakland.k12.mi.us

SOUTHWEST MICHIGAN

Lanre Ajayi/Eric Rodgers
Berrien-Cass-Van Buren Michigan Works!
499 West Main Street
Benton Harbor, MI 49022
Phone (269) 927-1799 ext 1176/1131
Fax (269)927-1399

Cincy Sullivan/Fred Harvey/Curt Mastos
Kalamazoo-St. Joseph Michigan Works! Service Center
1601 S. Burdick St.
Kalamazoo MI 49001
(269) 383-2536 Ext. 117/112/132
(269) 383-3785 FAX
csulliva@kresanet.org

BAY AREA

Kristen Wenzel
Saginaw Midland Bay Michigan Works!
Northpointe Plaza
4061 North Euclid
Bay City, MI 48706
(989) 667-0500
(989) 684-7920 FAX
wenzelk@bst.michiganworks.com

Nathan Kammer
Director of Workforce Training
Career Alliance, Inc.
711 N. Saginaw St, Suite 300
Flint, MI 48503
(810) 233-5974
(810) 233-4234 FAX
nkammer@careeralliance.org

NOTICE TO BIDDERS

MULTIPLE WARRANTIES

If this contract otherwise requires more than one warranty bond, the Contractor may provide a single warranty performance bond that satisfies the following conditions:

1. The single warranty performance bond shall guarantee performance of all of the warranty obligations of the contract.
2. The expiration date of the bond shall be the date on which the last of the warranties has been completely fulfilled.
3. The amount of the bond must be the highest amount of the otherwise required bonds.
4. Once the terms of a warranty have been completely fulfilled, if other warranties remain to be fulfilled, the amount of the bond may be reduced to the highest dollar amount of the otherwise required bonds for those remaining warranties.

NOTICE TO BIDDERS

Pass-Through Warranty Bonds

The prime contractor may assign responsibility for the warranty obligations and the posting of a warranty bond to a subcontractor(s) (hereafter warranty contractor) in accordance with the terms of this Notice to Bidders. No second tier subcontractor assignments will be permitted.

The following conditions must be met:

1. The assignment must be made to the subcontractor (the warranty contractor) that will perform the work covered by the warranty. If for any reason after signing the Warranty Contract and posting the warranty bond, the warranty contractor does not perform the work, the warranty contractor will remain obligated for the warranty obligations and the warranty bond obligations shall remain in effect unless the Department consents in writing to substituting a different contractor to assume those warranty obligations and accepts a substitute warranty bond.
2. To become a warranty contractor responsible for the warranty obligations of the Contract, and the posting of a warranty bond, the warranty contractor shall complete and submit to the Department a Warranty Contract and a warranty bond for the warranty it will be responsible for. If the Warranty Contractor will be responsible for more than one warranty on the project, a single warranty bond may be submitted in accordance with 03NB20, Multiple Warranties. A single Warranty Contract indicating all of the warranties it covers may be submitted. The Warranty Contract shall be signed by an authorized signer of the warranty contractor, as identified in its prequalification application.
3. **The assignment of the warranty work must be designated with and at the time of electronic bid submittal, and must provide all required information. MDOT will not accept assignments of warranty work after the final bid submittal by the Bidder.**
4. The Warranty Contract and warranty bond must be submitted to MDOT prior to award of the prime contract for the work to which the warranty applies.
5. The warranty contractor must be prequalified in the work classification for the type of work to be warranted.
6. The warranty bond shall guarantee performance of all the warranty obligations for the covered work, in accordance with the Warranty Contract.
7. All provisions of the prime contract shall be applicable to the warranty contractor in regards to the warranty work, except as otherwise expressly provided in the Warranty Contract.
8. Under no circumstances shall the assignment of the warranty work and the execution of a Warranty Contract create any obligation to the Department beyond the obligations undertaken in the prime contract. The purpose of the Department accepting the assignment of warranty obligations is to allow a warranty contractor to stand in place of the prime contractor for purposes of the warranty work without increasing any obligation or liability that the Department would have had if the prime contractor had not assigned the warranty work.

EXHIBIT 1-D – DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

In addition to the requirements of the Michigan Department of Transportation Disadvantaged Business Enterprise program, the Contractor shall comply with the requirements of this Exhibit 1-D.

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ATTACHMENTS

Design-Build Bidders List

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

A. DBE GOAL

The DBE goal established for this contract is 0% of the Contract Price. The use of DBE vendors on this project is encouraged.

The Contractor may establish individual contract goals for each contract, subcontract, and each consultant, subconsultant and supply and service provider agreement in amounts to ensure the overall contract goal is met. All contracts, subcontracts, and supply and service provider agreements must be reviewed and approved prior to the award/selection of each contract, subcontract, consultant, subconsultant and supply and service provider agreement.

The DBE goal may be attained by means of:

1. An approved subcommitment form 0178 with a Michigan Unified Certification Program (MUCP) certified DBE. The amount of goal attainment is dependent on the amount actually paid to DBEs for work performed, per the agreement.
2. A joint venture with a MUCP certified DBE. The MDOT Office of Business Development must approve a joint venture *prior to* the selection of a contractor, subcontractor, consultant, subconsultant, supplier or service provider. It is the Proposer's responsibility to verify that the MDOT Office of Business Development has pre-approved the joint venture. Only the amount paid to DBEs will be counted towards the goal.

The Proposer shall make good faith efforts to include DBE contractors, subcontractors, consultants, subconsultants, suppliers and service providers in the Design-Build team. Furthermore, the Proposer shall also make every reasonable effort to subcontract work to DBEs through good faith negotiations and/or solicitations in advance of the date specified for the opening of bids.

The Proposer shall submit at the time of proposal bid the threshold DBE commitment forms 0178 or 0182 that they will subcontract to DBEs at the onset of the project. The Proposer must continue to make GFEs to meet the goal throughout the life of the project. *A Proposer who fails to indicate a DBE commitment must submit a plan to fulfill the DBE goal indicated, with timelines and anticipated contracting opportunities.*

B. SUBMITTAL OF DOCUMENTATION

With the submission of the initial Proposal and for all subcontracts subsequently awarded where goals are set, regardless of contract size, the Design-Build contractor, subcontractor, consultant, subconsultant, supplier, and service provider will be required to: (a) propose the participation of specific DBEs to meet the goal using forms 0178 or 0182; or (b) demonstrated good faith efforts to meet the goal. The Design-Build contractor, subcontractor, consultant, subconsultant, supplier, and service provider must provide justification if it rejects bids, quotes, or proposals from properly certified, qualified DBE firms.

In order to fulfill a DBE goal, the firms utilized as DBE subcontractors, consultants, sub-consultants, suppliers, or service providers must be certified as DBEs by the MUCP prior to the award of the Contract, or the selection of any new subcontractors, consultants, subconsultants, suppliers or service providers during the project. Requests for approval by the MDOT OBD are required before contracts with DBEs are executed. The MUCP Disadvantaged Business Enterprise (DBE) Directory contains the names and addresses of all firms that are certified to perform the type of work the Proposer is intending to subcontract. The MUCP DBE Directory can be accessed at the following website:

<http://mdot270.state.mi.us:8080/UCP/HomePageServlet>

Firms certified by other local jurisdictions do not count toward the DBE goal. If there are questions concerning the MUCP certification status of a firm, the MUCP certification process or to obtain a copy of the MUCP DBE Directory, please call the MUCP Office of Business Development at (517) 373-3277 or visit the Office on-line at the following website:

<http://www.michigan.gov/mdotdbe>

The Proposer must submit a completed **Design-Build Bidders List**, which includes information on: (1) all DBE and non-DBE firms that submitted a bid/proposal for the project; (2) the proposed firms to be used on the project as subcontractors, consultants, subconsultants, suppliers, and service providers; (3) a description of the work; (4) bid dollar amount. The Proposer must submit a Design-Build Bidders List regardless of whether or not it has indicated sufficient DBE participation to meet the DBE goal. To meet federal requirements, all vendors/quoters should submit MDOT form 0168A.

The Contractor shall submit to the MDOT OBD for approval updated Forms 0178 or 0182 and shall submit an updated complete **Design-Build Bidders List** quarterly until Final Acceptance is achieved.

C. CONTINUING GOOD FAITH EFFORTS

During the term of the contract, the Contractor shall continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform on the contract, and that the Contractor meets its DBE goal. These efforts shall include but not be limited to the following:

- (a) Negotiating in good faith to obtain DBE participation both prior to and during the life of the project;
- (b) Continuing to provide assistance to DBE subcontractors, consultant, subconsultant, suppliers, and service providers in obtaining bonding, insurance, etc., if required by the contract;
- (c) Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting approval from the MDOT Office of Business Development to obtain a substitute DBE or a DBE participation modification;
- (d) Ensuring all vendors, including DBEs, are paid promptly for the satisfactory completion

of items or partial items of work associated with the subcontract on a monthly basis, for work satisfactorily completed within the previous thirty (30) calendar days.

- (e) Timely quarterly submission of either the “Prime Contractor Statement of DBE Subcontractor Payments (MDOT Form 0164) or the “Prime Consultant Statement of DBE Subconsultant Payments (MDOT Form 0165), as applicable. Credit shall not be counted toward the DBE goal until each DBE is paid for their work.
- (f) Submission by the Prime Contractor of a “Good Faith Effort Plan” to show ongoing efforts made to achieve the DBE participation goal. The Plan shall be submitted on a quarterly basis to MDOT’s Office of Business Development for review and approval. Additionally, the Office of Business Development shall be notified in a timely manner of any problems which may adversely impact DBE goal attainment.
- (g) If the Contractor or a subcontractor responsible for obtaining DBE participation requests a substitution of a DBE firm, the Contractor or subcontractor must exert good faith efforts to replace the DBE firm with another DBE.

D. DBE CONTRACTS

Whenever a DBE is selected as a subcontractor, consultant, subconsultant, supplier, or service provider and the DBE participation has not been previously approved, the Contractor or his/her designated DBE Liaison Officer shall provide the MDOT Office of Business Development with executed MDOT DBE Participation Forms 0178 (construction version) or 0182 (consultant version) and all related forms for approval before the DBE begins work. Failure to ensure that a DBE commitment has been approved by MDOT before the DBE begins work on the project may result in the work being deemed ineligible for credit toward the DBE participation goal.

**Michigan Department of Transportation
Office of Business Development
Design-Build Bidders List**

JN: _____

Proposer/Contractor: _____

List all comparative quotes of participants performing on the project and participants that bid or submitted proposals, including DBEs and non-DBEs. Include Contractors, Subcontractors, Consultants, Subconsultants, Regular Dealers, and Service Providers.

To meet requirements of federal regulations at 49 CFR Part 26.11, all bidders/submitters shall complete and return the attached "MDOT Vendor Availability Questionnaire" (MDOT Form 0168A) to the address listed on the form.

Name, Contact Name and Phone number of Contractor	Indicate firms that will be used*	Description of Work	Bid \$ Amount	
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

*Indicate firms that will be used on the project with a check or an asterisk.

This form may be submitted on an alternate form

EXHIBIT 1-F – MODIFICATIONS TO THE MDOT STANDARD SPECIFICATIONS FOR CONSTRUCTION

General

These Contract Provisions are a revised version of MDOT’s Standard Specifications Division 1, and contain requirements generally applicable to the Work to be performed by Contractor. In certain cases provisions in the Standard Specifications have been superseded by other provisions of the Contract Documents. For ease of reference, this document uses the same section numbers as the Standard Specifications and identifies provisions of the Contract Documents that have replaced or modified the standard clauses.

If the Contractor believes that a modification is unclear, the Contractor shall have the obligation to raise the issue with MDOT. Regardless of whether the Contractor raises the issue, MDOT shall always have the right to notify the Contractor if the Contractor is interpreting the modification incorrectly.

Those standard specifications that are left blank are not modified in this document, but they may be modified by Special Provisions or other Contract Documents.

All references to the Engineer in Division 1 shall mean MDOT unless the context requires otherwise. References to low bid, low Bidder and apparent Low Bidder shall refer to Best Value, Best Value Proposer, or selected Best Value Proposer, as applicable, when Best Value procurement is indicated in the Instructions to Proposers.

All Division 1 Standard Specifications are incorporated herein, except as otherwise provided in the Contract Documents, and with the following exceptions:

A. Division 1 – General Provisions – Specific Modifications

Section 101. TERMS, FORMAT, AND DEFINITIONS

Section 101 is hereby deleted in its entirety and shall be as set forth in Exhibit 1-A to Book 1 of the Contract Documents.

Section 102. PROPOSAL SUBMISSION, AWARD AND EXECUTION OF CONTRACT

102.02 Contents of Proposal Form

Subsection 102.02 is hereby deleted in its entirety and shall be as set forth in the Instructions to Proposers and the Contract Documents.

102.03 Interpretation of Bid Items in the Proposal Form

Subsection 102.03 is hereby deleted in its entirety and shall be as set forth in the Instructions to Proposers.

102.04 Examination of Plans, Specifications, and Work Site

Subsection 102.04 is hereby deleted in its entirety and shall be as set forth in the Instructions to Proposers and in Book 1, Sections 1, 2, 6, and 13.

102.06 Irregular Proposals

Provisions regarding irregular Proposals shall be in accordance with the Instructions to Proposers and this subsection 102.06, modified as follows:

Subsection 102.06.C is hereby deleted and replaced with the following:

It is the intention of the Department to waive irregularities in subsection 102.06.B and accept the lowest qualified Proposal or Best Value Proposal, as indicated in the Instructions to Proposers, whenever the considerations set forth in this subsection do not justify rejection of the Proposal. In determining whether to waive an irregularity and accept a Proposal, the Department will consider whether the nature or extent of the irregularity is such that acceptance of the Proposal might confer on the Bidder an unfair advantage or possibility for Proposal manipulation; jeopardize funding for the project; impose unreasonable administrative burdens on the Department; or, otherwise undermine the integrity of a fair, open and honest competitive bidding process. Where to do so would not be contrary to those considerations, the Department may allow a Bidder to remedy a Proposal irregularity but in no event will a Bidder be permitted to do so by increasing or decreasing its Proposal Price or materially alter its Proposal for the project as specified in the Request for Proposals. The authority to waive irregularities is not intended to allow the Department to choose among multiple prices improperly quoted for the same item of work where only one of those choices would make that Proposal the lowest accepted Proposal or Best Value Proposal, as applicable.

Subsection 102.06.D is hereby deleted and replaced with the following:

Only a Bidder whose Proposal has been rejected pursuant to subsection 102.06 and who would otherwise be the lowest Bidder or Best Value Proposer, as applicable, has an opportunity to appeal a proposed rejection under subsections 102.11 and 102.12. Once all administrative appeals are exhausted under subsections 102.11 and 102.12, the decision of the Department or the Commission is final and binding on all Bidders.

102.07 Delivery of Proposals

Subsection 102.07 is hereby deleted in its entirety and shall be as set forth in the Instructions to Proposers.

102.08 Withdrawal or Revision of Proposal

Subsection 102.08 is hereby deleted in its entirety and shall be as set forth in the Instructions to Proposers.

102.09 Public Opening of Proposals

Subsection 102.09 is hereby deleted in its entirety and shall be as set forth in the Instructions to Proposers.

102.13 Consideration of Proposals

Provisions regarding consideration of Proposals shall be in accordance with the Instructions to Proposers and this subsection 102.13, modified as follows:

Delete the first paragraph and replace with the following:

To determine the Proposal Price, the proposals will be reviewed on the basis of the sum of products of the quantities and unit or lump sum bid prices. In the case of discrepancy between this calculated total and the total shown in the Proposal, unit or lump sum prices as entered in the Proposal shall govern and all errors found in said computations will be corrected.

Section 103 SCOPE OF THE WORK

103.01 Intent of Contract

Subsection 103.01 is hereby deleted in its entirety and shall be as set forth in the Contract Documents.

103.02 Changes in the Work

Subsection 103.02 is hereby deleted in its entirety and shall be as set forth in Book 1 of the Contract Documents.

103.03 Adjustments

Delete the first paragraph. Delete “the adjustment” in the second paragraph and substitute “Any adjustment in connection with a Change Order”.

103.05 Maintenance of Traffic

Subsection 103.05 is hereby deleted in its entirety and is substituted with the following:

GENERAL

Unless otherwise provided, a road undergoing improvements shall be kept open to all traffic by and at the expense of the Contractor. Where so provided in the Contract, traffic shall be directed over an approved detour route. The Contractor shall keep the portions of the Project being used by public traffic, whether it be through or local traffic, in such condition that the traffic will be adequately accommodated at all times. The Contractor shall provide and maintain temporary approaches, crossings, and intersections with trails, roads, streets, businesses, parking lots, residences, garages, farms, and other abutting property in acceptable condition, but will not be required to remove snow.

PLANNED DETOURS

Planned detours are those specifically identified in Book 2 and within detour agreements between the jurisdictional authorities. Planned detours may designate a route by naming specific streets to follow, in which case the Contractor will be required to provide and install signs, signals, and MOT devices as necessary to establish the route. The Contractor must provide, install, and maintain signs, signals, and MOT devices as necessary to close the street or ramp. MDOT will provide maintenance of roadway surfaces of planned detours at no cost to the Contractor.

CONTRACTOR'S REQUEST FOR DETOUR

The Contractor may request that through traffic be detoured. The request shall contain all information needed for justification and shall specify the routes to be established. If arrangements can be made that are satisfactory to the agencies having jurisdiction over the roads to be used, MDOT may then at its sole discretion establish an approved detour subject to the following conditions:

- (a) The Contractor shall design, provide, install, maintain, and remove all the necessary traffic control devices on the detour roads.
- (b) The Contractor shall pay all expenses incurred in maintaining and restoring the detour roads, except for snow removal.
- (c) The Contractor shall fulfill the obligations for maintenance of local traffic by furnishing, placing, and maintaining all traffic control devices and other traffic protection measures required on the roads undergoing improvements.

TEMPORARY BYPASSES

All temporary bypass facilities requested by the Contractor and accepted by MDOT shall be constructed, maintained, and removed at the Contractor's expense.

WINTER SUSPENSION

The Contractor shall, at no expense to MDOT, make passable and shall open all existing roads to traffic during periods of authorized winter suspension to eliminate the need to maintain the detour roads during the suspension period.

During periods of authorized winter suspension, MDOT will, at its expense, perform routine maintenance on the roads undergoing improvement. However, the Contractor will be responsible for the maintenance of all traffic control devices thereon. When work is resumed after winter suspension, the Contractor shall replace or renew any work lost or damaged during the suspension and shall re-establish all traffic control devices required for the resumption of the Work. The Contractor shall then complete the Project in every respect as though its prosecution had been continuous and without interference.

Section 104 CONTROL OF THE WORK

104.01 Authority of Department

All references to plans and specifications shall be replaced with the term Contract Documents. Any adjustment and modification of the Contract under Subsection 104.01.B shall be addressed as a Change Order.

104.02 Plans and Working Drawings

Provisions regarding plans, working drawings, shop drawings, and other construction documents are hereby deleted in their entirety and are set forth in Book 2, and 3. Requirements applicable to specific portions of the Work may be identified with particularity in such sections.

104.03 Deviations from the Plans

Subsection 104.03 is hereby deleted in its entirety.

104.04 Conformity with Plans and Specifications

Subsection 104.04 is hereby deleted in its entirety and is substituted with the following:

All Work performed and all materials furnished shall conform to the Contract Documents.

All work performed and all materials furnished shall be in conformance with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances, required by the Contract Documents. If MDOT finds that the material or the finished product in which the material is used is not in conformance with the Contract Documents, MDOT will decide whether the Nonconforming Work will be allowed to remain in place, or whether it must be removed and replaced or otherwise corrected as a condition for Final Acceptance.

Plan dimensions and specification values are to be considered as the target value to be strived for and complied with as the design value from which deviations (within tolerances) may be allowed. If any changes to the Contract Document requirements are ordered or authorized by MDOT, the revised values shall

govern. It is the intent of the Contract requirements that the materials and workmanship shall be uniform in character and shall conform to the prescribed target value or to the middle portion of the tolerance range.

The purpose of the tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons. When a maximum or minimum value is specified, the production and processing of material and the performance of the Work shall be so controlled that the material or workmanship will not be of borderline quality or dimension. MDOT will allow an industry standard tolerance where working tolerances are not specified.

The remaining Divisions of these specifications provides guidelines, tolerances, and adjustments for many cases of Nonconforming Work. When the Contractor or MDOT finds that the materials furnished, the Work performed, or the finished product does not conform to the requirements of the Contract Documents, including the adjustments set forth in the remaining Divisions of these specifications, but MDOT determines, in its sole discretion, that reasonably acceptable Work has been produced, MDOT will determine the extent the Work will be Accepted and remain in place. If Accepted, (1) the Contractor shall document the basis for Acceptance based on MDOT's determination by Change Order, which will provide for an appropriate reduction in the Contract price for such Work or materials not otherwise provided for in this subsection, (2) MDOT will notify the Contractor in writing that the Contract Price will be reduced in accordance with this subsection, or (3) in lieu of a price reduction, MDOT may permit correction or replacement of the finished product, provided the correction or replacement does not adversely affect the Work. When such requirements specify a disincentive payment adjustment based on a unit price, the unit price shall be as specified in the applicable specification, and if no unit price is specified, the unit price shall be comparable to bid unit prices for similar work in the area.

The Contractor shall have the right to remove and replace the Nonconforming Work in lieu of accepting a price reduction provided the correction or replacement does not adversely affect the Work. However, it is in MDOT's sole discretion to determine whether a price reduction may be made in lieu of correction or replacement of Nonconforming Work. The reduction in Contract price shall take place as provided in this subsection 104.04, based upon the Approved unit price.

When either the Contractor or MDOT finds that the materials furnished, Work performed, or the finished product are not in conformity with the Contract Documents and MDOT determines, in its sole discretion, that it has resulted in an inferior or unsatisfactory product, the Work or materials shall be removed and replaced or otherwise corrected at the expense of the Contractor.

When no other basis for Acceptance is set forth in the Contract Documents covering Work that is not fully acceptable but that is allowed to remain in place, the Contractor shall document MDOT's basis of Acceptance and payment by Contract modification or change order, which will provide for an appropriate adjustment in payment for the Nonconforming Work as justified by MDOT's engineering determinations of the reasonable value of the Work performed.

104.05 Removal of Unauthorized Work

Subsection 104.05 is hereby deleted in its entirety and shall be as set forth in Book 1.

104.06 Coordination of Specifications and Plans

Subsection 104.06 is hereby deleted in its entirety. Book 1, Section 1.3 and Book 2 set forth the order of priority of the various Contract Documents.

104.08 Lines, Grades, and Elevations

Provisions regarding construction stakes, lines, and grades shall be in accordance with Book 2, Section 9 and this subsection modified as follows:

Delete subsections 104.08.A, 104.08.B.15, 104.08.E, 104.08.F, and 104.08.J.

104.09 Disputed Claims for Extra Compensation

Subsection 104.09 is hereby deleted in its entirety and shall be as set forth in Book 1, Section 19.

Section 105 CONTROL OF MATERIALS**105.02 Natural Material Sources Found within the Grading Limits**

Subsection 105.02 shall be deleted and replaced with the following:

The Contractor may use material found within the grading limits of the project as determined suitable by the Engineer. All material removed shall be replaced with suitable material.

105.03 Borrow Material

Subsection 105.03 shall be deleted and replaced with the following:

Material found outside the grading limits is considered borrow. Unless otherwise specified in the Contract Documents, the Contractor shall furnish the borrow material. The Contractor shall not remove borrow from the highway right-of-way.

For Contractor provided material sources, the Contractor shall take necessary action to certify that the material is environmentally acceptable and acquire all required rights and permits. A copy of the permit(s) shall be given to the Engineer before the use of the material on the project.

Granular materials excavated from under water shall be stockpiled for sufficient time to be drained of free water before placing on a prepared subgrade. If the Contractor elects to accomplish de-watering of borrow material by a temporary lowering of the water table, the Contractor shall be responsible for any damages resulting from use of this method.

Upon completion of the work, sites from which borrow material has been removed shall be restored according to subsection 205.03.H

The Contractor shall perform all necessary construction, maintenance, and rehabilitation of borrow haul routes. The Contractor will be held liable for all damages caused by the Contractor's hauling operations and will be required to pay for damages according to section 107.

If the haul road involves a private railroad crossing, provisions shall be made by the Contractor according to subsection 107.20.

105.04 Miscellaneous Quantities

Subsection 105.04 is hereby deleted in its entirety.

105.09 Unused Materials

The second paragraph is deleted.

Section 107 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**107.02 Permits and Agreements**

The second paragraph is deleted.

107.06 Furnishing Right-of-Way

Subsection 107.06 is hereby deleted in its entirety. Provisions for furnishing right-of-way shall be in accordance with Book 2, Section 7.

107.08 Land Monuments and Property Corners

Subsection 107.08 is hereby deleted in its entirety. Provisions for land monuments and property corners shall be in accordance with Book 2, Section 9.

107.09 Archeological and Historical Findings

Subsection 107.09 is hereby deleted in its entirety. Provisions for archeological and historical findings shall be in accordance with Book 1, Section 5 and 13.

107.11 Contractor's Responsibility for the Work

The first paragraph of subsection 107.11 is hereby deleted and substituted with the following:

Until Final Acceptance, the Contractor shall have the charge and care of the Work and shall take every precaution against injury to the public or otherwise, or damage to property, public or private, from the elements or any other cause. The Contractor shall be responsible for the expense resulting from and of the aforementioned injuries or damages. In addition, 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 Final Acceptance and shall bear the expense of the damage except as otherwise indicated in Book 1.

107.21 Accepted for Traffic

Subsection 107.21 is hereby deleted in its entirety. Provisions for completion deadlines and opening sections to traffic are provided in Book 1, Section 20.

Section 108 PROSECUTION AND PROGRESS**108.01 Subcontracting of Contract Work**

The first and third sentences of the second paragraph are deleted.

108.07 Determination of Contract Time for Work Day Contracts

Subsection 108.07 is hereby deleted in its entirety. Provisions for time extensions are included in Book 1.

108.08 Extension of Time on Work Day Contracts

Subsection 108.08 is hereby deleted in its entirety. Provisions for time extensions are included in Book 1.

108.09 Extension of Time on Calendar Day or Calendar Date Contracts

Subsection 108.09 is hereby deleted in its entirety. Provisions for time extensions are included in Book 1.

108.10 Request for Extension of time for Work Day, Calendar Day and Calendar Date Contracts

Subsection 108.10 is hereby deleted in its entirety. Provisions for time extensions are included in Book 1.

108.11 Liquidated Damages

Subsection 108.11 is hereby deleted in its entirety. Provisions for liquidated damages are included in Book 1, Section 17.

Section 109 MEASUREMENT AND PAYMENT**109.01 Measurement of Quantities**

Subsection 109.01 is hereby deleted and replaced with the following:

The purpose of measurement of quantities is to identify testing and inspection frequencies, to track force account work, and to provide a basis for certain price reductions.

The Method of Measurement and Basis of Payment sections within the Standard Specifications are hereby deleted.

The Contractor acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in the Contract Documents.

109.02 Scope of Payment

Subsection 109.02 is hereby deleted in its entirety and shall be as set forth in Book 1, Section 11.

109.03 Payment for Increased Contractor Costs

Subsection 109.03 is hereby deleted in its entirety except that subsection 109.03.A.2 shall be incorporated. Payment for increased Contractor costs shall be as set forth in Book 1, Section 13.

109.04 Payments for Increased or Decreased Quantities

Subsection 109.04 is hereby deleted in its entirety.

109.05 Adjustments for Eliminated Items

Subsection 109.05 is hereby deleted in its entirety.

109.06 Partial Payments

Subsection 109.06 is hereby deleted in its entirety.

109.07 Force Account Work

The first paragraph of subsection 109.07.I is hereby deleted and replaced with the following:

Payment for Work performed on a force account basis will be made in accordance with Book 1, Section 11.

109.09 Final Inspection, Acceptance, and Final Payment

Subsection 109.09 is hereby deleted in its entirety. Milestone completion shall be in accordance with Book 1, Section 20.

Section 150 MOBILIZATION

Section 150 is hereby deleted in its entirety.

EXHIBIT 1-G – EXECUTION AND AWARD OF CONTRACT FOR EXPEDITED PROJECTS

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
DESIGNATED EXECUTION AND AWARD OF CONTRACT

DES:CY

1 of 1

C&T:APPR:BW:DBP:04:03:12

The section 102.15, on page 20, of the Standard Specifications for Construction are hereby deleted and replaced with the following:

The Department will provide the contract and bond forms to the determined low Bidder, at the address on file with the Department. The low Bidder must return, and the Department must receive the fully executed contract, bond forms, and insurance documents required by the Department no later than 1:00 pm on **April 12, 2012**. No extension of this deadline will be considered or allowed.

If the Department does not receive the signed contract, bond forms, and insurance documents required by 1:00 pm on **April 12, 2012**, the Department may award the contract to the next low Bidder, or otherwise exercise its discretion in the accordance with subsection 102.13.

The Department considers the contract awarded and binding when signed by the determined low Bidder and executed by the Department.

The first sentence of section 102.17, on page 21, of the Standard Specifications for Construction is hereby deleted and replaced with the following:

The determined low Bidder's failure to sign the contract and submit satisfactory bonds and insurance documents for the award of the contract by 1:00 pm on **April 12, 2012**, will result in the payment of the bid guaranty to the awarding authority.