REQUEST FOR PROPOSALS

MICHIGAN DEPARTMENT OF TRANSPORTATION

Progressive Design-Build Project

Marshall Modernization Project

Job Number: 217737, 218872, 219004, 219007

Control Section: 13062, 13016, 13042, 13073, 13074, 13082, 13161

Addendum ~~3~~4

December ~~5~~15, 2023

MDOT
Michigan Department of Transportation

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1 INTRODUCTION

These Instructions to Proposers (ITP) for the Marshall Modernization Project (the Project) are issued by the Michigan Department of Transportation (MDOT) to seek competitive proposals (individually, a Proposal and collectively, Proposals) for the opportunity to develop, design, and potentially construct this Progressive Design Build (PDB) project through this Request for Proposals (RFP). The Project will be implemented using a Progressive Design Build Contract (PDB Contract). See PDB Contract, Section 2.1 (Project Description; Scope of Work) for more information about the Project.

Entities desiring to enter into a PDB Contract are invited to submit a Proposal and become a Proposer. The Proposer shall comply with the ITP throughout the procurement. The Proposer shall provide all of the items required in this ITP. It is anticipated that the Proposer will include, as part of its team, any entities required for the Design-Builder to meet the Project prequalification requirements described in Section 2.4 (Prequalification). The Proposer shall also take into consideration the Project goals identified in Section 1.3 (Project Goals) when drafting their Proposal.

The Project will be funded with state dollars thereby requiring the Proposers to adhere to all pertinent state and local requirements. Additionally, portions of the Project are located on the National Highway System thereby requiring Proposers to adhere to pertinent Federal Requirements as determined during Preconstruction Services and as described in the PDB Contract.

All times in this ITP are Eastern Time. Capitalized terms and acronyms not otherwise defined herein are defined in PDB Contract Exhibit A (Definitions/Acronyms).

1.1 Documents Comprising the RFP

The RFP consists of the following documents:

- This ITP (including attachments)
- Progressive Design-Build Contract (including the Exhibits and Attachments)
- Reference Information Documents (RID) (not part of the contract)
    - Refer to Attachment D (Reference Information Document Index) for access information and an outline of all information provided.

1.2 Procurement Process

MDOT intends, through this procurement, to enter into a PDB Contract that will result in cost-effective and expedited completion of all elements of the Project. This ITP is issued to solicit information, in the form of Proposals, that MDOT will evaluate to determine which Proposer will be selected to deliver the Project pursuant to the evaluation process described in Section 4 (Evaluation Process).

MDOT staff, with the assistance of consultants, are in the process of performing early preliminary engineering activities.

Following execution of the PDB Contract, the Design-Builder will be obligated to perform the Preconstruction Services outlined in the PDB Contract and be responsible for completing the design and constructing the Project, if an agreement on price to perform the relevant services is reached.

During Preconstruction Services, the selected Design-Builder will prepare and submit a Guaranteed Maximum Price (GMP) for one or more Work Package Contract Modifications in accordance with the PDB Contract. MDOT will procure a separate Independent Cost Estimator (ICE), with whom MDOT and the Design-Builder will collaborate during Project development. Subject to price agreement with MDOT, the Design-Builder will be awarded the construction portion of the relevant Work Package Contract Modifications. See Section 8 of the PDB Contract for self-performance requirements related to Construction Work.

By submitting a Proposal, Proposers agree to be bound by the requirements outlined in this RFP, to be held to any commitments made in a submitted Proposal and to satisfy all requirements developed during the Preconstruction Services. Failure of the Proposer to meet these requirements may result in rejection of the Proposal.

1.3 Project Goals

The following goals have been established for the Project:

A. Construct trunkline network improvements to accommodate major regional manufacturing development, improving access to existing businesses, improving safety, throughout, and providing additional capacity for future development.

B. Minimize project delivery time to accommodate opening of economic development by 2026. Substantial construction completion (roadway open to traffic with available access to properties) needs to be completed to ensure facilitation of the anticipated traffic volumes due to development in the area.

C. Develop a flexible Preconstruction and Construction environment with resources that can adapt and scale in response to stakeholder input, changing infrastructure needs, and nearby development projects without adversely impacting the Project schedule.

D. Maximize the safety of workers and the traveling public during construction with consideration to minimizing inconvenience.

E. Maximize the value of the Project and achieve the Project goals through implementation of efficient design and innovative construction solutions and management techniques while meeting construction completion deadlines.

F. Deliver the optimal infrastructure solutions that achieve the Project goals within the Project budget.

2 BACKGROUND INFORMATION; RFP PROCESS

2.1 Project Description; Scope of Work

The Project is located in Emmett and Marshall townships and the city of Marshall in Calhoun County, and includes construction for the following major items of Work:

- Anticipated project improvement limits include:
  - JN 217737 – M-96 (Michigan Avenue) from east of Eden Street to South 15 Mile Road and associated local road connections
  - JN 218872 – I-69/Michigan Avenue Interchange, I-94/I-69 Interchange, I-69 from south of Michigan Avenue to the I-94 Interchange and I-94 from 13 Mile Road to the I-69 Interchange
  - JN 219004 – Michigan Avenue from Strongwood Avenue to Wheatfield Parkway and from M-311 (11 Mile Road) to East of Eden Street.11 Mile Road from the MDOT owned, Amtrak maintained Railroad tracks to north of H Drive North, and associated local road connections.
  - JN 219007 – I-94 from west of Michigan Avenue to 13 Mile Road and the I-94/11 Mile Road/I-94BL Interchange
- Anticipated Project phasing
  - Phase 1 – complete improvements to M-96 from the western edge of the anticipated initial development site east to south 15 Mile Road
    1. This phase must be completed in accordance with Section 1.3, Item B.
  - Phase 2 – complete improvements along I-94 and I-69 along with interchange upgrades at I-94/I-69 and I-69/M-96
  - Phase 3 – complete improvements along M-311 and the interchange of I-94/M-311
  - Phase 4 – complete improvements along M-96 from M-311 to the POB of Phase 1.

2.2 Procurement Schedule

MDOT anticipates carrying out the procurement process contemplated hereby in accordance with the following schedule.

Activity / Milestone	Date
Issue RFP	October 25, 2023
Deadline for Proposers to submit questions on initial RFP and One-on-One Meeting agenda	November 7, 2023 @ 4:00pm (EDT)
Issue RFP Addendum #1	November 8, 2023
One-on-One Meetings with Proposers	November 14, 2023
Issue responses to Proposer questions on initial RFP	November 20, 2023
Issue RFP Addendum #2	November 28, 2023
Issue RFP Addendum #3	December 5, 2023
Deadline for Proposers to submit questions on RFP	December 8, 2023 @ 4:00pm (EDT)
Issue responses to Proposer questions on RFP	December 15, 2023
Proposal due date	December 22, 2023 @ 1:00pm (EDT)
Proposer interviews	January 16, 2024

Anticipated announcement of selection results	January 31, 2024
Anticipated execution of PDB Contract	February 2024

This schedule is subject to modification at the sole discretion of MDOT. Proposers will be notified of any change by an addendum to this RFP.

2.3 Inquiries and General Information

Information regarding this RFP, including addenda to the RFP, questions and answers, and project specific information, will be posted at the following website: MDOT – Innovative Contracting (michigan.gov).

In order to facilitate receipt, processing and response, all questions regarding the Project shall be submitted by e-mail to the MDOT Innovative Contracting Project Manager (IC PM) listed below by the date indicated in Section 2.2 (Procurement Schedule). Proposers shall use Attachment C (Proposer Clarification/Inquiry Submission Template) when submitting their questions. **The employees and representatives of the Proposer may not contact any MDOT staff (including members of the selection team) other than the MDOT IC PM, or their designee, to obtain information on the Project. Such contact may result in disqualification.**

MDOT may make edits in addenda to this RFP in response to clarification requests. Alternatively, MDOT may respond to those questions that MDOT deems to be material and not adequately addressed through potential addenda to the RFP. MDOT will post any such responses and/or addenda to this RFP on the MDOT Innovative Contracting website.

Proposers are responsible for monitoring the Project Webpage for information concerning this procurement.

MDOT Innovative Contracting Project Manager

Miranda Spare, P.E.

Michigan Department of Transportation, Innovative Contracting Unit

E-mail: SpareM@michigan.gov

Addenda to the RFP:

MDOT reserves the right to revise this RFP at any time before the Proposal due date. Such revisions, if any, will be announced by addenda and posted on the MDOT Innovative Contracting website. Proposers are responsible for monitoring the MDOT Innovative Contracting website for information concerning this procurement as teams responding to this RFP will be required to acknowledge in Attachment B (Proposer Introduction Form) that they have received and reviewed all Addenda posted thereon.

News Releases:

Any news releases pertaining to this RFP or the services, study, data or project to which it relates shall not be made without prior written MDOT approval, and then only in accordance with the explicit written instructions from MDOT.

Observers During Evaluation:

Proposers are advised that observers from other agencies affected by the Project and local governmental entities, may observe the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal due date.

Disclosure:

All information in a Proposal and any contract resulting from this RFP are subject to disclosure under the provisions of the "Freedom of Information Act," 1976 Public Act No. 442, as amended, MCL 15.231, et seq.

2.4 Prequalification

The Proposer must meet the following prequalification requirements. The Lead Designer shall meet the Primary Professional Service Prequalification categories. The Lead Designer in combination with the subconsultants shall

meet the Secondary Professional Service Prequalification categories.

Construction Prequalification Requirements:

- Comb/Jt 300000 Cb, Ea or
- Comb/Jt 300000 Cb, Fa or
- Comb/Jt 300000 B, Ea or
- Comb/Jt 300000 B, Fa or
- Comb/Jt 300000 Ea, Fa
- Subclassifications Required: Cb, B, Ea, Fa

Primary Professional Service Prequalification Requirements:

- Design – Bridges; Complex
- Design – Roadway: Complex

Secondary Professional Service Prequalification Requirements:

- Design – Bridge: Load Rating
- Design Geotechnical: Advanced
- Design – Hydraulics II
- Design – Project Development Studies
- Design – Traffic: Capacity & Geometric Analysis
- Design – Traffic: Pavement Markings
- Design – Traffic: Safety Studies
- Design – Traffic: Signal
- Design – Traffic: Signal Operations – Complex
- Design – Traffic: Signing – Freeway
- Design – Traffic: Signing – Non-Freeway
- Design – Utilities: Roadway Lighting
- Design – Traffic: Work Zone Maintenance of Traffic
- Design – Traffic: Work Zone Mobility & Safety
- Landscape Architecture
- Design – Utilities: Municipal
- Surveying: Road Design
- Surveying: Structure
- Surveying: Hydraulics
- Surveying: Right-of-Way

2.5 Major Participants

As used herein, the term "Major Participant" means 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 entities however organized, holding (directly or indirectly) a 20 percent or greater interest in Proposer; any Subcontractor that will perform Work valued at 20 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.

2.6 Project Team

The Project Team, as referenced herein, is composed of MDOT staff, MDOT's consultants, the ICE, the Design-Builder, potentially Design-Builder Related Entities, and any additional Project stakeholders.

MDOT has retained the following general engineering consultant to begin the environmental analysis and complete early preliminary engineering: WSP Michigan. Other entities with a conflict of interest include Garver LLC and any other firm that has requested and received a conflict of interest determination from MDOT.

2.7 Equal Employment Opportunity

The Proposer will be required to follow State of Michigan Equal Employment Opportunity (EEO) policies.

2.8 Self-Performance and Other Requirements

Pursuant to Section 8 of the PDB Contract, the Design-Builder will be required to self-perform 35 percent of the Total Construction GMP. All Subcontractors shall self-perform a minimum of 50 percent of the total subcontracted work.

MDOT will review design submittals as generally described within Exhibit B of the PDB Contract. MDOT will provide construction engineering, testing, and inspection similar to the standard approach used on traditional MDOT projects.

3 CONTENT OF PROPOSAL

This section describes specific information that shall be included in the Proposals. Proposals shall follow the outline of this Section 3. Proposers shall provide brief and concise information that addresses the requirements of the Project consistent with the evaluation criteria described in this ITP. Proposals shall be submitted exclusively in the English language, inclusive of English units of measure and cost terms in United States of America dollar denominations.

3.1 Administrative Information

The Proposer shall provide the following information as part of its Administrative Information section of the Proposal. All Administrative Information will be reviewed on a pass/fail basis only and not as part of the qualitative assessment of the Proposal. There are no page limits for the Administrative Information.

3.1.1 Introduction

The Proposer must complete and sign the Attachment B (Proposer Introduction Form). **The form certifies the truth and correctness of the contents of the Proposal.** This information will be used to define the Proposer team structure and composition, identify the Proposer, and its designated contact.

3.1.2 Organizational Information

The Proposer shall include in Attachment B a signed statement by the Proposer attesting that the Design-Builder and Design-Builder-Related Entities satisfy the prequalification requirements listed under Section 2.4 (Prequalification), as of the Proposal due date. The entity meeting each of the construction and professional service prequalification classifications and subclassifications listed in Section 2.4 must be identified. Proposer shall include a concrete paver and an HMA paver on their team, with the final paver (HMA and/or concrete) to be selected during Preconstruction Services.

3.1.3 Organizational Conflicts of Interest

Identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Major Participants, proposed consultants, contractors and subcontractors, and their respective chief executives, directors and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

Disclose: (a) any current contractual relationships with MDOT (by identifying the MDOT contract number and project manager) that may result in, or could be viewed as a potential conflict of interest on this Project; (b) present or planned contractual or employment relationships with any current MDOT employee; and (c) any other circumstances that might be considered to create a financial interest in the contract for the Project by any current MDOT employee if the Proposer is awarded the PDB Contract. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

For any fact, relationship or circumstance disclosed in response to this Section 3.1.3 identify steps that have been or will be taken to avoid, neutralize or mitigate any organizational conflicts of interest.

The Proposer shall complete Attachment A (Conflict of Interest Disclosure) certifying that they have read and understand MDOT's policy regarding conflict of interest and that each Major Participant has done the same. The Proposer shall certify that they and each Major Participant have no conflict of interest with the Project. If there is a conflict with the Project, then the Proposer needs to describe the conflict.

The Proposer agrees that, if after award, an organizational conflict of interest is discovered, the Proposer shall make an immediate and full written disclosure to MDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, MDOT may, at its discretion, cancel the PDB Contract for the Project. If the Proposer was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MDOT, MDOT may terminate the contract for default.

MDOT may disqualify a Proposer if any of its Major Participants belong to more than one submitting team.

3.1.4 Legal Structure

If the Proposer organization has already been formed but does not currently have paperwork on file with MDOT, provide complete copies of the organizational documents that allow, or would allow by the time of contract award, the Proposer and Major Participants to conduct business in the State of Michigan. MDOT will verify the legal structure of Proposers with paperwork currently on file with MDOT. If the Proposer organization has not yet been formed, provide a brief description of the proposed legal structure or draft copies of the underlying agreements.

3.1.5 Financial Viability

The Proposer shall supply form 1300 EZ with their Proposal unless the Proposer has one currently on file with MDOT. Proposers do not need to provide MDOT Form 1381.

3.2 Qualifications of the Design-Builder

3.2.1 Firm Qualifications

The Proposer, inclusive of all Major Participants, shall describe their qualifications, experience, and capacity to deliver the Project using specific project experiences (identify project name, owner, owner contact and contact information, role on the project, description of scheduled completion deadlines and actual completion dates, and original design or construction budget and final design or construction cost) and other relevant considerations, including:

- Experience of Proposer's team members working together successfully on previous projects;
- Experience and qualifications on projects that demonstrated collaboration and partnership to successfully integrate construction and design activities;
- Experience and qualifications implementing effective value engineering concepts or alternative technical concepts on projects;
- Experience and qualifications relating to successful maintenance of traffic operations on comparable projects;
- Experience and qualifications identifying, mitigating, and resolving project risks in an efficient, cost-effective manner;
- Experience and qualifications with expedited schedules and timely completion on comparable projects;
- Experience and qualifications with on-budget completion of comparable projects; and
- Experience and qualifications coordinating/collaborating with adjacent contractors to successfully complete the project.

The narrative shall not exceed five pages.

3.2.2 Key Personnel Qualifications

3.2.2.1 Resumes of Key Personnel

Resumes of each Key Personnel shall be limited to two pages. Resumes shall describe the experience and capacity of the Key Personnel to perform the role on the Project. As part of the resume, provide three to five project references with contact information, including phone number and e-mail. If an individual fills more than one position, only one resume is required. Include the following items on each resume:

A. Relevant licensing and registration.
B. Office location of Key Personnel at the time of Proposal submittal.
C. Years of experience performing similar work.
D. Actual work examples on similar projects, including projects, project dates, duties performed and their percentage of time on the project.

The following table provides required and preferred qualifications of the Key Personnel assigned to the Project. Any certifications required to meet the requirements of the RFP shall be in place by the time the PDB Contract is executed.

Key Personnel Position	Preferred Requirements
Project Manager	The Design-Builder's Project Manager shall have experience managing the design and construction of highway construction projects with a similar scope of work and must have Design-Build experience. A minimum of 10 years of experience is required for this position. The Design-Builder's Project Manager will be responsible for the overall design, construction, quality management and contract administration for the Project and will: i. have full responsibility for the prosecution of the Work; ii. act as agent and be a single point of contact in all matters on behalf of Design-Builder; iii. be available (or the Approved designee will be available) at all times that Work is performed; and iv. have authority to bind Design-Builder on all matters relating to the Project.
Construction Manager	The Construction Manager shall have experience managing field operations on highway construction projects of similar scope. A minimum of 10 years of experience is required for this position. The Construction Manager must be on site during all construction activities (or the Approved designee must be on site). The Construction Manager must work under the direct supervision of Submitter's Project Manager. The Construction Manager is responsible for ensuring that the Project is constructed in accordance with the Project requirements. The Construction Manager is responsible for managing the Design-Builder construction personnel, scheduling of the construction activities and administering all construction requirements of the Contract.
Construction Quality Control Manager	The Construction Quality Control Manager shall have experience overseeing the inspection and materials testing on highway construction projects of similar scope. A minimum of 10 years of experience is required for this position. The Construction Quality Control Manager must manage the Design-Builder's Quality Control functions and will: i. not be assigned any other duties or responsibilities on the Project; ii. visit the site as necessary to validate construction quality, respond to any quality issues, and report on that visit to MDOT's Project Manager; iii. attend at least one progress meeting per month to report on construction quality issues; iv. be independent of direct scheduling or production activities and reports directly to the Design-Builder's management team; v. be available whenever any construction activities are being performed; and vi. have the authority to stop any and all Work that does not meet the standards, specifications or criteria established for the Project.
Design Manager	The Design Manager shall have experience in managing the design of highway construction projects and must be a licensed Professional Engineer in the State of Michigan now or by the award of the Project. 10 years or more of experience is preferred for this position. The Design Manager is expected to have recent relevant project experience managing similar types of projects and must have Design-Build experience. The Design Manager will be responsible for ensuring that the overall Project design is completed, and design criteria requirements are met. The Design Manager will: i. be responsible for managing the Design-Builder's design personnel and administering all design requirements of the PDB Contract; ii. be available whenever design activities are being performed; iii. work under the direct supervision of the Design-Builder's Project Manager; and iv. regularly attend design and construction progress meetings.

Key Personnel Position	Preferred Requirements
Design Quality Control Manager	The Design Quality Control Manager shall have experience managing the design quality component of highway construction projects of similar scope and complexity and must be a licensed Professional Engineer in the State of Michigan now or by the award of the Project. A minimum of 10 years of experience is required for this position. The Design Quality Control Manager will be responsible for design quality control for the Project. The Design Quality Control Manager will: i. be independent of design production and associated activities; ii. be available whenever design activities are being performed; and iii. work under the direct supervision of Design-Builder's management team.
Environmental Compliance Manager	The Environmental Compliance Manager shall be employed by the Lead Designer or a subconsultant providing professional services and must have recent experience on projects with similar environmental conditions including wetland impacts, regulated stream impacts, threatened and endangered species restrictions (Indiana Bat, Northern Long-eared Bat, and Eastern Massasauga Rattlesnake), non-hazardous contaminated materials handling and disposal, and soil erosion and sedimentation control (SESC) measures. 10 years or more of experience is preferred for this position. The ECM will: i. be responsible for assuring and reporting compliance of all on-site activities with the requirements of all permits and regulatory requirements; ii. report directly to MDOT and the Design-Builder's Project Manager simultaneously; iii. have the authority to stop work that is not in compliance with environmental requirements; and iv. visit the site at least once per week and attend progress meetings at least monthly to report on environmental items.
Lead Cost Estimator	The Lead Cost Estimator is preferred to have recent, relevant experience on projects preparing production-based cost estimates for projects of similar scope. The Cost Estimator must work under the direct supervision of the Design-Builder's Project Manager. 10 years or more of experience is preferred for this position. The Lead Cost Estimator is responsible for ensuring that the milestone estimates and GMP are developed in accordance with Project requirements and reflects discussion and correspondence with the Project Team. The Cost Estimator will: i. clearly communicate the basis of the estimate to MDOT; ii. identify missing or incomplete information needed for current or future estimates; and iii. collaborate with the Project Team to reach a common understanding of Project costs.
Lead Geotechnical Engineer	The Lead Geotechnical Engineer shall be experienced in geotechnical engineering as required for this Project and must be a registered Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Hydraulics Engineer	The Lead Hydraulic Engineer shall be experienced in hydraulic engineering as required for this Project. This experience should be focused on freeway storm sewer design, ditch and culvert design, and water detention/retention system design. The Lead Hydraulics Engineer shall be a registered Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Structures Engineer	The Lead Structures Engineer shall be experienced in structure design of the size required to accomplish the scope of work for structures on this Project. The Lead Structures Engineer shall be a licensed Professional Engineer in the State of Michigan now or by the award of the Project.

Key Personnel Position	Preferred Requirements
Lead Road Engineer	The Lead Road Engineer shall be experienced in roadway design related to roadway reconstruction and rehabilitation projects, including large roadway corridor projects of similar scope. The Lead Road Engineer shall be a licensed Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Traffic Engineer	The Lead Traffic Engineer shall be experienced in signing design, pavement marking design, traffic signal design, and have significant recent experience in traffic engineering, traffic management, and capacity analysis on similar projects. This experience should be focused on freeways and conventional interchanges. The Lead Traffic Engineer shall be a licensed Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Maintenance of Traffic Engineer	The Lead Maintenance of Traffic Engineer shall be experienced in work zone safety, work zone traffic control design, and have significant recent experience in maintenance of traffic engineering and traffic management on similar projects. This experience should be focused on freeways and conventional interchanges, and unique maintaining traffic concepts in narrow corridors. The Lead Maintenance of Traffic Engineer shall be a registered Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Utility Engineer	The Lead Utility Engineer shall have recent relevant experience with coordinating and resolving utility conflicts on similar projects, including Design-Build projects. They shall demonstrate their ability to work with multiple utilities at once and how conflicts are identified, mitigated, and resolved.

3.3 Organization and Project Approach

3.3.1 Organization During Preconstruction Services and Construction Services

The Proposer shall provide an organizational chart(s) for Preconstruction and Construction services using no more than two 11”x17” pages that show:

- Proposer and Major Participants roles in the organization;
- the flow of the “chain of command” with lines identifying participants who are responsible for major functions to be performed and their reporting relationships, in managing and building the Project;
- the functional structure of the organization down to the construction supervisor level with identification of Key Personnel by name.

It is expected that Design-Builder’s staff that will be active during the Construction Services are also active during the Project’s Preconstruction Services.

In addition to the organizational chart(s), the Proposer shall provide a one-page narrative regarding the organization that describes the Proposer’s teaming arrangements, its management structure, and approach. The narrative shall include, at a minimum, a discussion of the following:

A. How the Proposer team organization will integrate into the Project Team and promote collaboration during Preconstruction Services and Construction Services;
B. The experience of the team members working together on other comparable projects and the results of that experience;
C. How the Proposer team will operate, in light of the complexity and sequencing of the Project;
D. The Proposer’s approach to forecasting, providing, and maintaining necessary project resources (labor, equipment, materials) through each phase of the Project, and Proposer’s additional capacity that can be leveraged as needed to deliver the Project;
E. The Proposer’s approach to facilitating communication among internal staff, subcontractors, MDOT, MDOT’s consultants, as well as their anticipated communication and involvement with the public; and
F. How the management structure will facilitate the management of the Project risks.

3.3.2 Preconstruction Services Approach

Using a maximum of six pages, describe the Proposer's specific Pre-construction Services approach, specifically including:

1. the Proposer's schedule management approach and methods to optimize the construction schedule with design;
2. the Proposer's approach to identifying factors that may control the overall project schedule;
3. the Proposer's approach to performing preliminary engineering and final design in alignment with the project goals, including collaboration with MDOT;
4. the Proposer's approach to identifying potential Work Packages accompanied by a description of how anticipated major design and Work Packages will be used to optimize project delivery;
5. the Proposer's approach to pricing, cost reconciliation and negotiation, and subcontracting;
6. the Proposer's approach to risk management including methods used to identify, mitigate, and price risk during Preconstruction Services; and
7. The Proposer's approach to quality management during Preconstruction Services, specifically addressing the Proposer's understanding of the potential risks associated with the Project and ~~mitigation~~quality related efforts that will be ~~needed~~performed to remove or reduce ~~the~~ risk ~~to meet the Project goals~~.

3.3.3 Construction Services Approach

Using a maximum of four pages, describe the Proposer's specific Construction Services approach, specifically including:

1. the Proposer's approach to management of construction phasing;
2. the scope of work the Proposer intends to self-perform to meet self-performance requirements and the scopes of work that the Proposer intends to subcontract;
3. the Proposer's approach to managing subcontracting and subcontractor performance during construction, including the approach to tracking, documenting, and ensuring compliance with equal employment opportunities requirements;
4. the Proposer's approach to risk management and use of the risk register during Construction; and
5. the Proposer's approach to quality management during Construction Services.

3.3.4 Staffing Plan Supplement

The Proposer shall include an appendix to the Organization and Project Approach for both Preconstruction Services and Construction Services that shall not exceed two pages total that provides supplemental descriptions of how additional project staff will support the Key Personnel in the management and delivery of the Project. The supplement shall provide details of the Project staff and describe how their roles and responsibilities will be used in support of the Key Personnel and the overall organization. The Proposer shall describe Project staff responsibilities and their authority over the operations.

4 EVALUATION PROCESS

4.1 Proposal Evaluation

MDOT will initially review the Proposals for responsiveness to the requirements of this RFP. The information in the Proposal will then be measured against the evaluation criteria described in this Section 4. A non-responsive or partially non-responsive Proposal missing required information will result in a "fail" rating, which may result in rejection of the Proposal.

4.1.1 Administrative Information

The Administrative Information will be evaluated on a pass/fail basis only.

4.1.2 Qualifications of the Design-Builder

4.1.2.1 Firm Qualifications

Firm Qualifications will be evaluated based on the extent to which Proposer:

1. demonstrated relevant experience that will improve the likelihood of successful project delivery in alignment with the Project goals; and
2. demonstrated available labor and equipment resources to deliver the Project in alignment with the project goals.

Additional consideration will be given to those firms that have shown a history of successfully working together.

4.1.2.2 Key Personnel Qualifications

Key Personnel Qualifications will be evaluated based on the extent to which:

1. The Key Personnel meets or exceeds the preferred requirements and demonstrates experience that is relevant to the role on the Project.
2. The Key Personnel demonstrates availability to perform the role on the Project.

4.1.3 Organization and Project Approach

The Organization (including the Staffing Plan identified in Section 3.3.4) and Project Approach during the Preconstruction Services and Construction Services, ~~Preconstruction Services Approach, and Construction Services Approach~~ will each be evaluated based on the extent to which the Proposer:

1. included relevant and responsive information that is clearly organized and easy to understand;
2. demonstrated an understanding of the Project, Project Goals, and PDB principles; and
3. demonstrated technical expertise and management approaches that will increase the likelihood of project success.

4.1.4 Location

The Proposer will be evaluated based on the percentage of Key Personnel that currently reside within the State of Michigan.

Percent of Key Personnel currently residing in MI	Score
95-100	5
80-94	4
50-79	3
25-49	2
10-24	1
Less than 10	0

4.2 Interviews

Each Proposer will participate in an interview as part of the evaluation process. The interview will consist of a 20-minute presentation by the Proposer and 40 minutes of Q&A from MDOT. The Proposer will present on the qualifications of their team, project approach, or other areas they feel will add value to the Project. MDOT will ask Proposers general questions and/or questions that are specific to their Proposal. Interviews are limited to 60 minutes.

The Proposer may bring to its interview any material it believes may assist MDOT in the evaluation process. The Proposer shall attend the interview in person.

The Proposer may bring up to 10 individuals to attend the interview.

The Proposer will be evaluated on the quality of the information presented in the interview, including the extent to which:

1. the Proposer communicated Project understanding in a clear and concise manner that was easy to understand;
2. the Proposer demonstrated technical expertise, ability to anticipate technical issues and risks to Project success, and required levels of expertise for each Project phase; and
3. the Proposer demonstrated recognition of key points and ideas, including the Design-Builder's role in Project advancement at each Project phase, likely issues, and Project stressors at each Project phase, understanding of the GMP process and pricing transparency, and ideas and ability necessary to effectively collaborate with MDOT and other stakeholders to achieve Project goals.

4.3 Proposal Scoring

MDOT will evaluate all responsive Proposals and measure each Proposer's response against the Project goals and evaluation criteria set forth in this RFP, resulting in a numerical score for each Proposal. The scoring will be distributed as summarized below:

Evaluation Criteria		Maximum Points
Qualifications	Firm Qualifications	15
	Key Personnel Qualifications	25
Organization and Project Approach	Preconstruction Services Organization, and Project Approach	15
	Construction Services Organization, and Project Approach	15
Interview	Presentation	15
	Question and Answer	10
Location	Location of Key Personnel	5
Total Available Points		**100**

4.4 Determining Selected Proposer

MDOT will total the scores for each responsive Proposal and prepare a ranked list of Proposers. Selection will be based on the Proposer with the highest total combined score.

4.5 Notification of Selection

The selected team will have their Proposer's name and score posted on MDOT's innovative contracting website, which will serve as the selection announcement. Teams that are not selected will only have their scores posted;

however, each Proposer will receive their individual score sheet from MDOT via e-mail within five working days of the scores and selection results being posted.

4.6 Post-Award Considerations

Following award, MDOT may negotiate any aspect of the PDB Contract after selection. The decision to commence negotiations and any topics of negotiation are at MDOT's sole discretion. If MDOT elects to negotiate the PDB Contract, then the Selected Proposer also hereby commits to engage in good faith negotiations. However, nothing in this Section 4.6 (Post-Award) is intended to require negotiations before award or restrict negotiations after contracting, understanding that the PDB delivery model contemplates ongoing good faith negotiation of contract terms as specifically contemplated in the form of the PDB Contract for this Project. The Validation Phase is not subject to negotiation.

If MDOT is unable to reach agreement with the selected Proposer, then MDOT reserves the right to negotiate in order of ranking with other Proposers until coming to agreement and executing the PDB Contract.

The selected Proposer will be deemed to have failed to engage in good faith negotiations with MDOT if the selected Proposer:

1. fails to attend and actively participate in scheduled negotiation meetings with MDOT; or
2. insists upon terms or conditions for any documents to be negotiated or provided by the Design-Builder hereunder that are inconsistent with the form of the PDB Contract.

4.7 Debriefing

Feedback may be provided via face-to-face meeting, phone or email at the discretion of the IC PM; however, it will not be provided until after the award of the PDB Contract.

5 PROPOSAL SUBMITTAL REQUIREMENTS

The following sections describe requirements that all Proposers shall satisfy in submitting Proposals. Failure of any Proposer to submit their Proposal as required in this RFP may result in rejection of its Proposal.

5.1 Due Date, Time and Location

Proposals are due on the date and time listed in Section 2.2. Any Proposal that fails to meet the deadline or delivery requirement will be rejected without opening, consideration or evaluation.

Proposals shall be delivered via email to the MDOT IC PM identified in Section 2.3. The Proposals shall have the subject line of **"Marshall Modernization Proposal"**. MDOT will not accept Proposals by facsimile, or any other means of delivery.

5.2 Format

All Proposals shall comply with the following:

A. Provide a Portable Document File (PDF) that is bookmarked. The maximum file size allowable for emailing is 20 megabytes (MB). If the Proposal is larger than 20 MB, please provide the Proposal in multiple e-mails with each attachment less than 20 MB. Please ensure all e-mails are received by the due date and time listed in Section 2.2. Portions of the Proposal received after the due date and time will not be considered in scoring.

B. The Proposal components comprised of the Qualifications of the Design-Builder pursuant to Section 3.2 and Organization and Project Approach pursuant to Section 3.3 shall not exceed 44 single-sided 8.5"x11" pages (46 single-sided 8.5"x11" pages are allowed if a staffing plan supplement is included in the Proposal) and up to 2 single-sided 11"x17" pages exclusively for organizational charts.

C. In the 1300EZ form, the references to "Bidder" shall mean "Proposer".

D. All Proposal pages shall be 8 ½ inches by 11 inches with the exception of page(s) used for the organizational chart(s).

E. Font must be a minimum of 12 point.

F. All pages must be numbered continuously throughout and in the format of "Page 1 of _", including resumes and legal understanding.

G. Graphics are allowed within established page limits. Text used on graphics shall be legible and shall be used to describe the contents of the graphic. Any additional narrative text that does not directly relate to a graphic may be excluded from MDOT consideration at MDOT's sole discretion.

5.3 Ownership of Proposals

Proposals and any other information submitted by Proposers shall become the property of MDOT. All or any part of the proposed Proposer innovation or method may be used or disclosed on this or future MDOT projects without obligation or compensation to the Proposer.

5.4 Validity Period

Proposals are to be valid for MDOT's acceptance for a minimum of 49 days after the Proposal due date to allow time for evaluation and selection. A Proposal, if accepted, shall remain valid for the duration of the Contract.

6 DEPARTMENT RIGHTS AND DISCLAIMERS

This RFP does not commit MDOT to enter into a contract or proceed with the procurement of the Project. MDOT assumes no obligations, responsibilities and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred by the parties responding to this RFP. All such costs shall be borne solely by each Proposer.

Notwithstanding anything to the contrary contained in the RFP or the PDB Contract, MDOT reserves the right, in its sole discretion, to do any of the following:

1. develop the Project in any manner that it deems necessary or desirable, including modifying the scope of the Project;
2. modify or rephrase Proposer Clarifications;
3. exclude from consideration the Proposer if its Proposal contains a material misrepresentation or omission;
4. reject any or all of the Proposals or other submittals or responses;
5. terminate evaluation of any and all submittals, responses, and Proposals;
6. cancel, modify, or withdraw the entire RFP;
7. issue a new RFP;
8. investigate the qualifications (including to require additional evidence) of any Proposer or Progressive Design-Builder or any of Lead Designer, Lead Contractor, any Key Personnel firm, or any Subcontractor, including specifically to seek or obtain information, and consider such information, from any source, including the evaluators' personal experiences or knowledge, that, in each case, has the potential to improve the understanding and evaluation of the Proposals;
9. hold meetings and exchange correspondence with the Proposer to seek an improved understanding and evaluation of the responses to the RFP;
10. require correction of or waive deficiencies, informalities, and minor irregularities in Proposals; or seek clarifications or modifications to a Proposal;
11. disqualify the Proposer if it changes its Proposal without MDOT approval, to include disqualification under subsequent RFPs pertaining to the Project for violating any rules or requirements of this solicitation/procurement set forth in this ITP or in any other communication from, or on behalf of, MDOT;
12. disclose information contained in the Proposal to the public as governed by applicable Law, order of any court having jurisdiction, or by this ITP;
13. appoint evaluation committees to review the Proposal, and seek the assistance of outside technical experts and consultants in Proposal evaluations; and
14. exercise any other right reserved or afforded to MDOT under this ITP, or applicable Law or in equity.

Attachment A Conflict of Interest Disclosure

_____(Major Participant entity name) certifies that it has read and understands the following:

The [MAJOR PARTICIPANT ENTITY], its team members, and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the Project, that would conflict or appear to conflict in any manner with the performance of the services under this Contract. "Affiliate" means a corporate entity connected to the [MAJOR PARTICIPANT ENTITY] through common ownership. “Team member” means any known entity the [MAJOR PARTICIPANT ENTITY] intends to be in a contractual relationship with to complete the work associated with the Project. The [MAJOR PARTICIPANT ENTITY], its team members, and its Affiliates agree not to provide any services to any entity that may have an adversarial interest in the Project, for which it has provided services to the DEPARTMENT. The [MAJOR PARTICIPANT ENTITY], its team members, and its Affiliates agree to disclose to the DEPARTMENT all other interests that the [MAJOR PARTICIPANT ENTITY], its team members, or sub consultants have or contemplate having during each phase of the Project. The phases of the Project include, but are not limited to, planning, scoping, early preliminary engineering, and construction. In all situations, the DEPARTMENT will decide if a conflict of interest exists. If the [MAJOR PARTICIPANT ENTITY], its team members, and its Affiliates choose to retain the interest constituting the conflict, the DEPARTMENT may terminate the Contract for cause in accordance with the provisions stated in the Contract.

☐ Certification for Subject Project: Based on the foregoing, the [MAJOR PARTICIPANT ENTITY] certifies that no conflict exists with the subject Project for it, or any of its team members and/or Affiliates

☐ Disclose of Conflict with Subject Project: Based on the foregoing, the [MAJOR PARTICIPANT ENTITY] certifies that a potential conflict does or may exist with the subject Project for it, and/or any of its team members and/or Affiliates. The attached sheets describe the potential conflict

This form, and any attachments, must be certified by a person from the [MAJOR PARTICIPANT ENTITY] who has contracting authority.

Certified by: Printed Name: _____

Signature: _____

Title: _____

Company Name: _____

Date: _____

Attachment B Proposer Introduction Form

Proposer Organization Information: *If the Proposer is a joint venture, include information from each member of the joint venture.*

Business Name:	
Business Address:	
Business Type: (corporation, partnership, joint venture, etc.)	

Proposer's Point of Contact: *This person will be the single point of contact on behalf of the Proposer organization, responsible for correspondence to and from the organization to MDOT. MDOT will send all Project-related communications to this contact person.*

Name:	
Address:	
Telephone number:	
E-mail Address:	

Percentage of Key Personnel located in Michigan at time of Proposal submittal: _____

Major Participants:

Major Participant Name/Contact	Address of Head Office	Description of Role/Prequalification

By signing this Attachment B, the Proposer expressly commits that the Key Personnel designated in the Proposal for the positions or roles described in Section 3 and identified in the above table shall be available to serve the role so identified in connection with the Project.

Prequalification Requirements:

Prequalification Requirement	Entity fulfilling Requirement
Ea	
B	
Cb	
Fa	
Design - Bridges; Complex	
Design - Roadway: Complex	
Design - Bridge: Load Rating	
Design Geotechnical: Advanced	
Design - Hydraulics II	
Design - Project Development Studies	
Design - Traffic: Capacity & Geometric Analysis	
Design - Traffic: Pavement Markings	
Design - Traffic: Safety Studies	
Design - Traffic: Signal	
Design - Traffic: Signal Operations – Complex	
Design - Traffic: Signing – Freeway	
Design - Traffic: Signing – Non-Freeway	
Design - Utilities: Roadway Lighting	
Design - Traffic: Work Zone Maintenance of Traffic	
Design - Traffic: Work Zone Mobility & Safety	
Landscape Architecture	

Prequalification Requirement	Entity fulfilling Requirement
Design – Utilities: Municipal	
Surveying: Road Design	
Surveying: Structure	
Surveying: Hydraulics	
Surveying: Right-of-Way	

By signing this Attachment B, the Proposer expressly attests that the Design-Builder and Design-Builder-Related Entities satisfy the prequalification requirements provided in this ITP.

Acknowledgement of RFP Addenda: *Identify and acknowledge all RFP addenda provided by number and date.*

Addenda Number:	Addenda Date:	Acknowledgement: (check box)
		☐
		☐
		☐

Signatures:

This form is required to be signed by authorized representatives of the Proposer organization. If the Proposer is a joint venture, the joint venture members shall sign the form. If the Proposer is not yet a legal entity, the known Major Participants shall sign the form.

By signing below, the Proposer certifies the truth and correctness of the contents of the Proposal, including this Proposer Introduction Form.

Printed Name:	Signature:	Date:	Organization/Role:

Attachment C Proposer Clarification/Inquiry Submission Template

Question ID **([Proposer Name]-No.)**	**Document (PDB Contract/ ITP/RID, Section)**	**Classification (Public/Confidential)**	**Question (From Proposer)**
TEAM-01*	PDB Contract, Section 3.3.1*	Confidential*	
TEAM-02*	PDB Contract, Section 5*	Confidential*	
TEAM-03*	ITP, Section 1.2*	Public*	
TEAM-04*	RID Index*	Public*	

*Information included for example purposes only.

Attachment D Reference Information Document Index

INDEX OF REFERENCE INFORMATION DOCUMENTS

These documents are provided on MDOT ProjectWise. Access can be obtained by contacting Miranda Spare, MDOT Innovative Contracting Project Manager at SpareM@michigan.gov. When requesting access, also carbon copy (cc) David Neubauer, MDOT Project Manager at NeubauerD1@michigan.gov.

RID Survey **(Complete Survey Portfolio and mapping of I-94/I-69 interchange will be submitted at a later date)**
S-218872-217737_Align-ROW_2023-09-29.dgn
S-218872-217737_ControlPts_2023-09-29.txt
S-218872-217737_Survey_2D_2023-09-29.dgn
S-218872-217737_Survey_3D_2023-09-29.dgn
S-218872-217737_Survey_Info_Sheet_2023-09-29.docm
S-218872-217737_Survey_Info_Sheet_2023-09-29.pdf
S-218872-217737_Terrain_2023-09-29.dgn
S-218872-217737_Terrain_2023-09-29.xml
S-218872-217737_Terrain_Deck_S04 OF 13073_2023-09-29.xml
S-218872-217737_Terrain_Deck_S05 OF 13082_2023-09-29.xml
S-218872-217737_Terrain_Deck_S06 OF 13073_2023-09-29.xml
S-218872-217737_Terrain_Deck_S06 OF 13082_2023-09-29.xml
S-218872-217737_Terrain_Deck_S08 OF 13073_2023-09-29.xml
S-218872-217737_Terrain_Deck_S16 OF 13073_2023-09-29.xml
S-218872-217737_Terrain_Decks_2023-09-29.dgn
S-218872_Underclearance_Sketch_S07 of 13082 Verona Road Over I-94.pdf
S-218872_Elevation_Sketch_S08 WB M-96 over I-69.pdf
S-218872_Plan_Sketch_S08 WB M-96 over I-69.pdf
S-218872_Underclearance_Sketch_S09 OF 13073 Verona Road over I-69.pdf
S-218872_Elevation_Sketch_S16 EB M-96 over I-69.pdf
S-218872_Plan_Sketch_S16 EB M-96 over I-69.pdf
S-218872_Underclearance_Sketch_X02 OF 13073 RR over I-69.pdf
S-217737 Bear Creek Hydro Survey.zip
S-218872 Pigeon Creek Hydro Survey.zip
RID GEOTECHNICAL
G-218872_217737 Marshall Modernization GDR.pdf
G-218872_217737 boring logs.pdf G-218872_217737 boring logs.dgn
RID MISCELLANEOUS
Marshall Modernization – Alignment Draft.dgn

INDEX OF WORK IN PROGRESS (WIP) TO BE INCLUDED IN RID

These documents will be distributed to successful PDB Team once completed.

WIP RID ENVIRONMENTAL
Environmental Clearance (MDOT will clear a footprint that all earth disturbance activities must remain within)
WIP RID TRAFFIC
Transportation Technical Report documenting Base and Future Year traffic operations for the preferred alternative
Safety Analysis
Interchange Access Change Request (IACR) for I-94/11 Mile Road/I-94BL, I-94/I-69, and I-69/Michigan Avenue (Will be completed as required)
WIP RID MISCELLANEOUS
Survey
Survey Portfolio
Utilities
Utility contact list

Attachment E Example Notice of Selection Results

(DATE OF POSTING)

Marshall Modernization Progressive Design-Build Project

MDOT Job No. 217737, 218872, 219004, 219007

The following team has been selected for the Project:

Component		Points Available	Selected Team	Non-Selected Teams		
			[Team name]	*	*	*
Qualifications	Firm Qualifications	15				
	Key Personnel Qualifications	25				
Project Approach	Preconstruction Services Approach	15				
	Construction Services Approach	15				
Interview	Presentation	15				
	Question and Answer	10				
Location	Location of Key Personnel	5				
	Total	**100**				

*Names are not provided - Intentionally left blank

PROGRESSIVE DESIGN-BUILD CONTRACT

MICHIGAN DEPARTMENT OF TRANSPORTATION

Progressive Design-Build Project

Marshall Modernization Project

Job Number: 217737, 218872, 219004, 219007

Control Section: 13062, 13016, 13042, 13073, 13074, 13082, 13161

Addendum ~~3~~4

December ~~5~~15, 2023

Michigan Department of Transportation

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Exhibit D – Validation Phase Scope and Fee

Exhibit E – Validation Phase Schedule of Values

Exhibit F – Contract Bond

Exhibit G – MDOT Requirements

Exhibit H – Design-Builder Key Personnel Commitments

Exhibit I – Affidavit of Authorizations and Representations

Recitals

This Progressive Design-Build Contract ("PDB Contract") is entered into by and between the State of Michigan ("MDOT") and (_____) ("Design-Builder") (collectively "Parties"), effective as of the last date set forth on the signature page hereto, with reference to the definitions contained in Exhibit A (*Acronyms and Definitions*) hereto and the following facts:

General Scope of Work

MDOT wishes to use a progressive design-build delivery to construct a Project located in Emmett and Marshall townships and the city of Marshall in Calhoun County, and includes construction for the following major items of Work:

The Project is located in Emmett and Marshall townships and the city of Marshall in Calhoun County, and includes construction for the following major items of Work:

- Anticipated project improvement limits include:
    - JN 217737 – M-96 (Michigan Avenue) from east of Eden Street to South 15 Mile Road and associated local road connections
    - JN 218872 – I-69/Michigan Avenue Interchange, I-94/I-69 Interchange, I-69 from south of Michigan Avenue to the I-94 Interchange and I-94 from 13 Mile Road to the I-69 Interchange
    - JN 219004 – Michigan Avenue from Strongwood Avenue to Wheatfield Parkway and from M-311 (11 Mile Road) to East of Eden Street.11 Mile Road from the MDOT owned, Amtrak maintained Railroad tracks to north of H Drive North, and associated local road connections.
    - JN 219007 – I-94 from west of Michigan Avenue to 13 Mile Road and the I-94/11 Mile Road/I-94BL Interchange
- Anticipated Project phasing
    - Phase 1 – complete improvements to M-96 from the western edge of the anticipated initial development site east to south 15 Mile Road
        - This phase must be completed to accommodate opening of economic development by 2026. Substantial construction completion (roadway open to traffic with available access to properties) needs to be completed to ensure facilitation of the anticipated traffic volumes due to development in the area.
    - Phase 2 – complete improvements along I-94 and I-69 along with interchange upgrades at I-94/I-69 and I-69/M-96
    - Phase 3 – complete improvements along M-311 and the interchange of I-94/M-311
    - Phase 4 – complete improvements along M-96 from M-311 to the POB of Phase 1.

The Parties intend for the Contract to be a Progressive Design-Build contract obligating Design-Builder to perform all work necessary to complete the Project by the deadlines specified herein, for the Contract Price, subject only to certain specified limited exceptions as defined herein.

NOW, THEREFORE, in consideration of the sums to be paid to the Design-Builder 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 A (*Acronyms and Definitions*) hereto contains the meaning of various terms used in the Contract Documents.

1.2 Contract Documents

The term "Contract Documents" shall mean the documents listed in Section 1.3 (*Phases and Order of Precedence*), including all exhibits thereto.

1.3 Phases and Order of Precedence

This PDB Contract includes requirements for the Implementation and two corresponding subphases; the Preconstruction Services and the Construction Services. The Preconstruction Services and the Construction Services may overlap if more than one Work Package Contract Modification for Construction Work is executed as described in Section 2.2.2 (*Work Package Contract Modifications*).

Preconstruction Work shall be performed in accordance with the requirements of this Progressive Design-Build Contract including Exhibit B (*Preconstruction Services Requirements*). During performance of Preconstruction Work, any provisions of the Contract Documents that pertain solely to Construction Work shall not apply to Preconstruction Work.

The Parties anticipate that Exhibit B may need to be modified as the Design-Builder advances the Preconstruction Work. MDOT may, on its own initiative or at the request of the Design-Builder, determine that modification of Exhibit B is needed and notify the Design-Builder in writing of the modification. Upon notification by MDOT, and mutual agreement of the Parties, the modification shall be appended to the PDB Contract without further action.

In the event of any conflict among the Contract Documents applicable to Preconstruction Work, the order of precedence shall be as follows:

A. the PDB Contract, as executed by the Parties or amended pursuant to Section 27.1.1 (*General PDB Contract Amendments*);

B. any Preconstruction Services Contract Modification; and

C. Exhibit B as modified.

All Construction Work shall be performed in accordance with the requirements of this PDB Contract, excluding Exhibit B, and including any additional requirements in the Construction Services Contract Modification or a Work Package Contract Modification.

In the event of any conflict among the Contract Documents applicable to Construction Work, the order of precedence shall be as follows:

A. Contract Modification;

B. the PDB Contract, as executed by the Parties or amended pursuant to Section 27.1.1;

C. the Construction Services Contract Modification including the Technical Provisions and Management Plans;

D. any Work Package Contract Modification including any additional or different Technical Provisions and Management Plans; and

E. The version of the Michigan Department of Transportation Standard Specifications for Construction, and any Supplemental Specifications identified in the Construction Services Contract Modification or Work Package Contract Modification, (excluding Division 1 which shall not be deemed to be part of the Contract Documents, unless expressly incorporated or referenced in another Contract Document).

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. Design-Builder shall request MDOT's determination respecting the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4 Term

Without limiting Section 27.7 (*Survival*) and post-termination obligations under Section 18 (*Termination for Convenience*), this PDB Contract shall take effect on the Effective Date and will remain in effect until the earlier of:

A. MDOT issues a Notice of Final Acceptance described in Section 23.2.2 (*Inspection and Issuance of Notice of Final Acceptance*).

B. Earlier termination in accordance with the terms of the Contract Documents.

1.5 Interpretations

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

1.6 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 Effective Date of this PDB Contract.

1.7 Omission of Details; Clarification by MDOT

Design-Builder shall not take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Design-Builder shall apply to MDOT in writing for such further written explanations as may be necessary and shall conform to the explanation provided. Design-Builder shall immediately upon discovery notify MDOT and will have limited availability to make claims if MDOT is not notified within 3 Working Days of ~~discovery of all Errors which it may discover~~when the Design-Builder discovered or through a reasonable investigation should have discovered all Errors in the Contract Documents, and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed under similar circumstances, shall not relieve Design-Builder from performing such omitted Work or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Contract Modification hereunder.

1.8 Computation of Periods

"Calendar Days" or "Working Days" contained in the Contract Documents shall be interpreted in accordance with Exhibit A (*Acronyms and Definitions*). Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, shall be required to be performed as specified, even though the date in question may fall on a non-Working Day.

1.9 Federal Requirements

If federal funding is utilized on the Project, all Federal Requirements will be incorporated into the Construction Services Contract Modification or Work Package Contract Modification as appropriate.

1.10 MDOT Approval; Review and Comment

1.10.1 Approval

When the Design-Builder is required to submit an item to MDOT for Approval, the Design-Builder shall obtain MDOT's written approval of such item and may not proceed to incorporate that item into the Work or the Project without MDOT's written Approval. If MDOT does not respond to such a submittal within any required timeframe set forth in the Contract Documents, the Design-Builder shall send to MDOT a

written notice reminding MDOT that it is awaiting Approval as a condition precedent to submission of a Request for Contract Modification for a Relief Event.

Any time that MDOT does not Approve a submittal, it shall provide comments explaining the denial to the Design-Builder. Unless the Approval is expressly described in the Preconstruction Services Contract Modification, Construction Services Contract Modification, or Work Package Contract Modification as being in MDOT's sole discretion, the denial shall be based on the requirements of the Contract Documents. The Design-Builder shall address the comments in revisions or shall explain why it believes it cannot or should not address the comments. Once all comments have been fully resolved to the reasonable satisfaction of MDOT, any revised submittal shall then be resubmitted to MDOT for Approval.

MDOT may, in its discretion, conditionally Approve a submittal, allowing the Design-Builder to proceed with the Work related to the submittal, provided that the Design-Builder addresses minor clarifications or edits identified in such conditional Approval.

1.10.2 Review and Comment

When the Design-Builder is required to submit an item to MDOT for review and comment, MDOT shall have an opportunity to provide comments. If MDOT does not provide any comments within any required timeframe set forth in the Contract Documents, or within 10 Working Days if the Contract Documents do not provide a timeframe, then the Design-Builder shall notify MDOT that it has not received comments and may proceed to advance the Work without MDOT review and comment. Upon receipt of notice by the Design-Builder, MDOT shall provide comments or notify the Design-Builder in writing that MDOT has no comments within two Working Days or other timeframe agreed to by the Parties.

2 Progressive Design Build Process

2.1 Preconstruction Services

Preconstruction Services shall begin upon execution of this PDB Contract. The initial portion of Preconstruction Services Work shall be known as the Validation Phase. The scope of the Validation Phase Preconstruction Work and initial Preconstruction Services Fee is set forth in Exhibit D (*Validation Phase Scope and Fee)*. The initial Preconstruction Services Fee is a not to exceed amount. MDOT may elect, in its sole discretion, to issue one or more Preconstruction Services Contract Modifications to manage progression of Preconstruction Work. Each Preconstruction Services Contract Modification shall replace all prior Preconstruction Services Contract Modifications. The Parties shall engage in good faith negotiations to finalize any Preconstruction Services Contract Modification on a timely basis. Each Preconstruction Services Contract Modification shall include:

A. a description of the scope of Preconstruction Work;

B. an anticipated completion date for the Preconstruction Work; and

C. the Preconstruction Services Fee.

The Preconstruction Services shall continue until either:

A. MDOT exercises its right to terminate under Section 18 (*Termination for Convenience*); or

B. the Preconstruction Services Fee is reached, upon which:

   i. MDOT shall deliver a Notice of Termination under Section 18; or

   ii. The Design-Builder and MDOT agree in writing to negotiate a new Preconstruction Services Contract Modification. The requirements of Section 18 shall not apply during the period of time that a new Preconstruction Services Contract Modification is being negotiated. If the Parties are unable to negotiate a new Preconstruction Services Contract Modification within 30 Calendar Days, MDOT shall deliver a Notice of Termination to the Design-Builder under Section 18.

2.2 Construction Services

2.2.1 Construction Services Contract Modification

The Construction Services shall begin upon execution of the Construction Services Contract Modification. Development of the Construction Services Contract Modification shall be part of the Preconstruction Work. The Parties shall engage in good faith negotiations to finalize the Construction Services Contract Modification on a timely basis in accordance with Exhibit B, Section 16 (*Construction Services Contract Modification*).

The Construction Services Contract Modification shall include the requirements specified in Exhibit B, Section 16 and generally apply to all Work Package Contract Modifications. The executed Construction Services Contract Modification shall not be modified except through a Contract Modification in accordance with Section 15 (*Contract Modifications*).

2.2.2 Work Package Contract Modifications

A Work Package is a specified portion of the Construction Work, the exact scope of which will be negotiated between MDOT and the Design-Builder during Preconstruction Services.

Construction Work shall be authorized by the execution of one or more Work Package Contract Modifications. In addition to other conditions described in the Contract Documents, execution of the Construction Services Contract Modification shall be a condition precedent to the execution of a Work Package Contract Modification. There may be instances where insufficient information is available to fully develop the Construction Services Contract Modification prior to advancing schedule critical Work including but not limited to acquisition of long lead time materials, and other Design and Construction Work. In this event, MDOT may, in its sole discretion, waive the requirement and execute a Work Package Contract Modification.

It is MDOT's intent that the Design-Builder construct the Project through as few Work Package Contract Modifications as practicable. If the Design-Builder intends to perform Construction Work through more than one Work Package Contract Modification, the Design-Builder shall comply with the requirements of Exhibit B, Section 6 (*Work Package Plan*) related to the submittal of a Preliminary Work Package Plan and Final Work Package Plan. Approval of the Final Work Package Plan shall be a condition precedent to execution of the Construction Services Contract Modification. The intent of the Preliminary and Final Work Package Plans is to confirm that the Project can be completed within the available Project schedule and budget.

Development of Work Package Contract Modifications shall be part of the Preconstruction Work. Requirements related to the process for developing a Work Package Contract Modification and its required contents are described in Exhibit B, Section 17 (*Work Package Contract Modifications*).

If the Parties are unable to come to agreement on a Work Package Contract Modification, then MDOT may, in its sole discretion, do any combination of the following:

A. For all executed Work Package Contract Modifications, direct the Design-Builder to complete the Construction Work identified in the Work Package Contract Modification, but contract with another Person to construct the balance of the Project;

B. Direct the Design-Builder only to complete production of the Professional Services Work Product for all or any portion of the Project through a new Preconstruction Services Contract Modification mutually agreed upon by the Parties except that MDOT retains the sole discretion to adjust the Preconstruction Services Fee amount; or

C. Terminate this PDB Contract pursuant to Section 18 (*Termination for Convenience*).

2.2.2.1 Work Package GMPs

Each Work Package Contract Modification shall have a Work Package Guaranteed Maximum Price (GMP). The Project's Total Construction GMP shall be the sum of all Work Package GMPs. Each Work Package GMP shall be computed as the sum of the following and any other components agreed to by the Parties:

A. The Design-Builder's reasonable, good faith estimate of the cost of the Construction Work for the Work Package as mutually agreed upon by the Parties; and

B. The cumulative total of Provisional Sums specific to the Work Package documented in the Risk Register which shall include other details relating to relief for each Provisional Risk (e.g., quantities, unit prices). See Section 2.4 (*Risk Register*) for more information on risks.

Work Package GMPs shall be developed on an Open Book Basis, and MDOT shall have the right to access and copy all records, accounts, and other data used by the Design-Builder in connection with the preparation of any Work Package GMP.

Upon reaching the Work Package GMP for any given Work Package, the Design-Builder shall not have recourse to the Work Package GMP of other Work Packages without documenting MDOT's Approval via Contract Modification in accordance with and subject to the limitations set forth in Section 15 (*Contract Modifications*).

2.2.2.2 Schedule of Values and Baseline Schedule

Each Work Package Contract Modification shall include a Schedule of Values and a Baseline Work Package Schedule that meets the requirements of the Technical Provisions and Management Plans.

2.3 No Liability for Partial Design

If MDOT elects to terminate the PDB Contract prior to completion of Released for Construction Professional Services Work Product, the Design-Builder shall be released from all liability (under contract, tort, or any other legal theory) that may arise in relation to any MDOT use of Professional Services Work Product produced by the Design-Builder.

2.4 Risk Register

The Parties shall develop a Risk Register with respect to the entire Project in accordance with the guidelines and principles described in Exhibit B (*Preconstruction Services Requirements*).

MDOT, or one of its designees, shall be responsible for maintaining and updating the Risk Register. The Risk Register shall identify potential risk threats and opportunities related to Construction Work (each, a Risk Register Event). All Risk Register Events shall be categorized as either a MDOT Risk, Provisional Risk, or a Design-Builder Risk.

The Risk Register shall include dates on which MDOT gives its Approval of a particular Risk Register Event (including its associated relief), and the Risk Register Event shall be deemed as being in effect as of that date. All Work Package Contract Modifications shall include the most-current Risk Register as of the effective date of the Work Package Contract Modification updated with all Risk Register Events reasonably expected to be applicable to the Work Package.

The Risk Register shall also define response and mitigation strategies to be used with respect to Risk Register Events and identify any probable cost and/or time impacts to the Project.

2.4.1 MDOT Risks

All Risk Register Events that are categorized as MDOT Risks shall describe the types and extent of any relief that the Design-Builder shall be entitled to seek upon occurrence of the Risk Register Event. Risk Register Events that are MDOT Risks may also include requirements for cost sharing, determination of time impacts, payment requirements, and other terms.

If a Risk Register Event occurs while performing Construction Work, and the Risk Register Event is a MDOT Risk, then the Design-Builder shall be entitled to seek a Contract Modification in accordance with Section 15 (*Contract Modifications*).

2.4.2 Provisional Risks

All Risk Register Events that are Provisional Risks shall specify:

A. the amount of any Provisional Sum;

B. whether the Provisional Sum is a Shared Provisional Sum;

C. whether the Provisional Sum is capped or uncapped;

D. a description of how the Risk Register Event is triggered;

E. payment requirements for Provisional Sums; and

F. any required mitigation efforts to be taken by the Design-Builder.

When a Provisional Risk Register Event occurs, the Design-Builder shall coordinate with MDOT and obtain MDOT Approval of all Provisional Sum payment amounts and applicable relief.

2.4.2.1 Provisional Risks with Capped Provisional Sums

If a Risk Register Event occurs while performing Construction Work, and the Risk Register Event is a Provisional Risk with a capped Provisional Sum, then the Design-Builder shall not be entitled to seek any additional costs or schedule relief for occurrence of the Risk Register Event beyond that identified in the Risk Register.

2.4.2.2 Provisional Risks with Uncapped Provisional Sums

If a Risk Register Event occurs while performing Construction Work, and the Risk Register Event is a Provisional Risk with an uncapped Provisional Sum, and the Provisional Sum or other relief provided in the Risk Register is exhausted, then the Design-Builder shall be entitled to seek relief in accordance with Section 14 (*Relief & Compensation*) and Section 15 (*Contract Modifications*).

2.4.2.3 Shared Provisional Sums

For all Risk Register Events that identify a Shared Provisional Sum, upon achievement of Final Acceptance, or such other date determined by MDOT in its sole discretion, any unused Shared Provisional Sums across all Work Packages shall be allocated to MDOT or the Design-Builder as described in the Risk Register, and the Design-Builder's share shall be included as a separate line item on the Application for Final Payment in accordance with Section 13.5 *(Application for Final Payment)*.

2.4.3 Design-Builder Risks

To facilitate transparent pricing, the Risk Register may also include Design-Builder Risks and identify Design-Builder Risk Contingency Sums for Design-Builder Risks. Design-Builder Risk Contingency Sums identified in the Risk Register are not shared and are retained by the Design-Builder whether or not they are used. For avoidance of doubt, any risk not identified in the Risk Register shall also be considered a Design-Builder Risk notwithstanding it not being included in the Risk Register. Additionally, any Relief Event identified in Section 14.1.1 (*Relief Event Defined*) shall not be considered a Design-Builder Risk.

The Design-Builder shall receive no additional compensation for Design-Builder Risks beyond any Design-Builder Risk Contingency identified in the Risk Register.

3 Obligations of Design-Builder

3.1 Performance Requirements

3.1.1 Performance of Work

All labor, equipment, materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the applicable Completion Deadline shall be Design-Builder's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 15 (*Contract Modifications*), the costs of all such materials, services and efforts are included in the Contract Price.

3.1.2 Performance Standards

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

3.1.3 Performance as Directed

At all times during the term hereof, including during the course of, and notwithstanding the existence of any dispute, Design-Builder shall perform as directed by 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 Section 22 (*Claims for Adjustment and Disputes*).

3.2 General Obligations of Design-Builder

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

A. Furnish all design and other services, provide all equipment, 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 Work Map 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 Section 13 (*Payment*).

C. At all times, provide Design-Builder's Project Manager, who will

   i. have full responsibility for the prosecution of the Work,

   ii. act as agent and be a single point of contact in all matters on behalf of Design-Builder,

   iii. be present (or their designee will be present) at the Site at all times that Work is performed, and

iv. have authority to bind Design-Builder on all matters relating to the Project.

D. Obtain all Governmental Approvals (other than the Environmental Approvals and certain New Environmental Approvals in accordance with Section 7.2.2 (*New Environmental Approvals*).

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 Design-Builder 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 Design-Builder-Related Entities, as though all such Persons were directly employed by Design-Builder;

J. Mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating or redeploying Design-Builder's forces to other work, as appropriate.

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.

L. The Design-Builder 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.

MDOT will have the right to reject the Design-Builder's Project Manager prior to or anytime during their participation in the Project. Rejection may occur in accordance with employee performance requirements as described in Section 8.4 (*Employee Performance Requirements*). MDOT will Approve of any replacement. Such Approval will be based on the qualification requirements set forth in the RFP and elsewhere in the Contract Documents.

3.3 Representations, Warranties and Covenants

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

3.3.1 Maintenance of Professional Qualifications; Performance by Qualified Personnel

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

All design and engineering Work furnished by Design-Builder shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State 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 Professional Services Work Product and Construction Documents prepared or checked by them.

The Design-Builder acknowledges and agrees that the award of this PDB Contract by MDOT to the Design-Builder was based, in part, on the qualifications and experience of the personnel listed in the Proposal, and the Design-Builder's commitment that such individuals would be available to undertake and perform the Work. In addition to ratifying the representations, warranties, and covenants set forth in the Key Personnel Commitments attached to Exhibit C (*Design-Build Team*), the Design-Builder represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Key Personnel shall commit the amount of time to their applicable roles as set forth in the Contract Documents.

3.3.2 Governmental Approvals

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

3.3.3 Authorization

The execution, delivery and performance of this PDB Contract have been duly authorized by all necessary actions of Design-Builder, and, if applicable, Design-Builder's members, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person or any Guarantor is a party or by which their properties and assets may be bound or affected.

3.3.4 Legal, Valid and Binding Obligation

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

3.3.5 False or Fraudulent Statements and Claims

Design-Builder recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and the USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions hereunder. Accordingly, by signing this PDB Contract, Design-

Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to this PDB Contract. In addition to other penalties that may be applicable, Design-Builder also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Design-Builder to the extent the federal government deems appropriate.

3.3.6 Work Package Contract Modification Representations, Warranties, and Covenants

The Design-Builder understands and agrees that the representations, warranties, and covenants listed in this Section 3.3.6 shall apply and be included in all Work Package Contract Modifications in addition to the representations, warranties, and covenants listed in Section 3.3 (*Representations, Warranties and Covenants*).

3.3.6.1 Evaluation of Constraints

Design-Builder has evaluated the constraints affecting delivery of the Project, including the Right-of-Way Work Map, as well as the conditions of the Environmental Approvals and has reasonable grounds for believing and does believe that the Project can be constructed within such constraints.

3.3.6.2 Feasibility of Performance

Design-Builder has evaluated the feasibility of performing the Work within the time specified herein, 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.

3.3.6.3 Progression of Work

Design-Builder 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 schedule, including furnishing such employees, materials, facilities and equipment and working such hours (including extra shifts and overtime operations) as may be necessary to achieve such goals, all at Design-Builder’s own expense, except as otherwise specifically provided in the Risk Register and Section 15 (*Contract Modifications*).

3.3.6.4 Review of Site Information

Design-Builder has, conducted a reasonable investigation and otherwise examined the Site as well as surrounding locations, and as a result of such review, inspection, examination, and other activities the Design-Builder is familiar with, and has satisfied itself as to, the character of the Site, and accepts the physical requirements of the Work, subject only to the Design-Builder's express rights and bases to seek relief under this PDB Contract. Based on its review, inspection, examination and other activities, Design-Builder is familiar with and accepts the physical requirements of the Work. Before commencing any Work on a particular aspect of the Project, Design-Builder shall verify all governing dimensions and conditions at the Site and shall examine all adjoining work which may have an impact on such Work. Design-Builder shall be responsible for ensuring that the Professional Services Work Product and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

4 Information Supplied to Design-Builder; Disclaimer

4.1 Information Supplied

MDOT has made available and will make available during Preconstruction Services information which is described in the Contract Documents and certain Reference Information Documents (RID) regarding the Project.

4.2 Reliance on Specified RID Information

4.2.1 No Other Liability Regarding RID

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

Notwithstanding the preceding paragraph, during Preconstruction Services MDOT and the Design-Builder may determine that reliance on certain information included in the RIDs is appropriate. This reliance shall be documented in a Preconstruction Services Contract Modification, Construction Services Contract Modification, or Work Package Contract Modification and specifically identified information documented within the applicable amendment shall not be considered RID.

4.2.2 No Representation or Warranty Regarding Basic Configuration and RID

MDOT does not represent or warrant that the information contained in the RID is either complete or accurate or that such information conforms with the requirements of the Contract Documents.

4.3 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 this PDB Contract, Design-Builder acknowledges that MDOT has no such intent. It is the intent of the Parties that Design-Builder is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to Design-Builder's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that Design-Builder shall "furnish" the design for the Project.

4.4 Prerequisities for the Start of Design of the Project

The Design-Builder shall not start design of the Project until all the following events have been fully satisfied and remain so:

A. all insurance policies and bonds, as applicable, that are required to be delivered to MDOT hereunder have been submitted to MDOT in compliance with the requirements of the Contract Documents and remain in full force and effect;

B. the Preconstruction Services Quality Management Plan has been Approved;

C. the Preconstruction Services Schedule Management Plan has been Approved;

D. the Design-Builder has made available all Key Personnel and other personnel required to be made available;

E. the Design-Builder is not in breach of this PDB Contract; and

F. all representations, warranties, and covenants of the Design-Builder remain true and correct in all material respects.

5 Time within Which Project shall be Completed; Scheduling

5.1 Time of Essence

Time is of the essence for the Contract.

5.2 Notice to Proceed

Notice to Proceed shall be provided through Preconstruction Services Contract Modifications, the Construction Services Contract Modification or Work Package Contract Modifications as appropriate.

5.3 Completion Deadlines

Each Work Package shall specify a date for Substantial Completion. Said deadline for Substantial Completion is referred to herein as the "Substantial Completion Deadline". The Design-Builder shall achieve Substantial Completion by the Substantial Completion Deadline.

Each Work Package shall specify a date for Final Acceptance. Said deadline for Final Acceptance is referred to herein as the "Final Acceptance Deadline". The Design-Builder shall achieve Final Acceptance by the Final Acceptance Deadline.

5.4 No Time Extensions

Except as otherwise specifically provided in Section 14 (*Relief & Compensation*) and Section 15 (*Contract Modifications*), MDOT shall have no obligation to extend any Completion Deadline and the Design-Builder shall not be relieved of its obligation to perform the Construction Work in accordance with each Baseline Work Package Schedule, and to achieve the Completion Deadlines for any reason.

5.5 Float

All Float contained in each Baseline Work Package Schedule shall be considered a jointly owned and shared resource by the Design-Builder and MDOT, available to the Project, and shall not be considered as time for the exclusive use or benefit of either MDOT or the Design-Builder (subject to the restriction set forth in the definition of MDOT-Caused Delay).

All Float shall be shown as such in each Baseline Work Package Schedule on each affected schedule path. The Design-Builder shall monitor and account for Float in accordance with the Critical Path Method.

5.6 Monthly Schedule Updates

The Design-Builder shall prepare and deliver each Monthly Schedule Update with every Monthly Progress Payment Request. For avoidance of doubt, Monthly Schedule Updates do not serve to revise or amend, nor shall be deemed to revise or amend, a Baseline Work Package Schedule.

5.7 Estoppel for Acceptance of Schedule Submittals

The Design-Builder's obligations under this Section 5.7, and, with respect to any claim for additional time or costs in performance of the Construction Work, any acceptance by MDOT of a Baseline Work Package Schedule, any Revised Baseline Work Package Schedule thereafter, or Monthly Schedule Update shall not, and shall not be construed to bind MDOT to any improper logic, improper activity durations, or

errors in the expression of the Critical Path or otherwise be used as a defense by or on behalf of the Design-Builder in any dispute hereunder.

Without limiting the Design-Builder's other obligations under the Contract Documents, the Design-Builder shall correct any improper logic, improper activity durations, or errors in the Baseline Work Package Schedule, any Revised Baseline Work Package Schedule, or succeeding Monthly Schedule Update, as applicable.

5.8 Use of Schedule in Relief Event Process

For avoidance of doubt, Baseline Work Package Schedules only (not any Monthly Schedule Update) are relevant to measuring the duration of any delay hereunder; provided, however, that Monthly Schedule Updates may be relevant to determining whether the Design-Builder mitigated any such delay and may be relevant in determining whether a portion of the Work identified on a Baseline Work Package Schedule was completed.

5.9 Revisions to the Baseline Work Package Schedule

If permitted in the Approved Construction Schedule Management Plan identified in Exhibit B, Section 15 (*Technical Provisions and Management Plans*) the Design-Builder may request in writing a revision to the Baseline Work Package Schedule. MDOT shall have sole discretion to approve or deny this request.

5.10 Contract Schedule

Design-Builder shall deliver the Project, including planning, design, construction, management, development and completion, in accordance with the Baseline Work Package Schedule.

5.11 Prerequisites for Start of Construction

Except for Construction Work authorized prior to the execution of the Construction Services Contract Modification pursuant to Section 2.2.2 (*Work Package Contract Modifications*), the Design-Builder shall not start Construction Work (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 and the Design-Builder have executed the Construction Services Contract Modification;

B. MDOT and the Design-Builder have executed a Work Package Contract Modification;

C. all Governmental Approvals necessary for Construction Work for the Work Package have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such Construction Work have been performed;

D. all insurance policies and bonds, as applicable, that are required to be delivered to MDOT hereunder have been submitted to MDOT in compliance with the requirements of the Contract Documents and remain in full force and effect;

E. all necessary rights of access for such portion of the Project have been obtained;

F. the Design-Builder has made available all Key Personnel and other personnel required to be available;

G. the Design-Builder has issued Released for Construction Documents for such portion of the Project and:

   i. the Review and Comment process for such documents has been completed; or

   ii. pursuant to Section 1.10.1 (*Approval*), MDOT has conditionally allowed the Design-Builder to continue with the Work related to the documents;

H. MDOT has Approved the Technical Provisions and Management Plans required as a condition precedent to Construction Work;

I. the Design-Builder is not in breach of this PDB Contract; and

J. all representations, warranties, and covenants of the Design-Builder remain true and correct in all material respects.

5.12 Limitation of Operations

Design-Builder shall comply with all limitations as identified elsewhere within the Contract Documents.

6 Control of Work

6.1 Control and Coordination of Work

Design-Builder shall be solely responsible for and have control over the design, design quality, 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.

6.2 Safety and Health

The Design-Builder shall meet all safety and health requirements of MDOT Standard Specifications for Construction (Standard Specifications).

6.3 Process to Be Followed for Discovery of Certain Site Conditions

6.3.1 Discovery of Certain Site Conditions

If Design-Builder becomes aware of (a) any on-Site material that Design-Builder believes may contain Contaminated Materials that is required to be removed or treated, (b) any paleontological, cultural or biological resources, or (c) any Differing Site Conditions, Design-Builder shall promptly notify MDOT via telephone or in person, to be followed within 5 Calendar Days by written notification. In such event, Design-Builder shall immediately stop Work in the affected area and secure the affected area pending receipt of direction from MDOT. A provision of said notice by Design-Builder constitutes a condition precedent to MDOT's consideration of a Relief Event with respect to the conditions in question.

6.3.2 Further Investigation & Remediation Work

MDOT will view the location within two Working Days of receipt of notification from Design-Builder and may advise Design-Builder at that time whether to resume Work or whether further investigation is required. Design-Builder shall promptly conduct such further investigation as MDOT deems appropriate. Within one Working Day after viewing the locations, MDOT will advise the Design-Builder of the recommended action plan regarding the situation.

6.3.3 Recommence Work

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

6.3.4 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, Design-Builder shall follow the procedure set forth in the Governmental Approval.

6.4 Obligation to Minimize Impacts

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

6.5 Consent to Oversight; Obligation to Uncover Work

6.5.1 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 does not make such Person a party to the Contract nor will it change the rights of the Parties hereto. Design-Builder hereby consents to such oversight, inspection and testing. Upon request from MDOT, Design-Builder shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

6.5.2 Obligation to Uncover Finished Work

At all times before Final Acceptance, Design-Builder shall remove or uncover such portions of the finished Construction Work as directed by MDOT. After examination by MDOT and any other Persons designated by MDOT, Design-Builder shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to the Critical Path occasioned thereby shall be at Design-Builder's expense and Design-Builder shall not be entitled to an extension of time. 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 Design-Builder's expense and without an extension of time, 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 6.5.2 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing and restoring Work shall grounds for a Relief Event pursuant to Section 14 (*Relief & Compensation*).

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

6.6.1 Oversight and Acceptance

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

Builder's expense and without any extension of time, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, acceptances or approvals were conducted by any Person.

6.6.2 No Estoppel

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

6.7 Nonconforming Work

6.7.1 Rejection, Removal, and Replacement of Work

Subject to MDOT's right, in its sole discretion, to Accept or reject Nonconforming Work, Design-Builder shall remove and replace rejected Nonconforming Work so as to conform with the requirements of the Contract Documents, at Design-Builder's expense and without any extension of time; and Design-Builder 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 Design-Builder fails to correct any Nonconforming Work within five Working Days of receipt of notice from MDOT requesting correction (or, for Nonconforming Work which cannot be corrected within five Working Days, if Design-Builder fails to provide to MDOT a schedule for correcting any such Nonconforming Work Approved by MDOT's Project Manager within such five-Working Day period, begin correction within such five-Working 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 Design-Builder or obtain reimbursement from Design-Builder for such cost.

6.7.2 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 reduction in the applicable Work Package GMP. 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 reduction in the applicable Work Package GMP shall equal, at MDOT's election, (a) Design-Builder'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.

6.8 Quality Management

The Design-Builder shall perform the quality management necessary for the Design-Builder to comply with the Approved Preconstruction Services Quality Management Plan, the Technical Provisions and Management Plans, and otherwise meet all requirements of the Contract Documents.

6.9 At Risk Work

The Design-Builder may proceed with construction or procurement of certain elements or portions of the Project before the design of the entire Project has been completed or Released for Construction Documents have been issued. This is considered At Risk Work and is the Design-Builder's sole risk.

6.9.1 Approval of At Risk Work

In order to proceed with At Risk Work, submit an At Risk Work Management Plan for Approval by MDOT's Project Manager or designee prior to performing At Risk Work that includes the following:

A. Advantages/disadvantages of performing the At Risk Work, including impacts to the approved Construction Services Schedule Management Plan;

B. Any associated risk to MDOT by performing the At Risk Work;

C. The proposed maintenance of traffic plan to be utilized during the At Risk Work;

D. Applicable sections of the Approved Construction Services Quality Management Plan;

E. The Professional Services Work Product that will be used to construct the At Risk Work;

F. A description of how At Risk Work will be reconciled with the other design elements and Released For Construction Documents.

G. A narrative of how the work, materials, quantities, testing requirements, etc. will be coordinated with MDOT for inspection purposes;

H. Details of how the Design-Builder will request payment for any At Risk Work; and

I. Any other requirements requested by MDOT specific to the At Risk Work

Any payment for At Risk Work will be subject to Approval of the At Risk Work Management Plan. At Risk Work does not relieve the Design-Builder of their obligations and final construction shall be in conformance with the MDOT Accepted Released for Construction Documents.

7 Access to Site; Environmental Compliance

7.1 Access to Site

7.1.1 Access to Right-of-Way Identified on Right-of-Way Work Map

7.1.1.1 Obligation to Provide Access to Right of Way

MDOT will provide access to all right-of-way needed to construct the Project.

7.1.2 Access to Right-of-Way Not Identified on Right-of-Way Work Map

All right-of-way required for the Project shall be acquired in accordance with *The Uniform Relocation Assistance and Real Property Acquisition Act of 1970,* as amended.

7.1.2.1 Unidentified Right-of-Way as a Result of a MDOT-Directed Change

Any right-of-way not identified on the Right-of-Way Work Map that is required as the result of a MDOT-Directed Change will be addressed in the respective Contract Modification for MDOT-Directed Change.

7.2 Environmental Compliance

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

7.2.1 Mitigation Requirements

Design-Builder shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project.

7.2.2 New Environmental Approvals

7.2.2.1 Approvals To Be Obtained by MDOT

MDOT shall be responsible for obtaining any New Environmental Approvals necessitated by a Relief Event. Design-Builder shall provide support services to MDOT with respect to obtaining any such New Environmental Approval.

7.2.2.2 Approvals Required by Design-Builder

If a New Environmental Approval becomes necessary for any reason other than a Relief Event, Design-Builder 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. Design-Builder shall provide support services to MDOT with respect to obtaining any such New Environmental Approval.

8 Equal Employment Opportunity; Subcontracts; Labor

8.1 Equal Employment Opportunity

8.1.1 Equal Employment Opportunity Policy

Design-Builder shall comply with the Equal Employment Opportunity (EEO) requirements set forth in Exhibit G-1 (*Prohibition of Discrimination in State Contracts*).

8.1.2 Inclusion in Subcontracts

Design-Builder shall include Section 8.3.4 (*Subcontracting Terms*) and Exhibit G-1 (*Prohibition of Discrimination in State Contracts*) 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.

8.2 [RESERVED]

8.3 Subcontracting Requirements

Design-Builder shall comply with all applicable requirements of the Contract Documents relating to Subcontracts and Exhibit G-1 (*Prohibition of Discrimination in State Contracts*), and shall ensure that its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents relating to subcontracting (including Exhibit G-1 (*Prohibition of Discrimination in State Contracts*).

8.3.1 Changes in Organizational Structure

All changes in Key Personnel or a Major Participant from the selected Design-Builder's Proposal shall be approved by MDOT in writing by submitting Form 5100G. It is expected that Key Personnel presented in the Proposal will be available for the duration of the project. MDOT may revoke an awarded contract if any Key Personnel or Major Participant identified in the Proposal is removed, replaced, or added without MDOT's prior written approval. To qualify for MDOT approval, the written request shall document that the proposed removal, replacement, or addition will be equal to or better than the Key Personnel or Major Participant provided in the Proposal. MDOT will use the criteria specified in this RFP to evaluate all requests.

8.3.2 Subcontracts for Preconstruction Work

Engagement and selection of Subcontractors performing Preconstruction Work shall be coordinated with and Approved by MDOT. Prior to the award of any such Subcontract, MDOT may require the Design-Builder to solicit qualifications and proposals from multiple firms for Professional Services or other work required.

Subject to MDOT's Approval, the Design-Builder shall negotiate price and terms for each Subcontract that conform to standard industry practice for work of similar scope and complexity.

No Subcontract will be issued unless the Subcontractor is prequalified by MDOT to perform the classification of Preconstruction Work proposed, when applicable. The Design-Builder shall submit the Subcontract cover page and Preconstruction 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 Design-Builder or any other person. MDOT's prequalification is not a guarantee or warranty of the Subcontractor's ability to perform or complete the Preconstruction Work subcontracted.

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.

8.3.3 Subcontracting of Construction Work

Construction Work amounting to not less than 35 percent of the Total Construction GMP shall be performed by the Design-Builder's own organization unless Approved by MDOT's Project Manager. 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 Total Construction GMP before computing the amount of work required to be performed by the Design-Builder's own organization. The Design-Builder's ''own organization'' shall be construed to include only workers employed and paid directly by the Design-Builder and equipment owned or rented by the Design-Builder, with or without operators. The percentage of work 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 is reasonable.

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

Any bonds furnished by the Subcontractor shall not reduce the Design-Builder's bonding requirements.

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

The Design-Builder remains fully responsible to MDOT for completion of the Construction Work according to the PDB 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 PDB Contract; any such action must be brought against the Design-Builder 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 Section 8.3.3. Any costs or damages incurred are assumed by the Design-Builder by the acceptance of the PDB Contract. It is further understood that the Design-Builder's responsibilities in the performance of the PDB Contract, in case of a Subcontract, are the same as if the Design-Builder had handled the work with the Design-Builder's own organization.

8.3.4 Subcontract Terms

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

A. Each Subcontract of any tier shall include terms substantially similar to the terms in this PDB Contract to the extent that such terms are relevant to such Subcontract. Terms substantially similar in all instances shall include:

   i. grants of Intellectual Property Rights;

   ii. access constraints and requirements pertaining to the Site;

   iii. maintenance of books and records; and

   iv. joinder to, obligation to offer evidence in, Dispute resolution, if necessary, in MDOT's sole judgment, to resolve a Dispute.

B. Each Subcontract of any tier shall include a provision that states that the Subcontractor is not a third-party beneficiary to the PDB Contract.

C. Each Construction Services Subcontract of any tier shall prohibit retainage.

D. Each Subcontract of any tier shall include payment, the MDOT Prompt Payment Special Provision 20SP-109A-01, and other terms in compliance with this PDB Contract and applicable Laws.

E. Each Subcontract of any tier shall include language acknowledging the timing of payments from MDOT to the Design-Builder hereunder and the process set forth herein for the submission and review of invoices or Requests for Monthly Progress Payment, as applicable.

F. Each Subcontract of any tier shall expressly include a covenant to require the Subcontractor to participate, at the Design-Builder's request, in meetings between the Design-Builder and MDOT concerning matters pertaining to such Subcontractor, its work, or the coordination of its work with other Subcontractors and contractors to MDOT.

G. Each Subcontract of any tier shall expressly require the Subcontractor to stop Work on the date and to the extent specified in a Notice of Termination in accordance with Section 18 (*Termination for Convenience*).

H. Each Subcontract of any tier shall expressly permit assignment to MDOT of all Design-Builder rights under the Subcontract in the event of termination pursuant to Section 18.

I. Each Subcontract shall provide that MDOT is a third-party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit.

J. Each Subcontract shall provide that all guarantees, indemnities, professional responsibility, and warranties, express and implied, shall inure to the benefit of MDOT as well as the Design-Builder.

K. Each Subcontract shall provide for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes prior to commencing litigation.

L. Each Subcontract of any tier shall expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of MDOT will be null and void.

8.4 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 Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, or who is intemperate or disorderly, then, at the written request of MDOT, Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior Approval of MDOT in its sole discretion. If Design-Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then MDOT may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to Design-Builder. Such suspension shall in no way relieve Design-Builder of any obligation contained in the Contract Documents or entitle Design-Builder to a Contract Modification or extension of time. Once compliance is achieved, Design-Builder shall be entitled to and shall promptly resume the Work.

9 Utility Work

9.1 Generally

The Design-Builder acknowledges and agrees that it is responsible for all Utility Work necessary to accommodate the design and construction of the Project pursuant to the Contract Documents.

If any Work Package includes Work that would afford MDOT the right to pay Utility Owners directly for amounts to which they are entitled under Utility Agreements, then the Design-Builder shall identify the direct allowable payment within each Request for Monthly Progress Payment.

9.2 Utility-Specific Design-Builder Obligations

The Design-Builder shall take all reasonable steps to avoid Relocations and to minimize costs to Utility Owners and MDOT.

The Design-Builder shall avoid multiple designs and multiple relocations of the same Utility, whether the design and/or Relocation is performed by a Utility Owner or by the Design-Builder.

9.3 Utility-Related Risk Register Events

9.3.1 Utility-Relocations

Each Relocation with respect to each Utility (and each respective Utility Owner) shall be identified as a Provisional Risk and managed and paid for through the Risk Register. This notwithstanding, as a threshold matter to eligibility for relief under the Risk Register, the Design-Builder shall bear the burden of proving that the Relocation cannot reasonably be avoided.

9.3.2 Utility-Owner Acts or Omissions

The adverse effects of any acts or omissions of each Utility Owner in contravention of its obligations under a Utility Agreement and as relates to each Utility's Relocation, including Utility Owner Delays, shall be identified as a Provisional Risk and managed and paid for through the Risk Register.

9.3.3 Unidentified Utilities

Without limiting the Design-Builder's general mitigation duty under Section 2.4 (*Risk Register*), Relocations required for an Unidentified Utility shall be identified as a Provisional Risk, and managed and paid for through the Risk Register. If only a portion of an Unidentified Utility to be Relocated is encountered, then any relief afforded the Design-Builder shall be allowed only for that portion of the additional Utility Work.

9.3.4 Constraints on all Utility-Related Risk Register Events

The Design-Builder shall not be entitled to any additional compensation hereunder for any costs of coordinating with Utility Owners or for assisting MDOT in coordinating with Utility Owners.

Unless the subsequent additional design or Relocation is caused by a MDOT-Directed Change or a change by the Utility Owner, the Design-Builder shall be responsible for all costs incurred by the Design-Builder, Utility Owner, or both for a subsequent additional design and subsequent additional Relocation.

If the Design-Builder elects to make payments to Utility Owners or to undertake any other efforts that are not required by the terms of the Contract Documents, the Design-Builder shall not be entitled to a Contract Modification in connection therewith.

9.4 Betterments

The Design-Builder shall not perform any Betterments in connection with the Work unless Approved by MDOT pursuant to MDOT Policy Manuals and FHWA's Program Guide for Utility Relocation and Accommodation for Federal-Aid Projects and documented in a Work Package Contract Modification.

9.5 Disputes Involving Utilities, Utility Owners

If a Dispute arises relating to any Utility Agreement to which the Design-Builder or MDOT is a party or the Utility Work thereunder, and the Utility Owner is a necessary or appropriate party to such Dispute, then such Dispute shall be resolved in the manner set forth in the applicable Utility Agreement, or if not set forth in the applicable Utility Agreement, then the Dispute shall be resolved in accordance with Dispute resolution provisions in Section 22 (*Claims for Adjustment and Disputes*).

9.6 Underground Facility Damage Protection

The Design-Builder shall make every effort to protect underground facilities from damage as prescribed in MDOT Standard Specification for Construction Section 107.12. It is the Design-Builder's responsibility to determine and take steps necessary to be in compliance with federal and state damage prevention directives.

10 Surety Bonds

10.1 Performance and Lien Bond

Performance and lien bond shall be in accordance with subsection 102.16 of the Standard Specifications – Requirements of Contract Bonds.

10.1.1 Requirements of Performance and Lien Bonds

The Design-Builder shall provide one or more performance and lien bonds guaranteeing payment and performance obligations in a form approved by MDOT with penal sums in the amounts described below. During the Preconstruction Services, the penal sum of the performance and lien bonds shall be $100,000.00. Prior execution of a Work Package Contract Modification, the Design-Builder shall provide a substitute performance and lien bond with a penal sum in the amount of the Work Package GMP to be included as part of the Work Package Contract Modification. Prior to the execution of any additional Work Package Contract Modification, the Design-Builder shall increase the penal sum of the performance and lien bond or provide a replacement performance and lien bond in a form approved by MDOT. In either instance, the penal sum shall be the amount of the then current Total Construction GMP. The performance and lien bond shall guarantee payment and performance for all Work whether authorized by one or more Work Package Contract Modifications.

The Design-Builder shall maintain the payment and performance obligations of the performance and lien bond in full force and effect until issuance of the Notice of Final Acceptance. The performance and lien bonds shall list MDOT as an obligee and shall be provided by a qualified surety.

MDOT reserves the right to copy the Surety on any of its communications with the Design-Builder concerning the Design-Builder's performance, or performance deficiencies, on the Project.

10.2 Utility Work

The Utility Work furnished or performed by Design-Builder hereunder will automatically be covered by the performance and lien bonds. At their request, Utility Owners whose Utilities are being Relocated by Design-Builder 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, Design-Builder may provide separate bonds satisfactory to the Utility Owners. Design-Builder 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 Design-Builder shall include the cost of bond premiums.

10.3 No Relief of Liability

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

11 Insurance

11.1 Design-Builder Provided Insurance

Design-Builder shall procure, at its own expense, insurance acceptable to MDOT, as described herein, and shall maintain such insurance, as specified herein, in accordance with this Section 11.1.

The Design-Builder, prior to execution of the Contract, shall file with MDOT a Certificate or Certificates of Insurance in form satisfactory to MDOT, showing that the Design-Builder has complied with the insurance requirements set forth in this Section 11, and MDOT Form 1304A. The Design-Builder shall comply with subsection 107.10 of the Standard Specifications and 20TM102(A025) MDOT Special Provision for Insurance.

11.1.1 Professional Liability Insurance

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

11.1.2 Builder's Risk Insurance (Not Used)

11.1.3 Railroad Liability Insurance

12 Risk of Loss

12.1 Site Security

Site security shall be in accordance with subsection 107.11 of the Standard Specifications.

12.2 Maintenance and Repair of Work and On-Site Property

12.2.1 Responsibility of Design-Builder

In addition to adhering to subsection 107.11 of the Standard Specifications, the Design-Builder shall maintain, rebuild, repair, restore, or replace all Work (including Professional Services Work Product, Construction Documents, materials, equipment, supplies and maintenance equipment that 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 Section 12.2.2 (*Relief from Liability for Maintenance*). 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 subsection 107.11 of the Standard Specifications. Design-Builder shall also have full responsibility during such period for rebuilding, repairing and restoring all other property at the Site, whether owned by Design-Builder, MDOT or any other Person.

12.2.2 Relief from Liability for Maintenance

Upon the effective as of the date of Substantial Completion, 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.

12.3 Damage to Off-Site Property

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

12.4 Title

Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for 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 Section 12.1 (*Site Security*), Design-Builder shall retain sole care, custody and control of such materials, equipment, tools and supplies, and

shall exercise due care with respect thereto as part of the Work until Final Acceptance or until Design-Builder is removed from the Project.

13 Payment

13.1 Preconstruction Services Compensation

The Design-Builder's compensation for Preconstruction Services shall, pursuant to Section 13.1.1 (*Payment of Preconstruction Services Compensation,)* be calculated and paid as described below. In no event shall the Preconstruction Services Compensation exceed the initial or amended Preconstruction Services Fee.

A. Lump Sum for Validation Phase

MDOT will pay a lump sum Preconstruction Services Fee based on the Validation Phase Schedule of Values described in Exhibit E (Validation Phase Schedule of Values). MDOT will determine the value of work performed as described in the Validation Phase Schedule of Values.

B. Lump Sum for Preconstruction Services Contract Modifications

For those firms without an MDOT approved indirect cost rate, MDOT will pay a lump sum Preconstruction Services Fee based on the Preconstruction Services Schedule of Values. Each Preconstruction Services Contract Modifications shall include a lump sum Preconstruction Services Fee and Preconstruction Servies Schedule of Values which will be developed by MDOT and subject to agreement by the Design-Builder. Each Preconstruction Services Schedule of Values may define different methods for determining the value of work performed (e.g., monthly in equal amounts for a specified duration, percent complete, lump sum based on milestone, lump sum at completion, etc.).

C. Actual Cost Plus Fixed Fee for Preconstruction Services Contract Modifications

For those firms with an MDOT approved indirect cost rate, MDOT will pay for Preconstruction Services Work on an actual cost plus fixed fee basis. This basis of payment will include an estimate of labor hours by classification or employee, hourly labor rates, applied overhead, other direct costs, subconsultant costs, and applied fixed fee. The fixed fee for profit allowed for this project is 11.0% of the cost of direct labor and overhead. Direct expenses, if applicable, will not be paid in excess of that allowed by the Department for its own employees, in accordance with the State of Michigan's Standardized Travel Regulations. Those firms with an MDOT approved indirect cost rate must utilize MDOT's current price proposal template to derive costs, as well as MDOT's current invoicing template to request payment.

13.1.1 Payment of Preconstruction Services Compensation

No later than the tenth day of each calendar month during Preconstruction, the Design-Builder shall invoice MDOT for payment of Preconstruction Services Compensation earned in the prior month.

Each monthly invoice shall be supported by such information substantiating the Design-Builder's right to payment as MDOT shall reasonably require, in a form Approved by MDOT. The invoice shall include:

A. supporting detail for either method of payment described in Section 13.1 (*Preconstruction Services Compensation*);

B. a Preconstruction Services Progress Report on the progress of the Preconstruction Work including achievement of any required milestones; and

C. duly executed conditional waivers of rights to make claim against the Contract Bond from the Design-Builder and all Subcontractors, establishing timely payment or satisfaction of the payment requested by the Design-Builder in the previous invoice.

If MDOT disagrees with any of the information in the invoice, MDOT shall notify the Design-Builder, in writing, identifying the deficient or disputed information. In the event of a disputed invoice, MDOT, within 10 Working Days, shall identify the amount MDOT intends to withhold and the specific measures the Design-Builder must take to rectify MDOT's concerns. The Design-Builder and MDOT will attempt to resolve MDOT's concerns prior to the date payment is due. Payment will be made for all undisputed amounts within 30 Calendar Days of the approval of the invoice.

If an invoice is received after the date for such invoice set forth in this Section 13.1.1, then payment shall be made by MDOT as part of the subsequent payment.

13.2 Payment of Construction Services

13.2.1 Guaranteed Maximum Price

The Design-Builder shall only be entitled to compensation for Construction Work to the extent such Construction Work has been authorized pursuant to an executed Work Package Contract Modification. Each Work Package shall have a Work Package GMP. Except as set forth in the Contract Documents, Design-Builder shall not be entitled to compensation in excess of any Work Package GMP. The Total Construction GMP shall be the sum of the Work Package GMPs for all executed Work Packages.

13.2.2 GMP Payment Options

The Design-Builder's compensation for Construction Work shall be paid utilizing one of the two methods described below.

A. Lump Sum Schedule of Values

   i. The Work Package GMP shall be paid for progressed work by reference to an Approved Schedule of Values, or other process agreed to by the Parties in the Construction Services Contract Modification or Work Package Contract Modification. Payment as a lump sum shall exclude any Shared Provisional Sums included in the Risk Register.

B. Actual Costs Plus Markup

   i. The Work Package GMP shall be a maximum price with all costs, including costs payable pursuant to the Risk Register, paid based on Actual Cost, plus markup as agreed to by the Parties in the Construction Services Contract Modification or Work Package Contract Modification. The Parties shall also agree to how savings will be allocated in the event that costs for a Work Package are below the Work Package GMP.

13.2.3 Progressing, Invoicing, and Payment

13.2.3.1 Request for a Monthly Progress Payment

The Design-Builder shall submit a Request for Monthly Progress Payment in a form Approved by MDOT, including all of the information required by MDOT under the Construction Services Contract Modification, Work Package Contract Modification, and this Section 13.2, containing the amount claimed to be payable for Construction Work based upon the agreed percent complete by reference to the

Approved Schedule of Values or other method agreed upon by the Parties, plus MDOT Approved amounts due under Provisional Sums in the Risk Register.

If Construction Work advances under multiple Work Packages, then the Design-Builder shall itemize all amounts payable by reference to the respective Work Package but submit only one Request for Monthly Progress Payment.

MDOT and Design-Builder shall meet to review the Request for Monthly Progress Payment to resolve any outstanding issues regarding activities for which payment is sought. The Design-Builder shall submit a revised Request for Monthly Progress Payment to address any outstanding issues identified by MDOT.

MDOT will pay the amount ultimately agreed under each Request for Monthly Progress Payment as and when required under each Work Package Contract Modification.

13.2.3.2 Certification of Monthly Progress Payment

Each Request for Monthly Progress Payment shall be certified by the Design-Builder Project Manager, and with respect to a Request for Monthly Progress Payment relating to design Work, the Design Manager. Such certification shall provide that all amounts being requested are true and correct, the required level of testing and inspection is complete, all certifications of compliance are submitted, the Work is completed in accordance with the Contract Documents, and there is no outstanding Nonconforming Work for which payment is being requested. No Request for Monthly Progress Payment will be processed without such certification.

13.2.3.3 Documents to be Provided with the Request for Monthly Progress Payments

All documents reasonably requested by MDOT shall be submitted with each Request for Monthly Progress Payment application. No Request for Monthly Progress Payment will be processed without all such documents including:

A. conditional waivers of right to make claims against the Contract Bond from each Subcontractor;

B. a Construction Services Progress Report;

C. documentation, including certified payroll, material certifications, equipment charges and payment records, supporting the direct allowable payments by MDOT to Utility Owners pursuant to Section 9.1 (*Utility Work; Generally*), and

D. a Monthly Update Schedule.

13.2.4 Withholding

No payment will be made for activities that are incomplete, except as provided in Section 13.2.3.1 (*Request for Monthly Progress Payment*). Payment will not be made for Nonconforming Work unless MDOT agrees that a pay adjustment may be made for Nonconforming Work in accordance with Section 6.7 (*Nonconforming Work*).

MDOT intends to withhold 5% of the Work Package GMP until receipt of the as-built plans are received. Additional details regarding this withholding will be included in the Work Package Contract Modification authorizing completion of the as-built plans.

13.3 Limitations on Payment

13.3.1 Progress Payment Limitation

In no event shall MDOT have any obligation to pay Design-Builder any amount which would result in any of the following:

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;

C. Payment for Materials incorporated into the Work that are not properly documented with testing in accordance with the Material Source List and Material Acceptance Methods as identified in the Materials Source Guide and that do not have the appropriate material certifications.

13.3.2 Unincorporated Materials

13.3.2.1 Delivery of Materials

Materials shall be delivered to the Site, or delivered to Design-Builder and promptly stored by Design-Builder in a location Approved by MDOT Project Manager. Materials that have not been delivered 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, Design-Builder shall include the Materials in an Approved Schedule of Values 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 Calendar Days.

13.3.2.2 Title to Materials

All such materials so delivered shall become the property of MDOT. At MDOT's request, Design-Builder 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. Design-Builder 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 Design-Builder, shall contain complete material description and identification data.

13.4 Payments to Subcontractors

The Design-Builder is responsible to ensure that all Subcontractors and suppliers at every tier are promptly paid in accordance with MDOT Special Provision for *Prompt Payment* (20SP-109A). The Design-Builder 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 Design-Builder fails to comply with this requirement, MDOT's Project Manager may withhold the amount due from any monthly progress payment until the required payment(s) have been made.

13.5 Application for Final Payment

Following MDOT's issuance of a Notice of Final Acceptance pursuant to Section 23.2.2 (*Inspection and Issuance of Notice of Final Acceptance*), the Design-Builder shall prepare and submit an Application for Final Payment to MDOT showing the proposed total amount due the Design-Builder.

In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include the written consent by the Surety to such payment and such other documentation as MDOT may reasonably require, including all Released for Construction Professional Services Work Product. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment.

It is the Parties' intent that the amount of the Final Payment consists almost entirely in the value of the Work on the Punch Lists across all Work Packages, modest administrative charges to finalize and deliver the Record Drawings, and other Project close-out documentation, at-cost demobilization expenses, and final accounting of Shared Provisional Sums under Section 2.4.2 (*Provisional Risks*).

MDOT will review the Design-Builder's proposed Application for Final Payment, responding with changes, corrections, or requests for additional information or documentation. The Design-Builder shall resubmit its proposed Application for Final Payment upon responsive changes, corrections, or documentation, and the Parties shall continue this process until MDOT Approves the Application for Final Payment. MDOT shall make the payment to the Design-Builder not later than 30 Calendar Days after MDOT issues the Approval of the Application for Final Payment.

The Design-Builder's receipt of Final Payment shall constitute a waiver and release of Claims by the Design-Builder, for itself and for all Design-Builder-Related Entities, against the State of Michigan, and in particular MDOT, and any of its employees, officers, directors, commissioners and officeholders, agents, representatives, consultants, attorneys, successors, and permitted assigns, except for Claims the Design-Builder has already submitted to MDOT.

13.6 Right to Stop Work if Undisputed Payment is Not Made

The Design-Builder shall have the right to stop Work if MDOT fails to make an undisputed payment due hereunder within 30 Calendar Days after receipt of a written notice of nonpayment. Any such Work stoppage shall be deemed a suspension for purposes of Section 17.1 (*Suspension for Convenience*).

14 Relief & Compensation

14.1 Relief Events

14.1.1 Relief Event Defined

The occurrence of any of the following events during Construction Services shall constitute a Relief Event for which the Design-Builder shall be entitled to seek adjustments to the Baseline Work Package Schedule and/or the applicable Work Package GMP pursuant to this Section 14 and Section 15 (Contract Modification*s*). If an event is not listed below, the Design-Builder shall not be entitled to a Relief Event:

A. the occurrence of a Risk Register Event that is identified as a MDOT Risk;

B. the occurrence of an uncapped Provisional Risk Register Event that is subject to relief, upon exhaustion of the Provisional Sum;

C. a Change in Law;

D. a MDOT-Caused Delay;

E. unavoidable delays arising from a suspension order pursuant to Section 17.1 (*Suspension for Convenience*);

F. uncovering, removing, and restoring Work, to the extent additional costs or time are provided for in Section 6.5.2 (*Obligation to Uncover Finished Work*);

G. discovery at, on, or under the ROW (after acquired) of any Differing Site Conditions:

   i. not known to the Design-Builder prior to the effective date of the Work Package where the scope of the Work includes the affected portion of the ROW; or

   ii. that would not have become known to the Design-Builder by undertaking a reasonable investigation;

H. discovery at, on, or under the ROW (after acquired) of any Item of Archaeological or Biological Significance:

   i. not known to the Design-Builder prior to the effective date of the Work Package Contract Modification where the scope of the Work includes the affected portion of the ROW; or

   ii. that would not have become known to the Design-Builder by undertaking a reasonable investigation;

I. Force Majeure Events; and

J. discovery at, on, or under the ROW (after acquired) of any Hazardous Materials not constituting a release of Hazardous Materials by a Design-Builder-Related Entity:

   i. not known to the Design-Builder prior to the effective date of a Work Package Contract Modification where the scope of the Work includes the affected portion of the ROW; or

   ii. that would not have become known to the Design-Builder by undertaking a reasonable investigation.

14.1.2 Limitations on Relief Events

None of the foregoing events described in Section 14.1.1 (*Relief Event Defined*) shall be deemed a Relief Event to the extent that performance of the Work would have been suspended, delayed, or interrupted by any other cause, including the negligence, reckless or willful misconduct, act or omission, or breach or violation of applicable Law, Governmental Approval, or contract (including any Contract Document) by the Design-Builder or any Design-Builder-Related Entity on any part of the Project.

For those Relief Events for which the Design-Builder is afforded additional time for performance (or excused from performance for a period of time), delays are measured as direct delays to the Critical Path on the affected Baseline Work Package Schedule.

For those Relief Events, excluding Force Majeure Events, for which the Design-Builder is afforded an increase in a Work Package GMP, the amount of the additional compensation shall equal the increased Actual Costs incurred by and necessary for Design-Builder's performance in accordance with the Contract Documents, or actual time or quantities under unit prices for the same, if so identified.

Without limiting the Design-Builder's general duty of mitigation under Section 2.4 (*Risk Register*) or those criteria expressed in any of the foregoing events described in Section 14.1.1 themselves, Relief Events shall be limited to the extent that the adverse effects of the Relief Event could have been avoided by the exercise of caution, due diligence, or reasonable efforts by the Design-Builder or any Design-Builder-Related Entity acting in accordance with the performance standards identified in Section 3.1.2 (*Performance Standards*) in all circumstances to the extent possible, including by Redeploying.

If the Design-Builder seeks relief for Force Majeure Events or Relief Events that are caused, extended, exacerbated, or otherwise informed by the occurrence of a Force Majeure Event, or if any costs are covered by insurance required to be placed under this PDB Contract (regardless of whether the Design-Builder has actually obtained such insurance), then the Design-Builder shall only be entitled to seek adjustments to the Baseline Work Package Schedule and not to any increase in a Work Package GMP; provided, however, that nothing in this Section 14.1.2 shall be construed to preclude the Design-Builder's recourse to any insurance policy or coverages.

14.2 Relief Event Claims

14.2.1 Relief Event Notice

The Design-Builder shall provide notice to MDOT within 15 Calendar Days after the date on which the Design-Builder first knew or should have known that a Relief Event occurred or is imminent (the Relief Event Notice). The Relief Event Notice shall include a reasonably detailed description of the Relief Event, relevant circumstances, an initial estimate of the approximate number of Calendar Days of delay to the Critical Path of affected Baseline Work Package Schedules, if any, and the approximate additional costs the Design-Builder will incur as a result of the Relief Event. The Relief Event Notice shall also describe the efforts of the Design-Builder that have been (or are going to be) undertaken to overcome, remove the Relief Event, or to mitigate the adverse effects of the Relief Event.

If the Design-Builder fails to deliver the Relief Event Notice within such 15 Calendar Days, then the Design-Builder shall have irrevocably and forever waived and released the portion of any Claim or right to relief for the adverse effect attributable to the Relief Event.

14.2.2 Request for Contract Modification

The Design-Builder shall submit to MDOT a Request for Contract Modification (RCM) within 30 Calendar Days after submitting the Relief Event Notice. The RCM shall include:

A. all requirements of Section 15.2 (*Contents of Contract Modifications*); and

B. to the extent not repetitive of clause 1:

   i. the Relief Event, including a detailed description, whether it is a Risk Register Event (with annotation to the Risk Register, if yes), the date of its occurrence, and its duration;

   ii. the adverse effect of the Relief Event on the Design-Builder's ability to perform any of its obligations under this PDB Contract;

   iii. analysis of the effects of the Relief Event on the relevant Baseline Work Package Schedule's Critical Path; and

   iv. the specific relief sought (including, where applicable, by reference to the Risk Register).

If the Design-Builder fails to deliver the RCM within such 30 Calendar Days, the Design-Builder shall have irrevocably and forever waived and released any Claim or right to relief for the adverse effect attributable to the Relief Event.

MDOT and the Design-Builder may mutually agree to extend the deadline for submission of the RCM.

14.2.3 Good Faith Efforts

MDOT and the Design-Builder shall use good faith efforts to agree on the extent to which the Design-Builder is entitled to cost, schedule, or performance relief, as may be applicable, as a result of any such Relief Event.

Once the Parties have mutually agreed as to the Design-Builder's entitlement to cost relief, they shall enter into a Contract Modification reflecting their agreement as to the adjustment in the applicable Work Package GMP pursuant to Section 15 (*Contract Modifications*).

14.3 Waiver

The rights and remedies set forth in this Section 14 shall be the Design-Builder's sole and exclusive rights and remedies upon the occurrence or due to the effects of a Relief Event, and the Design-Builder hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against MDOT on account of a Relief Event.

14.4 Assumption of Risk

Except as otherwise expressly provided in the Contract Documents, the Design-Builder:

A. acknowledges and accepts all risks, responsibilities, obligations, and liabilities in connection with performance of the Work and delivery of the Project; and

B. is not entitled to make any claim under the Contract Documents, at law, or in equity against MDOT, or the State of Michigan for any losses suffered in connection with the Project, the Work, or the Contract Documents.

15 Contract Modifications

This Section 15 sets forth the requirements for obtaining all Contract Modifications under this PDB Contract. The Design-Builder hereby acknowledges and agrees that the Total Construction GMP constitutes full compensation for performance of all Construction Work, subject only to those exceptions specified in Section 14 (*Relief & Compensation*) and this Section 15.

15.1 Contract Modifications Constraints

A Contract Modification shall not be effective for any purpose unless executed by MDOT. Contract Modifications may be issued only for the following purposes (or combination thereof):

A. to modify the Work;

B. to revise a Completion Deadline; or

C. to revise a Work Package GMP.

15.2 Contents of Contract Modifications

The Design-Builder shall prepare a form of Contract Modification for MDOT's Approval, conforming in all respects to the requirements and constraints in this Section 15 and, as it pertains to Contract Modifications due to Relief Events, Section 14 *(Relief & Compensation)*.

Each RCM and Contract Modification shall document the following, at a minimum:

A. Scope of Work: The scope of work shall describe in detail satisfactory to MDOT all additional or changed (or both) activities to be authorized by the Contract Modification.

B. Cost Estimate: The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made, acceptable to MDOT, consistent with the cost estimating principles described in Exhibit B, Section 7 (*Cost Estimating*).

C. Time Impact Analysis: For Contract Modifications contemplating Construction Work, if the Design-Builder claims that such event, situation, or change affects the Critical Path affecting a Completion Deadline, it shall provide a time impact analysis as to each affected Baseline Work Package Schedule, 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 a form satisfactory to MDOT, which compares the proposed new schedule to the then-current Baseline Work Package Schedule (statused as to Construction Work completed and not in dispute), as appropriate. The time impact analysis shall only propose to modify the activities that have been impacted by the event, situation, or change to justify the extension.

D. Justification. Each RCM shall include a justification detailing all causes of the proposed change, making specific reference to the applicable provisions of this Section 14.1 *(Relief Events)* which permit a Contract Modification to be issued, and describing the data and documents which establish the necessity of such proposed change.

E. Other Supporting Documentation: The Design-Builder shall provide other supporting documentation as required by MDOT.

15.2.1 Disposition; Incomplete Request for Contract Modifications

MDOT may reject the Design-Builder's RCM at any point in the process. MDOT's failure to respond to any RCM within 14 Calendar Days of delivery shall be deemed a rejection of any such RCM.

MDOT shall have no obligation to review the supporting documentation associated with any RCM until a complete RCM is provided.

Excepting only amendments to the PDB Contract, only complete Contract Modifications executed by MDOT shall change the Total Construction GMP, adjust any Work Package GMP, or extend any Completion Deadline.

15.2.2 Performance of Changed or Extra Work without a Contract Modification

If the Design-Builder undertakes any extra or changed work without receiving a Contract Modification executed by MDOT, the Design-Builder shall be deemed to have performed such work ~~voluntarily~~at the Design-Builder's sole cost, without right to a Contract Modification. In addition, the Design-Builder may be required to remove or otherwise undo any such work at its sole cost.

15.2.3 Procedure for MDOT Initiated Contract Modifications

If MDOT desires to evaluate whether to initiate a Contract Modification, MDOT may, at its discretion, issue a Request for Change Proposal.

Within seven Calendar Days after the Design-Builder's receipt of a Request for Change Proposal, MDOT and the Design-Builder shall consult to define the proposed scope of the change, including rough order of magnitude of cost and time impacts, if any, as relates to Construction Work.

Within seven Calendar Days after the consultation meeting, MDOT shall notify the Design-Builder whether MDOT desires the Design-Builder to prepare a Contract Modification. MDOT may require the Design-Builder to account for impacts on Baseline Work Package Schedules or to keep the Baseline Work Package Schedules but reflect additional Acceleration Costs to meet existing Completion Deadlines.

If requested by MDOT, the Design-Builder shall prepare and submit to MDOT for Approval a Contract Modification within 21 Calendar Days after receipt of MDOT's notification seeking a Contract Modification, complying with all applicable requirements of Section 15.4 (*Pricing of Contract Modifications*), and incorporating all requests made by MDOT. The Design-Builder shall bear the cost of developing the Contract Modification form, including any modifications requested by MDOT.

If MDOT and the Design-Builder agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time, or disagree as to the amount of any change to be made to a Work Package GMP or a Completion Deadline, MDOT may, in its sole discretion, issue a MDOT-Directed Change to the Design-Builder to proceed with the performance of the Work requested.

15.3 Certain Limitations for all Contract Modifications

15.3.1 Limitation on Work Package GMP Increases

Any increase in a Work Package GMP pursuant to Section 14 (*Relief & Compensation*) and this Section 15 shall exclude:

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

B. costs that could reasonably have been avoided by the Design-Builder, including by Redeploying; and

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

15.3.2 Limitation on Time Extensions

Any extension of a Completion Deadline pursuant to Section 14 (*Relief & Compensation*) and this Section 15 shall exclude any delay to the extent that it:

A. did not impact the Critical Path affecting a Completion Deadline;

B. was due to the fault or negligence, or act or failure to act of any Design-Builder-Related Entity; or

C. could reasonably have been avoided by the Design-Builder, including by Redeploying.

The Design-Builder shall demonstrate to MDOT's satisfaction that the change in the Work (or other event or situation which is the subject of the Contract Modification request seeking a change in a Completion Deadline) has caused or will result in an identifiable and measurable disruption of the Work, impacting a Critical Path activity affecting a Completion Deadline.

15.3.3 Limitation on Delay Costs

Before the Design-Builder may obtain any compensation for delay costs, the Design-Builder shall have demonstrated to MDOT's satisfaction that:

A. the Baseline Work Package Schedule in fact sets forth a reasonable method for completion of the Work;

B. the damages giving rise to the delay costs could not reasonably have been avoided by the Design-Builder, including by Redeploying; and

C. the Design-Builder has suffered or will suffer Actual Costs due to such delay, each of which costs shall be justified and documented in a manner satisfactory to MDOT.

15.3.4 Limitation on Acceleration Costs

Acceleration Costs shall be compensable hereunder only with express, written direction by MDOT to the Design-Builder to accelerate its efforts and evidenced by Contract Modifications issued by MDOT.

15.4 Pricing of Contract Modifications

MDOT and the Design-Builder (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Contract Modification. If compensation amounts or methodologies for compensation for a particular Relief Event is provided for in the Risk Register, then such compensation shall be determined in such amount or by such methodology. If the Risk Register does not address compensation or compensation methodologies for a particular Relief Event, and MDOT and the Design-Builder cannot agree on the terms of pricing of a Contract Modification pursuant to the cost estimating principles identified in Exhibit B, Section 7 (*Cost Estimating*), then compensation, if any, for

such Relief Event shall be determined pursuant to the MDOT force account Standard Specification 109.05(D).

15.5 No Release or Waiver

15.5.1 Extension of Time for Performance

No extension of time granted hereunder shall release the Design-Builder's Surety from its obligations. MDOT shall not be deemed to have waived any rights under this PDB Contract as the result of any grant of an extension of any Completion Deadline, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to the Design-Builder after such date.

15.5.2 No Contract Modification 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, the Design-Builder shall undertake, at its risk, work included in any request, order, or other authorization issued by a Person in excess of that Person's authority as provided herein or included in any oral request. The Design-Builder shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, MDOT may require the Design-Builder to remove or otherwise undo any such work, at the Design-Builder's sole cost.

16 [RESERVED]

17 Suspension of Work

Suspension of Work shall be in accordance with subsection 104.01.B, Authority of the Engineer to Suspend Work, of the Standard Specifications or in accordance with the provisions set forth below.

17.1 Suspension for Convenience

MDOT may, at any time and for any reason, by written notice, order the Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that MDOT deems appropriate for the convenience of MDOT. The Design-Builder shall promptly comply with any such written suspension order. The Design-Builder shall promptly recommence the Work upon receipt of written notice from MDOT directing the Design-Builder to resume Work.

17.2 Suspension for Cause

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

A. correct conditions unsafe for the Project personnel or the general public;

B. comply with any Governmental Approval, Law, or otherwise carry out the requirements of this PDB Contract;

C. carry out directives or orders of MDOT;

D. comply with environmental requirements or requirements contained in an Approved Management Plan or Technical Provision; or

E. remove an employee whom MDOT has requested be removed pursuant to Section 8.4 (*Employee Performance Requirements*).

17.3 Design-Builder Responsibilities during Suspension

During periods that Work is suspended, the Design-Builder shall continue to be responsible for the Work, and shall prevent damage or injury to the Project and other facilities in the Project vicinity, provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Design-Builder-provided insurance and bonds, and erect necessary temporary structures, signs, or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by MDOT, the Design-Builder shall continue to be responsible for maintenance of traffic in accordance with the Approved Maintenance of Traffic Technical Provision and any additional requirements in the Construction Services Contract Modification or applicable Work Package Contract Modification, and for maintenance during construction in accordance with the PDB Contract. If only part of the Work is suspended, the Design-Builder shall be entitled to payment for the costs allocated to the Work not suspended.

18 Termination for Convenience

MDOT may terminate the PDB Contract and the performance of the Work by the Design-Builder for its own convenience if MDOT determines, in its sole discretion, that a termination is in the best public, state, or national interest. MDOT shall notify the Design-Builder of its decision to terminate by delivering to the Design-Builder a written Notice of Termination specifying the extent of termination, its effective date, and any remaining Work necessary to place the Project in an acceptable condition, as determined by MDOT in its sole discretion. Termination of the PDB Contract shall not relieve any Surety of its obligation for any claims arising out of the Work performed. Termination may occur before or after Work has begun.

18.1 Design-Builder Responsibilities Upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by MDOT, the Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 18:

A. Stop Work as specified in the notice.

B. Communicate to all affected Subcontractors such notice of termination and that their Subcontracts are not to be further performed unless otherwise authorized in writing by MDOT.

C. Place no further Subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.

D. Terminate all Subcontracts to the extent that they relate to the Work terminated.

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

F. Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the Approval or ratification of MDOT, to the extent it may be required, which Approval or ratification shall be final.

G. Provide MDOT with an inventory list of all materials previously produced, purchased, or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder, which is either in the process of development or previously completed but not yet delivered to MDOT, and such other information as MDOT may request; and transfer title and deliver to MDOT, in the manner, at the times, and as and to the extent, if any, directed by MDOT of:

   i. fabricated or unfabricated parts, the Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated; and

   ii. the Professional Services Work Product and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to MDOT if the Work had been completed.

H. Complete performance, in accordance with the Contract Documents, of all Work not terminated.

I. Take all action that may be reasonably necessary, or that MDOT may direct, for the safety, protection, and preservation of:

   i. the public, including public and private vehicular movement;

   ii. the Work; and

   iii. the equipment, machinery, materials, and property related to the Contract Documents that is in the possession by the Design-Builder and in which MDOT has or may acquire an interest.

J. As authorized by MDOT in writing, use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by MDOT, any property of the types referred to in clause G; provided, however, that the Design-Builder:

   i. is not required to extend credit to any purchaser; and

   ii. may acquire the property under the conditions prescribed and at prices Approved by MDOT.

K. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by MDOT under the Contract Documents or paid in any other manner directed by MDOT.

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

M. Take other actions related to the Termination that are directed by MDOT.

18.2 Responsibility After Notice of Termination

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

A. The Design-Builder's responsibility for damage to materials for which partial payment has been made shall end when MDOT certifies that those materials have been stored in the manner and at the locations directed by MDOT.

B. The Design-Builder's responsibility for damage to materials purchased by MDOT subsequent to the Notice of Termination shall end when title and delivery of those materials has been taken by MDOT.

Immediately after MDOT determines that the Design-Builder has completed the Work directed to be completed in accordance with the Notice of Termination and such other work as may have been ordered to secure the Project for termination, the Design-Builder shall not be required to provide for continuing safety, security, or maintenance at the Site. Subsequent to the determination that all materials have been stored in the manner and at the locations directed by MDOT, further handling of such materials shall be the responsibility of MDOT.

18.3 Negotiated Termination Settlement

18.3.1 Settlement Proposal

After receipt of a Notice of Termination, the Design-Builder shall submit a final termination settlement proposal to MDOT in the form and with the certification prescribed by MDOT. The Design-Builder shall submit the proposal promptly, but no later than 90 Calendar Days from the effective date of termination,

unless the Design-Builder has requested a time extension in writing within such 90-Calendar Day period and MDOT has agreed in writing to allow such an extension. MDOT will review the Design-Builder's termination settlement proposal and will act upon it, return it with comments, or reject it. If the Design-Builder fails to submit the proposal within the time allowed, MDOT may determine, on the basis of information available to it, the amount, if any, due to the Design-Builder because of the termination and shall pay the Design-Builder the amount so determined.

18.3.2 Negotiated Settlement Amount

The Design-Builder and MDOT may agree upon the whole or any part of the amount or amounts to be paid to the Design-Builder by reason of termination of Work pursuant to this Section 18. Such negotiated settlement may include a reasonable allowance for profit solely on Work that has been completed as of the termination date and subsequently accepted by MDOT but not an amount for lost, anticipated, or unearned profit or other costs disallowed in Section 18.4.2 (*Maximum Compensation*). Such agreed amount(s), exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the cost of the Work not terminated, as determined by the costs allocated to such Work in the Schedule of Values. Upon determination of the settlement amount, the PDB Contract will be amended accordingly, and the Design-Builder will be paid the agreed amount. If Parties are unable to reach a settlement on all termination costs, compensation for those costs not agreed upon will be determined in accordance with Section 18.4 (*Determination of Compensation if Negotiations Fail*). Unless otherwise agreed to by the Parties as a part of a negotiated settlement, MDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work

18.4 Determination of Termination Amount if Negotiations Fail

If the Design-Builder and MDOT fail to agree, as provided in Section 18.3.2 (*Negotiated Settlement Amount*), upon the whole amount to be paid to the Design-Builder in whole or in part by reason of the termination of Work pursuant to this Section 18, the amount payable (exclusive of interest charges) shall be determined by MDOT in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section 18.2 (*Responsibility After Notice of Termination*).

18.4.1 Payment Upon Termination for Convenience

Subject to the limitations in Section 18.4.2 (*Maximum Compensation*), MDOT will pay the Design-Builder the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination, as such amounts are determined by MDOT:

A. The Design-Builder's actual reasonable out-of-pocket cost (without profit and including equipment costs only to the extent permitted by Section 15 (*Contract Modifications*)) for all Work performed, including mobilization, demobilization, and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits, or similar items, as established to MDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Design-Builder, amounts realized by the sale of materials, and for other appropriate credits. Deductions will also be made for the cost of damaged materials. When, in the opinion of MDOT, the cost of an item of Work is excessively high due to costs incurred to remedy or replacement of defective or rejected Work, the reasonable cost to be allowed will be the estimated

reasonable cost of performing that Work in compliance with the requirements of the Contract Documents, and the excessive actual cost will be disallowed.

B. As profit on the actual out-of-pocket cost permitted in clause 1 above, a sum determined by MDOT to be fair and reasonable; provided, however, that if it appears that the Design-Builder would have sustained a loss on the entire PDB Contract had it been completed, no profit shall be included or allowed under this Section 18.4.1, and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss.

C. The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 18.1(E) (*Design-Builder Responsibilities upon Termination*), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination under the PDB Contract, which amounts shall be included in the cost on account of which payment is made under clause A above.

D. The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 18.1(I), and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the PDB Contract including the reasonable cost to the Design-Builder of handling material returned to the vendor, delivered to MDOT, or otherwise disposed of as directed by MDOT, and including a reasonable allowance for the Design-Builder's administrative costs in determining the amount due to the Design-Builder as the result of the termination of Work under this PDB Contract.

18.4.2 Maximum Compensation

The Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 18.4.1 (*Payment Upon Termination for Convenience*)) plus its settlement costs, and that items such as lost, anticipated or unearned profit, unabsorbed overhead, opportunity costs, or consequential or other damages shall not be recoverable by the Design-Builder for itself or for its Subcontractors on account of the termination of the PDB Contract. However, the total amount to be paid to the Design-Builder, exclusive of costs described in Section 18.4.1(C) and (D), may not exceed the total Contract Price less the amount of payments previously made and less the cost of the Work not terminated, as determined by the costs allocated to such Work in the Schedule of Values. Furthermore, if any refund is payable with respect to Project-specific insurance or bond premiums, deposits, or similar items which were previously passed through to MDOT by the Design-Builder, such refund shall be paid directly to MDOT or otherwise credited to MDOT.

18.4.3 Excluded Sums

Except for normal spoilage, and except to the extent that MDOT will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Design-Builder under Section 18.4.1 (*Payment Upon Termination for Convenience*), the fair value, as determined by MDOT, of equipment, machinery, materials, and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to MDOT, or to a buyer pursuant to Section 18.1(J) (*Design-Builder Responsibilities upon Termination*). The amount set forth in the Proposal by the Design-Builder for the Work terminated shall be a factor to be analyzed in determining the value of the Work terminated.

18.4.4 Payment Upon Termination Amount

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

18.5 Reduction in Amount of Claim

The amount otherwise due the Design-Builder under this Section 18 shall be reduced by:

A. all unliquidated payments for Work or materials not yet performed on or supplied to the Project at the time of the payment, excluding payments made to or on behalf of the Design-Builder applicable to the terminated portion of the PDB Contract;

B. the amount of any unpaid Liquidated Damage or claim which MDOT may have against any Design-Builder-Related Entity in connection with the PDB Contract;

C. the agreed price for, or the proceeds of the sale of, any property, materials, supplies, or other things acquired by the Design-Builder or sold, pursuant to the provisions of this Section 18, and not otherwise recovered by or credited to MDOT;

D. amounts that MDOT reasonably deems advisable to retain to cover any existing or threatened claims, Liens, and stop notices relating to the Project, including claims by Utility Owners;

E. the cost of repairing, replacing or otherwise correcting any Nonconforming Work; and

F. any amounts due or payable by the Design-Builder to MDOT.

18.6 Partial Payments

MDOT may, from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by the Design-Builder in connection with the terminated portion of the PDB Contract, whenever, in the opinion of MDOT, the aggregate of such payments shall be within the amount to which the Design-Builder will be entitled under this Section 18. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 18, such excess shall be payable by the Design-Builder to MDOT upon demand.

18.7 Inclusion in Subcontracts

The Design-Builder shall insert in all Subcontracts a requirement that the Subcontractor shall stop Work on the date and to the extent specified in a Notice of Termination from MDOT in accordance with this Section 18 and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

18.8 Limitation on Payments to Subcontractor

For the purposes of Section 18.3.2 (*Negotiated Settlement Amount*) and Section 18.4 (*Determination of Termination Amount if Negotiations Fail*), upon termination under Section 18.1(E) (*Design-Builder Responsibilities upon Termination*), of Work under any Subcontract, the Design-Builder will not be entitled to reimbursement for that portion of the termination settlement with any such Subcontractor which constitutes lost, anticipated or unearned profit, unabsorbed overhead, opportunity costs, or consequential or other damages on account of the termination.

18.9 No Unearned Profit or Consequential Damages

Under no circumstances shall the Design-Builder be entitled to lost, anticipated or unearned profit, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination under this Section 18. The payment to the Design-Builder determined in accordance with this Section 18 constitutes the Design-Builder's sole and exclusive remedy for a termination under this Section 18.

18.10 No Waiver

Anything contained in this PDB Contract to the contrary notwithstanding, a termination under this Section 18 shall not waive any right or claim to damages, which MDOT may have, and MDOT may pursue any cause of action, which it may have at law or in equity or under this PDB Contract.

18.11 Dispute Resolution

The failure of the Parties to agree on amounts due under this Section 18 shall be a Dispute to be resolved in accordance with Section 22 (*Claims for Adjustment and Disputes*). Under no circumstances shall the Design-Builder be entitled to anticipatory or unearned profits, or consequential or other damages as a result of a termination under this Section 18.

18.12 Allowability of Costs

All costs claimed by the Design-Builder under this Section 18 shall, at a minimum, be allowable, allocable, and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

19 Default of Contract/Termination for Cause

Default of Contract shall be in accordance with subsection 108.11, Default of Contract, of the Standard Specifications.

19.1 Breach of Contract by the Design-Builder: Termination for Cause/Default

19.1.1 Events of Breach and Default

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

A. The Design-Builder fails following authorization by MDOT to begin the Work under the Contract Documents.

B. The Design-Builder fails to perform the Work with sufficient resources to ensure the prompt completion thereof.

C. The Design-Builder fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by MDOT under Section 8.4 (*Employee Performance Requirements*).

D. The Design-Builder discontinues or suspends the prosecution of the Work wrongfully or for reasons not permitted in the PDB Contract.

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

F. The Design-Builder breaches any other agreement, representation, or warranty contained in the Contract Documents, or the Design-Builder fails to perform any other obligation under the Contract Documents.

G. The Design-Builder fails to provide and maintain the required insurance, Performance and Lien Bond, or other required securities.

H. The Design-Builder assigns or transfers the Contract Documents or any right or interest therein, contrary to Section 27.4.2 (*Assignment by the Design-Builder; Changes of Control; Change of Organization*).

I. The Design-Builder fails, without good cause, to make payment when due for labor, equipment, or materials in accordance with the Contract Documents, its agreements with Subcontractors, and applicable law; fails to comply with any Law or Governmental Approval; or fails to comply with the instructions of MDOT consistent with the Contract Documents.

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

K. The Design-Builder becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors.

L. Insolvency, receivership, reorganization, or bankruptcy proceedings have been commenced by or against the Design-Builder and not dismissed within 60 Calendar Days.

M. Any representation or warranty made by the Design-Builder in the Contract Documents or in any certificate, schedule, instrument, or other document delivered pursuant to the Contract Documents shall have been false or materially misleading when made.

N. The Design-Builder is a party to fraud.

O. The Design-Builder fails to pay Liquidated Damages, erosion control disincentive assessments, or both, due and owing to MDOT.

P. The Design-Builder changes or substitutes Key Personnel without MDOT approval.

19.1.2 Right to Cure

MDOT agrees to provide the Design-Builder and Surety 10 Working Days' notice and opportunity to cure any breach before declaring any breach an event of Default, provided that no such notice and opportunity to cure is required for any breach which by its nature cannot be cured or for any breach that poses an immediate and imminent danger to public health or safety. If a breach is curable, but by its nature cannot be cured within 10 Working Days, as reasonably determined by MDOT, MDOT agrees not to declare an event of Default provided that the Design-Builder commences such cure within such 10-Working Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period exceed 60 Calendar Days in total unless mutually agreed upon by the Parties. The Design-Builder hereby acknowledges and agrees that the events described in Section 19.1.1(M) and (N) (*Events of Breach and Default*) are not curable. If the Design-Builder does not cure any breach or if the breach is not curable, the Design-Builder will be in Default and MDOT may provide the Design-Builder and Surety notice of Default.

Notwithstanding the foregoing, if MDOT believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, MDOT may rectify the condition at the Design-Builder's cost (excluding costs that would otherwise have been MDOT's responsibility under the express terms of the PDB Contract, if any), without notice and without awaiting lapse of any cure period. So long as MDOT undertakes to rectify a condition in good faith, even if under a mistaken belief in the occurrence of such Default, such action shall not expose MDOT to liability to the Design-Builder and shall not entitle the Design-Builder to any other remedy, it being acknowledged that MDOT has a paramount public interest in providing and maintaining safe public use of and access to the Project. MDOT's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

19.2 Remedies

19.2.1 Rights of MDOT

If a Default occurs, then, in addition to all other rights and remedies provided by law or equity or available under the PDB Contract or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the Contract Bond, or other performance security required hereby, MDOT shall have the following rights and remedies, without further notice, and without prejudice to any of its other

rights or remedies, and without waiving or releasing the Design-Builder and its Surety from any obligations, and the Design-Builder shall have the following obligations (as applicable):

A. MDOT may order the Design-Builder to suspend or discontinue the Work or any portion of the Work.

B. MDOT may terminate the PDB Contract or a portion thereof, in which case, the provisions of Section 18.1 (*Design-Builder Responsibilities Upon Termination*) and Section 18.2 (*Responsibility After Notice of Termination*) shall apply.

C. If and as directed by MDOT, the Design-Builder shall withdraw from the Site; and shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Design-Builder-Related Entity in the performance of the Work.

D. The Design-Builder shall deliver to MDOT possession of any or all facilities of the Design-Builder located on the Site, as well as any or all Professional Services Work Product and all other completed or partially completed drawings (including plans, elevations, details, and diagrams), specifications, records, information, schedules, samples, shop drawings, and other documents, that MDOT deems necessary for completion of the Work.

E. The Design-Builder shall confirm assignment to MDOT of Subcontracts requested by MDOT, and the Design-Builder shall terminate, at its cost, all other Subcontracts.

F. MDOT may deduct from any amounts payable by MDOT to the Design-Builder such amounts payable by the Design-Builder to MDOT, including Liquidated Damages or other damages payable to MDOT under the Contract Documents.

G. MDOT, without incurring any liability to the Design-Builder, shall have the rights to:

   i. If the Design-Builder or Surety has not proceeded satisfactorily within the cure period described in Section 19.1.2 (*Right to Cure*), take the performance of all or a portion of the Work from the Design-Builder (without the use of the Design-Builder's equipment, tools, and instruments) and enter into an agreement with another Person for the completion of such Work;

   ii. require the Surety to take the performance of all or a portion of the Work from the Design-Builder (without the use of the Design-Builder's equipment, tools, and instruments) and enter into an agreement with another Person for the completion of such Work; or

   iii. use such other methods, as in the opinion of MDOT, will be required for the completion of the Project.

H. If MDOT exercises any right to perform any obligations of the Design-Builder, in the exercise of such right MDOT may, but is not obligated to, among other things:

   i. perform or attempt to perform, or cause to be performed, such Work;

   ii. spend such sums as MDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors, and obtain materials and equipment as may be required for the purpose of completing such Work;

   iii. execute all applications, certificates, and other documents as may be required for completing the Work;

   iv. modify or terminate any contractual arrangements;

v. take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and

vi. prosecute and defend any action or proceeding incident to the Work.

19.2.2 Liability of Design-Builder

If a breach and subsequent event of default has occurred, the Design-Builder and Surety shall be liable to MDOT (in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable hereunder) for all costs reasonably incurred by MDOT or any party acting on MDOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). Upon the occurrence of an event of Default, MDOT shall be entitled to withhold all or any portion of further payments to the Design-Builder until such time as MDOT is able to determine how much (if any) remains owing to the Design-Builder. Promptly upon such determination, MDOT shall notify the Design-Builder in writing of the amount, if any, that the Design-Builder shall pay MDOT or that MDOT shall pay the Design-Builder with respect thereto. All costs and charges incurred by MDOT, including attorneys', accountants', and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any monies due or which may become due to the Design-Builder. If such expense exceeds the sum which would have been payable under the PDB Contract, then the Design-Builder and its Surety shall be liable and shall pay to MDOT the amount of such excess.

If a default under Section 19.1.1(K) or (L) (*Events of Breach and Default*) occurs, MDOT shall be entitled to request of the Design-Builder, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 10 Working Days of delivery of the request shall entitle MDOT to terminate the PDB Contract and to enforce the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, MDOT shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from MDOT's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the PDB Contract and the Contract Bond.

In lieu of the provisions of this Section 19.2.2 for terminating the PDB Contract and completing the Work, MDOT may pay the Design-Builder for the Work already done according to the provisions of the Contract Documents and may treat the Work remaining undone as if it had never been included or contemplated by the PDB Contract. The Design-Builder will not be allowed to claim prospective profit on, or any other compensation relating to, Work uncompleted by the Design-Builder under this provision.

If the PDB Contract is terminated for grounds that are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 18 (*Termination for Convenience*).

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

The exercise or beginning of the exercise by MDOT of any one or more rights or remedies under this Section 19.2.2 shall not preclude the simultaneous or later exercise by MDOT of any or all other rights or remedies, each of which shall be cumulative, and not exclusive.

The Design-Builder and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by the Design-Builder hereunder or by MDOT's declaration of an event of default, or by actions taken by MDOT under this Section 19.2.2.

20 Damages

20.1 Liquidated Damages and Incentives

20.1.1 Failure to Meet Completion Deadlines

Design-Builder understands and agrees that if Design-Builder fails to complete the Work in accordance with the Contract Documents, MDOT will suffer substantial losses and damages. Design-Builder agrees that it shall be liable for all such losses and damages. Design-Builder acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the Michigan State highway system and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to MDOT and the public in the event of Design-Builder's failure to achieve Substantial Completion and/or Final Acceptance by the applicable Completion Deadlines.

20.1.2 Liquidated Damages

The Design-Builder and MDOT will have stipulated the amount payable by the Design-Builder in the event of its failure to achieve the Completion Deadlines (in each case, Liquidated Damages) under each Work Package Contract Modification.

Without limiting MDOT's rights under Section 20.2 (*Offset; Withholding; Waiver*), if the Design-Builder fails to achieve Completion Deadlines, the Design-Builder shall pay to MDOT Liquidated Damages in the amounts agreed to in the Work Package Contract Modification.

The Design-Builder acknowledges and agrees that such Liquidated Damages are intended to compensate MDOT solely for the Design-Builder's failure to meet Completion Deadlines. Payment of Liquidated Damages shall not excuse the Design-Builder from liability from any other breach of the Contract Documents.

20.1.2.1 Maximum Liquidated Damages

Cumulative Liquidated Damages under this Section 20.1.2 shall not exceed the amount of Liquidated Damages identified in each Work Package GMP if any, as may be adjusted by Contract Modification.

20.1.2.2 Multiple Assessments of Liquidated Damages

Liquidated Damages may be assessed simultaneously under more than one subsection of this Section 20 as well as simultaneously under more than one Work Package.

20.1.3 Reasonableness of Liquidated Damage Amounts

Design-Builder understands and agrees that any Liquidated Damages payable in accordance with Section 20.1.2 (*Liquidated Damages*) are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of the Contract. Design-Builder further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

20.1.4 Incentives

The Design-Builder and MDOT may stipulate an incentive amount payable by MDOT in the event certain Completion Deadlines for a Work Package are met early. The exact amount of the incentive payment and

all details regarding eligibility and payment mechanisms will be defined in the Work Package Contract Modification.

20.2 Offset; Withholding; Waiver

20.2.1 Offset

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

20.2.2 Withholding

Without limiting MDOT's other remedies hereunder, MDOT shall have the right to withhold payment of any amount owed by the Design-Builder to MDOT hereunder for any Design-Builder Default until cured.

20.2.3 No Waiver

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

20.3 Mutual Waiver of Consequential Damages

Notwithstanding anything contrary in the Contract Documents, MDOT and the Design-Builder agree to waive all claims against each other for any consequential or indirect damages that may arise out of or relate to this Agreement. MDOT agrees to waive damages including but not limited to MDOT’s loss of use of the Project. The Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency.

21 Indemnification

21.1 Indemnifications by Design-Builder

21.1.1 General Indemnities

Subject to this Section 21.1.1, Indemnification shall be in accordance with subsection 107.10.A, Indemnification, of the Standard Specifications.

21.1.2 Design Defects

Subject to Section 21.1.1 (*General Indemnities*), Design-Builder shall release, indemnify and hold harmless the State of Michigan, the State Transportation Commission, and the Michigan Department of Transportation, and their employees or agents 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 Professional Services Work Product, regardless of whether such Errors were also included in the RID. Design-Builder agrees that, because the RID are subject to review and modification by Design-Builder, it is appropriate for Design-Builder to assume liability for Errors in the completed Project even though they may be related to Errors in the RID.

21.2 Responsibility of MDOT for Certain Contaminated Materials

21.2.1 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 Design-Builder 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 Design-Builder-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.

21.2.2 Generator Number for Hazardous Waste Remediation

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

A. Design-Builder 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 treated in accordance with Exhibit B, Section 11 (*Environmental Management Plan*).

21.3 No Effect on Other Rights

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

21.4 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), and latest revisions thereto to insure, protect, hold harmless and indemnify the Indemnified Parties.

22 Claims for Adjustment and Disputes

22.1 Claims for Compensation Adjustment and Disputes

If issue resolution efforts through Partnering are not successful, disputes shall be resolved through MDOT's Construction Contractor Claims Procedure, February 2021 edition. In the event there are conflicts between this PDB Contract and MDOT's Construction Contractor Claims Procedure, the PDB Contract will control.

23 Acceptance of Project

23.1 Substantial Completion of a Work Package

23.1.1 Notice by Design-Builder

Design-Builder shall provide written notice to MDOT when all of the following have occurred with respect to a Work Package:

A. Design-Builder has completed all Work (except for items only included in the requirements for Final Acceptance).

B. Design-Builder has ensured that the Work has been performed in accordance with the requirements of the Contract Documents.

C. Design-Builder has received all applicable Governmental Approvals required for Project use.

D. Design-Builder has furnished to MDOT certifications from Design-Builder's Design Manager, in form and substance satisfactory to MDOT, certifying conformity of the Professional Services Work Product with the requirements of the Contract Documents.

E. Design-Builder has furnished to MDOT certifications from the Design-Builder's Project Manager, in form and substance satisfactory to MDOT, certifying conformity of the construction with the Professional Services Work Product.

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

H. Design-Builder has obtained all applicable third party approvals relating to the Work and all third parties have completed all work that involves obligations by Design-Builder (including Utility Owners under any applicable utility agreements).

I. Design-Builder has ensured that the Project is fully opened to traffic and that no further work is required which would involve any lane or shoulder closure except for the following: Shoulder closures may be allowed (except on weekdays from 6 a.m. to 9 a.m. and 3 p.m. to 7 p.m.), at MDOT's sole discretion, for Punch List, maintenance, final cleanup, turf establishment, and landscape planting items.

23.1.2 Correction of Defects

Upon receipt of Design-Builder's notice in accordance with Section 23.1.1 (*Notice by Design-Builder*), 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 Design-Builder as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Substantial Completion, Nonconforming Work (including incomplete Work) which may be corrected as Punch List items and/or whether Design-Builder shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to 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.

23.1.3 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 Section 23.1.1 (*Notice by Design-Builder*) 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.

23.2 Final Acceptance

23.2.1 Conditions to Final Acceptance

23.2.1.1 Performance of Work after Substantial Completion

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

23.2.1.2 Conditions for the Letter of Final Completion

Design-Builder shall provide to MDOT a signed letter notifying MDOT of Final Completion in accordance with Section 23.2.1.3 (*Requirements for the Letter of Final Completion*) 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, Professional Services Work Product, As-Built Documents, right-of-way record maps, surveys, material certifications, test data and other deliverables required under the Contract Documents;

C. All special tools, equipment, furnishings and supplies purchased by and/or used by Design-Builder as provided in the Contract Documents have been delivered to MDOT and all replacement spare parts have been purchased and delivered to MDOT free and clear of Liens.

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

E. Design-Builder has furnished to MDOT certifications from Design-Builder's Design Manager, in form and substance satisfactory to MDOT, certifying conformity of the Professional Services Work Product with the requirements of the Contract Documents.

F. Design-Builder has furnished to MDOT certifications from the Design-Builder's Project Manager, in form and substance satisfactory to MDOT, certifying conformity of the construction with the Professional Services Work Product.

G. Design-Builder has furnished to MDOT certifications, in form and substance satisfactory to MDOT, certifying that there are no outstanding nonconformances.

H. Design-Builder 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. Final landscape and turf establishment items have been placed. The period of establishment for landscaping and turf items may be exempt from Final Acceptance but will cause the Contract to remain open for up to two growing seasons.

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

23.2.1.3 Requirements for the Letter of Final Completion

The Letter of Final Completion referred to in Section 23.2.1.2 (*Conditions for the Letter of Final Completion*) shall include the following statement:

To the best of Design-Builder's knowledge and belief, the Work under the PDB 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 PDB 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 PDB Contract or under any adjustment issued thereunder for said undisputed work; there are no outstanding claims, Liens or stop notices relating to the Project, including claims by Utility Owners; there is no existing default by Design-Builder under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or event of default under any Utility Agreement; and upon receipt of Final Acceptance, Design-Builder 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 PDB Contract.

If Design-Builder is unable to provide the letter in the above form, the letter 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 letter shall include a representation of Design-Builder that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter.

23.2.2 Inspection and Issuance of Notice of Final Acceptance

Upon MDOT's receipt of the Letter of Final Completion, MDOT will make final Inspection and MDOT will either issue a Notice of Final Acceptance or notify Design-Builder regarding any Work remaining to be performed. If MDOT fails to issue a Notice of Final Acceptance, Design-Builder shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Builder shall provide to MDOT a revised Letter 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.

23.2.3 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 Design-Builder and/or the Surety(ies), the amount of any overpayment sustained due to failure of Design-Builder to fulfill the obligations under the Contract. A waiver on the part of MDOT of any breach by Design-Builder shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve Design-Builder from any of its continuing obligations hereunder, or constitute any assumption of liability by MDOT.

23.3 Opening of Sections of Project to Traffic

23.3.1 Plan for Opening to Traffic

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

23.3.2 Direction to Open Following Design-Builder Failure to Perform

If Design-Builder is delinquent in completing shoulders, drainage structures or other features of the Work, MDOT may, but is not obligated to, order all or a portion of the Project opened to traffic notwithstanding such incomplete elements. Design-Builder shall then conduct the remainder of the construction operations, minimizing obstruction to traffic. Except as provided in Section 23.3.1 (*Plan for Opening to Traffic*), Design-Builder shall not receive any added compensation due to the added costs attributable to the opening of the Project to traffic.

23.3.3 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.

23.4 Assignment of Causes of Action

Design-Builder 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 Design-Builder, without further acknowledgment by the Parties.

24 Warranty and Maintenance

24.1 Warranty and Maintenance Bonds

Design-Builder shall provide warranty and maintenance bonds that guarantee performance of all Warranty and Maintenance obligations of Design-Builder under the Contract Documents.

24.1.1 Landscape Maintenance Bond (Not Used)

24.1.2 Pavement Warranty Bond

Prior to executing and Work Package Contract Modification, the Design-Builder shall provide warranty bonds for materials and workmanship pavement warranties in accordance with Exhibit G (*MDOT Requirements*).

The following MDOT Special Provisions shall apply to HMA Pavement:

- MDOT Special Provision for *Materials and Workmanship Pavement Warranty* (20SP-500A)
- MDOT Special Provision for *Warranty Work Requirements for New/Reconstructed Hot Mix Asphalt Pavement on Unbonded or Stabilized Base* (20SP-501L)

The following MDOT Special Provisions shall apply to concrete pavement:

- MDOT Special Provision for *Materials and Workmanship Pavement Warranty* (20SP-500A)
- MDOT Special Provision for W*arranty Work Requirements for New/Reconstructed Jointed Plain Concrete Pavement* (20SP-602B).

24.1.3 Concrete Surface Coating Warranty Bonds (Not Used)

24.2 Project Warranty and Maintenance Term

Warranties shall remain in effect for the time period in accordance with the applicable Special Provisions and the watering and cultivating requirements for landscaping elements in the Standard Specifications.

25 Documents and Records

25.1 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.

25.2 Project Records

25.2.1 Maintenance of Records

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

25.2.2 Audit and Inspection Rights

Design-Builder 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.

Design-Builder 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 Section 25.3 (*Retention of Records*)). In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the Design-Builder 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, Design-Builder shall assure compliance with this Section 25.2.2 for all Subcontracted Work.

25.2.3 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 Design-Builder has been overcredited under a previous item of Work, that overcredit will be credited against the final payment.

25.2.4 Contract Modification Pricing Data

For cost and pricing data submitted in connection with pricing Contract Modifications, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, such Persons and their representatives have the right to examine all books, records, documents and other data of Design-Builder related to the negotiation of or performance of Work under such Contract Modifications for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of

examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

25.2.5 Claims Audits

Any and all costs contained in Claims filed against MDOT shall be subject to audit by MDOT or its designee 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. Design-Builder, Subcontractors or their agents shall provide adequate facilities, acceptable to MDOT, for the audit during normal business hours. Design-Builder, Subcontractors and their agents shall cooperate with the auditors. Failure of Design-Builder, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or to permit the auditors access to the books and records of Design-Builder, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder. The auditors shall have available to them documents including, but not limited to, the following:

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 Design-Builder with the provisions of this Section 25.2.5 is a contractual condition precedent to Design-Builder's right to seek relief under Section 22 (*Claims for Adjustment and Disputes*). Design-Builder represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 25.2.

25.3 Retention of Records

Design-Builder shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to MDOT) at the Design-Builder's Project Manager's office in the State until seven years after the earlier to occur of (a) the date Final Acceptance is achieved or (b) the termination date. If Approved by MDOT's Project Manager, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents. Design-Builder 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 a final resolution on said Claim has been reached. Records to be retained include all books and other evidence bearing on Design-Builder's costs and expenses under the Contract Documents. Design-Builder shall make these records and documents available for audit and inspection to MDOT, at Design-Builder's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to Design-Builder).

25.4 Freedom of Information Act

25.4.1 Applicability of Act

Michigan's Freedom of Information Act, MCL 15.231 et seq., ("Michigan FOIA") applies to MDOT and MDOT is required to fully comply with Michigan FOIA.

25.4.2 Confidential Materials

Under no circumstances will MDOT be responsible or liable in any way to Design-Builder or any other Person for the disclosure of any materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of MDOT

26 Additional Design-Builder Obligations

26.1 Intellectual Property

The Design-Builder shall deliver, or cause to be delivered to MDOT copies of all Intellectual Property owned by or licensed to Design-Builder that it uses in providing the Work. MDOT shall have, and are hereby granted by Design-Builder, a perpetual, nonexclusive, transferable (to successor Government Entities only), royalty-free, irrevocable, worldwide, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others (solely designees and only in connection with the Project and retained by or on behalf of MDOT) to use, reproduce, modify, adapt and disclose, the Intellectual Property of or licensed to the Design-Builder solely in connection with the Project. MDOT's rights to exercise the foregoing license shall commence and endure only at the following times:

A. From and after expiration or earlier termination of the PDB Contract, for any reason whatsoever; or

B. During any time that a receiver is appointed for Design-Builder, or during any time that there is pending a voluntary or involuntary proceeding in bankruptcy in which Design-Builder is the debtor.

26.2 Coordination with Other Contractors of MDOT

MDOT reserves the right to perform and to contract with others to perform other or additional work on or near the Site. The Design-Builder shall coordinate with MDOT, such other contractors, any other third-parties working on or adjacent to the Site, and any other contractors working with such parties to the extent reasonably necessary for the performance by MDOT and such other contractors of their work, and shall cause its employees, agents, officers, and Design-Builder-Related Entities to so coordinate. If other separate contracts are awarded by MDOT, the Design-Builder shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by other contractors.

If MDOT exercises its right under Section 2.2.2 *(Work Package Contract Modifications)* to contract with other contractors to perform outstanding Work on the Project, the Design-Builder shall coordinate with such other contractors in good faith to facilitate completion of the Project in a timely and effective manner.

26.3 Interference by Other Contractors of MDOT

Except as described in the Risk Register, if the Design-Builder asserts that any of MDOT's other contractors have hindered or interfered with the progress or completion of the Work, then the Design-Builder's sole remedy shall be to seek recourse against such other contractors. The Design-Builder shall have the right to ask MDOT to resolve such dispute, provided the other contractor and its sureties have agreed to submit the dispute to MDOT, and provided that such proceeding shall be conducted at no cost to MDOT.

27 Miscellaneous Provisions

27.1 Contract Changes

27.1.1 General PDB Contract Amendments

This PDB Contract may be amended, notwithstanding its terms, only by a written instrument duly executed by the Parties or their respective successors or assigns in the same manner as this PDB Contract was originally executed.

27.1.2 Amendments, Modifications, and Change Orders

Preconstruction Services Contract Modifications, the Construction Services Contract Modification, Work Package Contract Modifications, and Contract Modifications shall be executed as described in Section 27.5.2 *(MDOT's Representative to Execute Contract Changes).*

27.2 Waiver

27.2.1 No Waiver of Subsequent Rights

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision, any course of dealing, or custom of the trade notwithstanding. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

27.2.2 Custom Does not Constitute Waiver

No act, delay, or omission done, suffered, or permitted by one Party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such Party under any Contract Document, or to relieve the other Party from the full performance of its obligations under the Contract Documents. No custom or practice between the Parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of the Contract Documents.

27.2.3 Waivers Must be in Writing

No waiver of any term, covenant, or condition of the Contract Documents shall be valid unless in writing and signed by the Party providing the waiver.

27.3 Independent Contractor

Nothing in the Contract Documents shall be construed as constituting any relationship with MDOT other than that of Project owner (MDOT) and independent contractor (the Design-Builder), nor any employer/employee relationship between MDOT and the Design-Builder's employees. Except as otherwise specified in the Contract Documents, the Design-Builder has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that the Design-Builder or any Subcontractor hires or engages to perform or assist in performing the Work. The Contract Documents

shall not be construed to create a contractual relationship of any kind between MDOT and a Subcontractor or any other Person except the Design-Builder.

27.4 Successors and Assigns

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

27.4.1 Assignment by MDOT

MDOT may assign all or part of its right, title, and interest in and to this PDB Contract, including rights with respect to the surety bonds required hereunder and any other performance security provided, to any Person that succeeds to the governmental powers and authority of MDOT.

27.4.2 Assignment by the Design-Builder; Changes of Control; Change of Organization

Without limiting Section 8.3 *(Subcontracting Requirements)*, the Design-Builder shall not otherwise sublet, transfer, assign, or dispose of any portion of this PDB Contract, delegate any of its duties hereunder, or suffer a voluntary or involuntary Change of Control, except in each case, with MDOT's prior written Approval, in MDOT's sole discretion. Except and after any Approval only, any of the foregoing actions shall be null and void *ab initio* and otherwise ineffective to relieve the Design-Builder of its responsibility for the Work assigned or delegated.

The Design-Builder shall not change the legal form of its organization in a manner that adversely affects MDOT's rights, protections, and remedies under the Contract Documents without the prior written Approval of MDOT, in MDOT's sole discretion.

27.5 Designation of, and Cooperation with Representatives

27.5.1 Designation of Authorized Representatives

Identified below are representatives of MDOT and the Design-Builder who are authorized to make decisions and bind the Parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent written notice delivered to the other Party in accordance with Section 27.10 (*Notices and Communication*). The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the Parties but who do not have authority to bind MDOT or the Design-Builder.

MDOT's Authorized representative is:

David Neubauer, PE
15300 Michigan Avenue
Marshall, MI 49068
269-789-0592
NeubauerD1@michigan.gov

The Design-Builder's representative is [●].

27.5.2 MDOT's Representative to Execute Contract Changes

Notwithstanding Section 27.5.1 (*Designation of Authorized Representatives*), the only individual person who can execute Preconstruction Services Contract Modifications, the Construction Services Contract Modification, Work Package Contract Modifications, and Contract Modifications on behalf of MDOT is MDOT's representative identified in Section 27.5.1. Such designation may be changed by a subsequent written notice delivered by MDOT to the Design-Builder in accordance with Section 27.10 (*Notices and Communication*).

27.6 Gratuities and Conflicts of Interest

Neither the Design-Builder nor any of its employees, agents, or representatives shall offer or give to an officer, official, or employee of MDOT or the State gifts, entertainment, payments, loans, or gratuities.

27.7 Survival

The Dispute resolution provisions contained in Section 22 (*Claims for Adjustment and Disputes*); the indemnification provisions contained in Section 21 (*Indemnification*) and elsewhere in the Contract Documents; the Design-Builder's obligations post-termination under Section 18.1 (*Design-Builder Responsibilities Upon Termination*); MDOT's obligation to pay termination compensation, if any; any release or waiver by or on behalf of any Design-Builder-Related Entity; the Design-Builder's obligations to pay MDOT amounts owed hereunder; MDOT's rights of offset under Section 20.2 (*Offset; Withholding; Waiver*); the Parties' respective rights and obligations under applicable Law as pertains to this PDB Contract, the Work, or the Project; the mutual waiver of consequential damages contained in Section 20.3 (*Mutual Waiver of Consequential Damages*); and all other provisions, which by their inherent character should survive termination of this PDB Contract, shall survive the termination of this PDB Contract.

27.8 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize any Person not a Party to this PDB Contract to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the indemnity provisions) expressly identify third persons or parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the Parties to the Contract Documents with respect to such third persons or parties shall remain as imposed by Law.

27.9 No Personal Liability

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

27.10 Notices and Communications

Notices and all other communications under the Contract Documents shall be in writing and shall be delivered by e-mail to MDOT's Authorized Representatives identified in Section 27.5.1 (*Designation of Authorized Representatives*).

27.10.1 Delivery of Notices

All correspondence with the Design-Builder shall be addressed to the Authorized Representative, except as otherwise directed by the Authorized Representative.

27.10.2 Receipt of Notices

Notices shall be deemed received at the time and date logged by the e-mail.

27.11 Further Assurances

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

27.12 Severability

If any clause, provision, section, or part of this PDB Contract is ruled invalid under Section 22 (*Claims for Adjustment and Disputes*) or otherwise by a court of competent jurisdiction, then the Parties shall:

A. promptly meet and negotiate a substitute for such clause, provision, section, or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the applicable Preconstruction Services Fee or GMP and Completion Deadline(s); and

B. if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.

The invalidity or unenforceability of any such clause, provision, section, or part shall not affect the validity or enforceability of the balance of this PDB Contract, which shall be construed and enforced as if this PDB Contract did not contain such invalid or unenforceable clause, provision, section, or part.

27.13 Headings

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

27.14 Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State of Michigan. All causes of action by the Design-Builder shall be brought in the Michigan Court of Claims. All causes of action by MDOT shall be brought in the Ingham County Circuit Court.

27.15 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to its subject matter.

27.16 Counterparts and Electronic Signatures

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be made and delivered electronically through the OneSpan platform.

IN WITNESS WHEREOF, the Parties have executed this Progressive Design-Build Contract as of the Effective Date.

[NTD: INSERT Design-Builder]

By: _____
Signature

Typed or Printed Name

Date

Michigan Department of Transportation

By: _____
[TITLE]

Typed or Printed Name

Date

APPROVED AS TO FORM

By: _____
[TITLE]

Typed or Printed Name

Date

Exhibit A – Acronyms and Definitions

As used in the PDB Contract to which this Exhibit A 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).

Acronyms

AASHTO	American Association of State Highway and Transportation Officials
BAV	Before and After Value
BMP	Best Management Practices
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq*.
CFR	Code of Federal Regulations
CPM	Critical Path Method
CQCM	Construction Quality Control Manager
DBE	Disadvantaged Business Enterprise
DQAM	Design Quality Assurance Manager
DQCM	Design Quality Control Manager
DQM	Design Quality Manual
ECM	Environmental Compliance Manager
EEO	Equal Employment Opportunity
FAR	Federal Acquisition Regulation
FCCM	Facilities Capital Cost of Money
FHWA	Federal Highway Administration, U.S. Department of Transportation
GEC	General Engineering Consultant
GFE	Good Faith Effort
GMP	Guaranteed Maximum Price
HAZMAT	Hazardous Material
ICE	Independent Cost Estimator
IMP	Incident Management Plan
ITP	Instructions to Proposers
JN	Job Number
MOT	Maintenance of Traffic
NEPA	National Environmental Policy Act

NHS	National Highway System
NPDES	National Pollutant Discharge Elimination System
NTE	Not-to-exceed
NTP	Notice to Proceed
OPCC	Opinion of Probable Construction Cost
OSHA	Occupational Safety & Health Administration
PE	Professional Engineer
PM	Project Manager
QA	Quality Assurance
QC	Quality Control
RCM	Request for Contract Modification
RCRA	Federal Resource Conservation Recovery Act
RFC	Release for Construction
RFP	Request for Proposals
RID	Reference Information Documents
R/W, ROW	Right-of-Way
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USFWS	U.S. Fish and Wildlife Service

Definitions

Acceleration Costs	Those fully documented increased costs reasonably incurred by Design-Builder (i.e., costs over and above what Design-Builder would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.
Accept or Acceptance	Formal conditional determination in writing by MDOT that a particular matter or item appears to meet the requirements of the Contract Documents.
Actual Cost	The Design-Builder's actual, reasonable, substantiated, direct cost to provide labor, material, equipment (owned or invoiced rental), and administrative overhead necessary for the Work; excluding profit.
Affiliate	(a) Any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any Major Participant; and (b) any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by, [i] Design-Builder, [ii] any Major Participant, or [iii] any Affiliate of Design-Builder under clause (a) of this definition. For purposes of this definition, the term “control” means the possession directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relation, or otherwise.
Applicable Standards	The standards included in Exhibit B (*Preconstruction Services Requirements*), subject to modification as described in Exhibit B, and those additional standards included in the Construction Services Contract Modification or a Work Package Contract Modification.
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 an extension of time and may reflect MDOT preferences.
At Risk Work	The meaning set forth in Section 6.9 (*At Risk Work*).
Base Plan	The Professional Services Work Product further defined in Exhibit B, Section 2.2 (*Design Submittals and Milestones*)

Baseline Work Package Schedule	The initial Approved schedule included in a Work Package Contract Modification. A Baseline Work Package Schedule is a schedule incorporating activities for Work as well as for Provisional Risks (up to the Provisional Sums). References to the Baseline Work Package Schedule include the Revised Baseline Work Package Schedule, if thereafter applicable, unless expressly stated otherwise. Each Work Package Contract Modification has an independent Baseline Work Package Schedule.
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.
Buildable Unit	A specified portion of the Project that may be designed, reviewed, and built with only limited controls and assumptions coming from the design of other portions of the Project.
Calendar Day	Every day shown on the calendar, beginning and ending at 12:01 am.
Certificate of Compliance	A certification provided by a manufacturer, producer, or supplier of a product that the product, as furnished to Design-Builder, complies with the pertinent Specification or Contract requirements. The certification shall be signed by a person who is authorized to bind the company supplying the material covered by the certification.
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 in Law	Any Law in effect at the time a Work Package Contract Modification is executed that is subsequently changed, altered, modified, or canceled that would materially affect the Design-Builder's rights or obligations pursuant to the Contract Documents.

Change of Control

Any assignment, sale, financing, grant of security interest, transfer of interest, or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Design-Builder or a material aspect of its business.

A change in the power to direct, control, or cause the direction or control of the management of any member, partner, or shareholder of the Design-Builder may constitute a Change of Control of the Design-Builder if such member possesses the power to direct or control or cause the direction or control of the management of the Design-Builder.

Notwithstanding the foregoing, the following shall not constitute a Change of Control:

1. a change in possession of the power to direct or control the management of the Design-Builder or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;
2. a change in possession of the power to direct or control the management of the Design-Builder or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a member of the Design-Builder (but not if the member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
3. an upstream reorganization or transfer of direct or indirect interests in the Design-Builder so long as there occurs no change in the Person with ultimate power to direct or control or cause the direction or control of the management of the Design-Builder;
4. a transfer of equity interests in the Design-Builder, where the transferring equity member and the transferee are under the same ultimate parent organization ownership, management, and control before and after the transfer; or
5. the exercise of minority veto or voting rights (whether provided by applicable Law, by the Design-Builder's organizational documents, or by related member or shareholder agreements or similar agreements) over major business decisions of the Design-Builder.

For purposes of this definition, a Person shall be deemed to own shares or membership interests in another Person if such Person owns the legal, beneficial, and equitable interest in their relevant shares or membership interest of the other Person.

Claim	A request by the Design-Builder for a time extension disputed by MDOT, or payment of money or damages arising from work done by or on behalf of the Design-Builder in connection with the Design Build Agreement that is disputed by MDOT. A Claim will cease to be a Claim upon resolution thereof, including resolution by execution and delivery by the Parties of a Contract Modification, a Preconstruction Services Contract Modification, or Construction Services Contract Modification.
Commission	The Michigan State Transportation Commission
Completion Deadline	Each 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 Manager	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Construction Quality Control Manager	The person identified by the Design-Builder responsible for performance of construction quality control services, as set forth in the Approved Quality Plan.
Construction Services	The Project phase beginning and ending as set forth in Section 2.2 (*Construction Services*) during which all Construction Work will be completed.
Contract Modification	A written amendment to certain terms and conditions of the Contract Documents issued in accordance with Section 15 (*Contract Modifications*).
Construction Services Contract Modification	A Contract Document modification establishing the commencement of Construction Services and satisfying the requirements set forth in Section 2.2.1 (*Construction Services Contract Modification*).
Construction Services Progress Report	A report on progress of the Construction Work submitted to MDOT monthly by the Design-Builder, in form and substance as set forth in the Construction Services Contract Modification or Work Package Contract Modification, approval of which is a condition of payment of the Design-Builder's Request for Monthly Progress Payment.
Construction Services Quality Management Plan	A document related to Design-Builder Quality Assurance and Design-Builder Quality Control for Construction Services Work.
Construction Work	All Work other than Preconstruction Work.

Contaminated Materials	(a) Any substance, product, waste or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law, (b) Any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Governmental Rule, (c) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under clause (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (d) Petroleum hydrocarbons excluding petroleum hydrocarbon products contained within regularly operated motor vehicles, (e) Asbestos or asbestos-containing materials in Structures and/or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground) and (f) Lead or lead-containing materials in Structures and/or other improvements on or in the Site. The term "Contaminated Materials" includes Hazardous Waste.
Contract	Depending on the context, (a) the Progressive Design-Build Contract, or (b) collectively, the Contract Documents.
Contract Documents	Means the Progressive Design-Build Contract and all Exhibits, Amendments, Modifications, and Change Orders, whether existing initially or created during the progression of the Progressive Design-Build Contract.
Contract Price	The total sum of money to be paid to the Design-Builder under this Progressive Design Build Contract.
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.
Cost Reconciliation Meeting	The meeting identified in Exhibit B, Section 7.5 (*Construction Cost Reconciliation Meetings*).
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.

Critical Path	The sequence of Baseline Work Package Schedule activities that determine the total minimum duration of the Work Package; the precedence of which activities have a total Float of less than or equal to zero. The Critical Path is the sequence of Baseline Work Package Schedule activities that must be completed on schedule for the Project to be completed on time in accordance with the Completion Deadlines. This is the longest duration path (or chain), in terms of time, of logically connected Construction Work activities on the Baseline Work Package Schedule, updated in accordance with the PDB Contract and, where relevant to time impact analyses, statused based upon Construction Work completed, corrected for any improper logic, improper activity durations, and errors.
Critical Path Method	A scheduling method that utilizes the Precedence Diagram Method to calculate each activity's early dates, late dates, Float values, and establishes the Critical Path through the activity network.
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.
Progressive Design-Build Contract or PDB Contract	The Progressive Design-Build Contract, as executed by MDOT and Design-Builder and any and all amendments, modifications, or Change Orders thereto.
Design-Builder	Design-builder who executes Contract with Contracting Authority for the Design-Build Project.
Design-Builder-Related Entities	Design-Builder, Major Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Design-Builder may be legally or contractually responsible.
Design-Builder Default	A Default as described in Section 19.1.1 (*Events of Breach and Default*), following notice and opportunity to cure to the extent permitted by Section 19.1.2 (*Right to Cure*) and issuance by MDOT of notice that a Design-Builder Default has occurred.
Design-Builder's Project Manager	The person designated by Design-Builder to supervise the Project and to receive delivery of notices and have full responsibility for delivery of the Work and who will act as a single point of contact in all matters on behalf of the Design-Builder.
Design-Builder Quality Assurance	All planned and systematic actions by the Design-Builder necessary to provide confidence and to certify to MDOT that all Work complies with the requirements of the Contract Documents.

Design-Builder Risk	A risk identified as a Design-Builder Risk on the Risk Register described in Section 2.4.3 (*Design-Builder Risks*).
Design-Builder Risk Contingency Sum	A fixed sum for a specific line item of Work that may be included as a contingency amount in a Work Package GMP upon agreement by the Design-Builder and MDOT. Design-Builder Risk Contingency Sums may be used at MDOT's discretion to allow the Design-Builder to utilize contingency sums for Work Packages. Where agreed as reflected in the Risk Register, Design-Builder Risk Contingency Sum may include a designation of unit pricing and the estimated number of units making up the Design-Builder Risk Contingency Sums.
Design Manager	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Design Quality Control Manager	The person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents, by the Design-Builder responsible for performance of Design-Builder Quality ~~Assurance~~Control services, as set forth in the Approved Preconstruction Services Quality Management Plan.

Differing Site Conditions

Subsurface or latent conditions encountered at the Site identified in the Professional Services Work Product resulting from Preconstruction Work that differ materially from the information provided in the work product resulting from the Preconstruction Work for such locations; or physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for work product resulting from the Preconstruction Work.

The term shall specifically exclude the following:

A. all such conditions of which the Design-Builder had, or should have had, actual or constructive knowledge as of the effective date of the Construction Services Contract Modification;

B. conditions that could have been discovered by reasonable investigation prior to the effective date of the Construction Services Contract Modification;

C. Utility facilities and all conditions arising out of, relating to, or resulting from Utility Work;

D. non-contaminated water;

E. variations in soil moisture content or groundwater levels from that indicated in the work product resulting from the Preconstruction Work;

F. Hazardous Materials;

G. Force Majeure Events, including conditions caused by Force Majeure Events

H. Any other condition or event for which risk is assigned elsewhere in the PDB Contract; and

I. any other such site conditions that would otherwise qualify for other relief expressly stated, under the terms, and subject to the conditions, of the Design Build Agreement.

Direct Costs

Actual costs for labor, equipment, and materials.

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.

Effective Date

The date of execution of the Contract by MDOT.

Engineer of Record

An engineer responsible for the final design of an element of the Work for the Design-Builder. The Engineer of Record is responsible to seal and sign the design plans in accordance with the requirements of Michigan State Board.

Environmental Approvals

The Governmental Approvals listed in the Construction Services Contract Modification or a Work Package Contract Modification that are identified as being MDOT's responsibility to obtain.

Environmental Compliance Manager	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
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 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*; the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 *et seq.*; and the Bald Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Environmental Management Plan	The environmental management plan provided by Design-Builder and Approved by MDOT as described in Exhibit B, Section 11 (*Environmental Management Plan*).
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.
Event of Default	A default as described in Section 19 (*Default of Contract/Termination for Cause*).
Federal Requirements	All Governmental Rules applicable to work financed with federal funds and the provisions required to be included in contracts.
Final Acceptance	Acceptance of the Project as described in Section 23.2 (*Final Acceptance*).
Final Acceptance Deadline	The meaning set forth in Section 5.3 (*Completion Deadlines*).
Final Work Package Plan	The meaning set forth in Exhibit B, Section 6.2 (*Final Work Package Plan*).
Firm	Any corporation, company, voluntary association, partnership, trust, or unincorporated organization that employs a Key Personnel or any other Person performing Work in connection with the Project.

Float

The amount of time that any given activity or logically connected sequence of activities shown on a Baseline Work Package Schedule may be delayed before it will affect completion of any Work as required to achieve any Completion Deadline. "Float" generally means the calculated difference between early completion times and late completion times for activities shown on a Baseline Work Package Schedule, including any float contained within an activity.

Force Majeure

Any of the following events or circumstances which directly cause the Design-Builder to be unable to perform their obligations under this Contract:

(a) war (including civil war or revolution), invasion violent act of foreign enemy or armed conflict, military or armed blockage, or military or armed takeover of the Project, occurring within the State;

(b) any act of terrorism, riot, insurrection, or civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction of the Project;

(c) national strikes not specific to the Design-Builder-Related Entities, embargoes, national unavailability or shortages of materials, that, in each case, directly causes interruption to construction;

(d) nuclear, radioactive, or biological contamination of the Project unless the source or cause of the contamination is a result of the Design-Builder-Related Entities;

(e) Sustained 100-year flood events, a tornado with an enhanced Fujita Score Rating of EF2 or greater, sinkholes or landslides caused by natural events, fire or explosions not caused by the Design-Builder, in each case directly impacting and damaging the improvements or interruption to construction of the Project;

(f) a natural seismic event, where such earthquakes and ground shaking directly impact and cause damage to any constructed temporary or permanent works of the Project;

(g) any emergency declared by a governmental entity, with authority to declare, that directly impacts the Project.

Unless specifically mentioned above, the term “Force Majeure” shall not include Normal Weather, normal wear and damage due to traffic and road maintenance, Differing Site Conditions, MDOT-Directed Changes, Utility Delays, delays, shortages, or price increases including but not limited to those delays, shortages, or price increases caused by the COVID-19 pandemic, or any other matter for which the Contract Documents specify how liability or risk is to be allocated between MDOT and Design-Builder, regardless of whether such matter is beyond Design-Builder’s control.

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.
Guaranteed Maximum Price or GMP	The maximum amount of compensation due for either a Work Package or the Total Construction of the Project (the sum of the value of all Work Packages).
GMP Line Item	Discrete units of Construction Work identified in the Risk Register and GMP.
Guarantor	Each entity (if any) providing a Guaranty.
Guaranty	Each guaranty of Design-Builder's obligations under the Contract Documents (if any).
Hazardous Waste	Waste as defined in 40 C.F.R. 261 et seq.
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 and the Utility.
Incident Management Plan	A Management Plan required by Exhibit B, Section 8 (*Safety Management Plan*) developed prior to any physical presence by the Design-Builder on the Project that addresses the Design-Builder's procedures and actions when an emergency occurs within or adjacent to the Site.
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.
Independent Cost Estimator	The Person identified by MDOT to perform independent cost estimation services.
Inspection	The act of viewing or looking carefully at the Contract and Work to verify whether all work done and materials furnished comply with the specifications and quality requirements contained in the Contract Documents.

Instructions to Proposers	The RFP document identified as Instructions to Proposers.
Intellectual Property	All current and future legal and/or equitable rights and interests in know-how (including trade secrets and confidential business information that have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, circuit layouts, plant varieties, database rights, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, other proprietary information, all analogous rights in other jurisdictions and applications (drafted or pending) of or for any of the foregoing, subsisting in or relating to the Work, the Project, Project design data or other Project data (including testing data, traffic data and Project Data). "Intellectual Property" includes software used in connection with the Project (including software used for management of traffic on the Project), and Source Code and Source Code Documentation. Intellectual Property is distinguished from submittals, notices, and all such materials generated from the physical construction and from the equipment itself, all data, sketches, charts, calculations, drawings, layouts, plans, depictions, specifications, manuals, electronic files, artwork, records, reports, analyses, studies, correspondence, and other documents and materials created or collected under the terms of, or otherwise under the Contract Documents, and other work product and other related materials that disclose Intellectual Property.
Intellectual Property Rights	All patents, copyrights, trademarks, service marks, trade secrets and all similar and related intellectual property rights protected under any Law.
Items of Archeological or Biological Significance	Any (a) human remains, (b) artifacts, and/or other items of historical, archaeological, paleontological, or geological significance, or (c) any species listed by the United States Fish and Wildlife Service as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.*, in each case to the extent that the existence of such item was not disclosed in any of the reports produced as part of the Preconstruction Work.
Key Personnel	The persons listed in Exhibit C (*Design-Build Team*), subject to revision in accordance with the Contract.
Laboratory	A testing laboratory operated by or designated by MDOT.
Labor Dispute	A controversy between the Design-Builder and the Design-Builder's employees, union, bargaining agents, suppliers, or suppliers' bargaining agents, or between unions which results in a potential or actual work stoppage.

Laws	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 "Laws" includes all consolidations, amendments, extension, or replacements, unless otherwise indicated. The term "Laws" does not include Governmental Approvals or tax laws.
Lead Contractor	The entity identified in Exhibit C (*Design-Build Team*), subject to revision in accordance with the Contract Documents.
Lead Cost Estimator	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Lead Designer	The entity identified in Exhibit C (*Design-Build Team*), subject to revision in accordance with the Contract Documents.
Lead Geotechnical Engineer	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Lead Hydraulics Engineer	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Lead Maintenance of Traffic Engineer	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Lead Road Engineer	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Lead Structures Engineer	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Lead Traffic Engineer	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Lead Utility Engineer	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
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 Design-Builder and the Design-Builder's Surety to guarantee payment of the debts covered by the bond.
Liquidated Damages	The damages described in Section 20.1 (*Liquidated Damages and Disincentives*).

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 20 percent or greater interest in Proposer; any Subcontractor that will perform Work valued at 20 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.
Management Plans	The documents described in Exhibit B (*Preconstruction Services Requirements*) that describe how the Design-Builder will administer the Construction Work. Examples of Management Plans include the Safety Management Plan, Permitting and Environmental Mitigation Plan, and the Construction Schedule Coordination Plan.

MDOT-Caused Delays

Any of the following events, or the cumulative effect of any such delays as set forth below having resulted in a delay to then-current Critical Path (as of the date of the event):

1. a MDOT-Directed Change;
2. failure of MDOT to obtain (but not to maintain) any Governmental Approvals for which MDOT is responsible for obtaining;
3. re-evaluation, modification, or supplement to any MDOT-provided Governmental Approval issued by MDOT acting in its capacity as a Governmental Person, where such re-evaluation, modification, or supplement is not caused by any Design-Builder-Related Entity;
4. failure of MDOT to provide a response to a complete, compliant Design-Builder submittal within the time period committed under Exhibit B (*Preconstruction Services Requirements*);
5. failure of MDOT to provide any required ROW, Utility Easement, or other real property right by the applicable date identified in a Work Package Contract Modification;
6. the occurrence of a MDOT release of Hazardous Materials;
7. any material damage to the Project directly caused by MDOT that requires additional Construction Work; or
8. any other event that the Contract Documents expressly state shall be treated as a MDOT-Caused Delay; provided that the Design-Builder has used commercially reasonable efforts to mitigate the subject MDOT-Caused Delay; provided, further, that the exercise of any right of MDOT hereunder, at law, or in equity is not, nor shall be construed to be, a MDOT-Caused Delay; and provided, further, that any provision that expressly states that such event or circumstance does not constitute a MDOT-Caused Delay (or a MDOT-Directed Change, as relates to this definition of MDOT-Caused Delay), is not, nor shall be construed to be, a MDOT-Caused Delay.

MDOT shall not take into account Float in calculating the duration of such MDOT-Caused Delay.

MDOT-Directed Changes

Any changes in the Work (including changes in the standards applicable to the Work) that MDOT has directed the Design-Builder to perform as described in Section 15 (*Contract Modifications*), excepting:

1. any provision that expressly states that such event or circumstances does not constitute a MDOT-Directed Change;
2. those directives or prerogatives expressly reserved to MDOT; and
3. , the exercise of any right of MDOT, in either case, hereunder, at law, or in equity.

MDOT's Project Manager	The person designated by MDOT, on MDOT's behalf, to direct the Project.
MDOT Risk	A risk identified as a MDOT Risk on the Risk Register described in Section 2.4.1 (*MDOT Risks*)
Monthly Schedule Update	A monthly schedule submittal provided by the Design-Builder after a Baseline Work Package Schedule is Approved, describing and demonstrating progress in the Construction Work since the last Monthly Schedule Update (or for the first, since the Approved Baseline Work Package Schedule) for which, upon Approval by MDOT, the Design-Builder can be paid.
Municipal Utility	A Utility owned and operated by a governmental agency having corporate status and usually powers of self-government (city, township, village, etc.).
New Environmental Approval	Any of the following: (a) a new Governmental Approval of the same type as an Environmental Approval; and (b) a revision, modification or amendment to one or more of the Environmental Approvals.
Nonconforming Work	Work performed that does not meet requirements of the Contract Documents.
Notice of Final Acceptance	The written notice issued by MDOT to Design-Builder under Section 23.2.2 (*Inspection and Issuance of Notice of Final Acceptance*).
Notice of Substantial Completion	The written notice issued by MDOT to Design-Builder under Section 23.1.3 (*Notice of Substantial Completion*).
Open Book Basis	Allowing MDOT to review all underlying assumptions, information, documents, and data associated with the issue in question, including assumptions as to costs of the Work (including extra work), delay costs, changes in cost, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, quotes, estimates, proposals, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, gross commercial revenues, insurance rates, insurance proceeds, credits and refunds, letter of credit fees, overhead, profit, and other items reasonably required by MDOT to satisfy itself as to the reasonableness and accuracy of any amount.
Opinion of Probable Construction Cost	An estimate of the Project's Guaranteed Maximum Price developed after Base and Preliminary Plan submission utilizing the cost estimating principles identified in Exhibit B, Section 7 (*Cost Estimating*).
Performance Bond	The security furnished by the Design-Builder and the Design-Builder's Surety to guarantee performance of the Work in accordance with the Contract.
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.
Preconstruction Services	The Project phase beginning and ending as set forth in Section 2.1 (*Preconstruction Services)* during which Preconstruction Work will be performed.
Preconstruction Services Compensation	The meaning set forth in Section 13.1 (*Preconstruction Services Compensation*).
Preconstruction Services Contract Modification	A Contract Document modification affording additional or modified Preconstruction Work, extending duration of the Preconstruction Services, or increasing the Preconstruction Services Fee.
Preconstruction Services Fee	The maximum amount payable by MDOT for Preconstruction Services Work pursuant to Section 13.1 (*Preconstruction Services Compensation*).
Preconstruction Services Progress Report	A report on progress of the Preconstruction Work submitted to MDOT monthly by the Design-Builder, in form and substance as agreed upon by the Parties, approval of which is a condition of payment of the Design-Builder's payment for Preconstruction Services in accordance with Section 13.1.1 (*Payment of Preconstruction Services Compensation*).
Preconstruction Services Quality Plan	The meaning set forth in Exhibit B, Section 3 (*Preconstruction Services Quality Management Plan*).
Preconstruction Services Schedule Coordination Plan	The meaning set forth in Exhibit B, Section 4 (*Preconstruction Services Schedule Management*).
Preconstruction Services Schedule of Values	A detailed schedule apportioning Preconstruction Services Compensation among activities associated with the Preconstruction Work in amounts to be paid to the Design-Builder by MDOT at milestones mutually agreed upon by the Parties.
Preconstruction Work	All Work, including Professional Services Work Product necessary in connection with the preparation and finalization of the Construction Services Contract Modification or any Work Package Contract Modification, including any such work described in the Preconstruction Services Contract Modification. For clarity, the Preconstruction Work shall not include any Construction Work authorized by a Work Package Contract Modification.
Preliminary Plan	The Professional Services Work Product further defined in Exhibit B, Section 2.2 (*Design Submittals and Milestones*)
Preliminary Work Package Plan	The meaning set forth in Exhibit B, Section 6.1 (*Preliminary Work Package Plan*).
Price Facilitator	The MDOT or MDOT's representative that will receive and review the OPCCs submitted by the Design-Builder and the ICE in accordance with the process described in Exhibit B, Section 7 (*Cost Estimating*).

Private Utility	Privately owned facilities which convey or transmit the commodities outlined in the definition of Utility of this section, but devoted exclusively to private use.
Private Utility Owner	Any owner or operator of a facility which is not a Public or Municipal Utility.
Professional Services Work Product	All drawings, specifications, reports, calculations, records, or submittals at any stage of development or revision developed during Preconstruction Services relating to the Project.
Project	The Marshall Modernization Progressive Design-Build Project as identified in the Recitals to this Progressive Design-Build Contract and further described in 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.
Project Manager	The individual person identified as such in Exhibit C (*Design Build Team*), subject to revision in accordance with the Contract Documents.
Project Website	The MDOT-controlled document management system that will be utilized by the Parties to submit documents and Professional Service Work Product.
Proposal	Those documents constituting Design-Builder's response to the RFP, including any supplements to proposals as may have been requested by MDOT.
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.
Provisional Risk	A risk identified as a Provisional Risk in the Risk Register.
Provisional Sum	A fixed sum for a specific line item of Work that is included as an allowance amount in a Work Package GMP upon agreement by the Design-Builder and MDOT. Provisional Sums may be used in instances when the actual price or quantity for such item of work is unknown at the time of agreement on a Work Package GMP. Where agreed as reflected in the Risk Register, Provisional Sums may include a designation of unit pricing and the estimated number of units making up the Provisional Sums.

Public Utility	A Utility that meets the criteria, as verified by the Michigan Public Service Commission, in MDOT's "Utility Classification for Use of State Highway Right-of-Way" (https://www.michigan.gov/mdot/business/permits/utility-coordination/utility-classification-state-highway-right-of-way#:~:text=Use%20of%20state%20highway%20right%20of%20way%20by%20utilities%20shall,%3A%20municipal%2C%20public%20and%20private).
Public Utility Owner	An owner or operator of a Public Utility.
Punch List	The list of Work items with respect to the Project which remain to be completed after achievement of Substantial Completion, as applicable, generally limited to minor incidental items of Work which have no adverse effect on the safety or operability of the Project, and which can be performed without shutting down a Traffic Lane or Shoulder.
Quality Control Manager	The individual employed by the Design-Builder responsible for the overall Quality Control of the Work.
Redeploy or Redeploying	Resequencing, reallocating, or redeploying forces to other portions of the Work or Site or to other activities unrelated to the Work.
Reference Information Documents	The documents designated as Reference Information Documents in the RFP.
Released for Construction	The Professional Services Work Product further defined in Exhibit B, Section 2.2 (*Design Submittals and Milestones*)
Relief Event	The meaning set forth in Section 14.1.1 (*Relief Event Defined)*.
Relief Event Notice	The meaning set forth in Section 14.2.1 (*Relief Event Notice)*.
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.
Request for Change Proposal	A proposal issued by MDOT under Section 15 (*Contract Modifications*).
Request for Contract Modification or RCM	A Design-Builder initiated request for a change order made pursuant to Section 14 (*Relief & Compensation*) and Section 15 (*Contract Modifications*).
Request for Monthly Progress Payment	A request made by Design-Builder for payment pursuant to Section 13.2.3.1 (*Request for Monthly Progress Payment)*.
Revised Baseline Work Package Schedule	The adjusted Baseline Work Package Schedule (or prior Revised Baseline Work Package Schedule), further to time impact analyses when the Design-Builder is granted an extension of time under the Contract Documents, or the Parties otherwise agree in writing. References to the "Baseline Work Package Schedule" mean to the "Revised Baseline Work Package Schedule" if, pursuant to the PDB Contract, the Baseline Work Package Schedule was revised.

Request for Proposals	The Request for Proposals for the Project issued by MDOT including all addenda and clarifications thereto.
Right-of-Way (ROW)	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. The term "Right-of-Way" is sometimes used to indicate Right-of-Way and is sometimes used to indicate rights-of-way for other facilities.
Risk Register	The meaning set forth in Section 2.4 (*Risk Register*).
Risk Register Event	The meaning set forth in Section 2.4 (*Risk Register*).
Risk Workshop	The meetings held to develop and update the Risk Register, as more fully set forth in Exhibit B, Section 5 (*Risk Management*).
Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.
Right-of-Way Work Map	A map that includes permanent Right-of-Way, Consent to Grades, Consent to Grade Drives, and Consent to Construct Sidewalks to be acquired by MDOT or other government agencies.
Safety Plan	The safety plan developed by the Design-Builder as part of the Preconstruction Work and Approved by MDOT.
Schedule of Values	A detailed schedule apportioning a Work Package GMP among activities associated with the Work of the applicable Work Package Contract Modification and any Risk Register Event (in the latter case, as may be allocable) in amounts to be paid to the Design-Builder by MDOT at milestones mutually agreed upon by the Parties.
Shared Provisional Sum	The meaning set forth in Section 2.4.2 (*Provisional Risks*).
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 Design-Builder 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 Specifications 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	MDOT's 2020 Standard Specifications for Construction, as modified in the 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.
Subcontract	Any subcontract to perform any part of the Work or provide any Materials, Equipment or supplies for any part of the Work between Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontracting Management Plan	The meaning set forth in Exhibit B, Section 9 (*Subcontracting Management Plan*).
Subcontractor	Any Person with whom Design-Builder has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Submittals Matrix	The meaning set forth in Exhibit B, Section 3.1.1 (*Design-Builder Responsibility*).
Substantial Completion	Completion of the Project as described in Section 23.1 (*Substantial Completion of a Work Package*).
Substantial Completion Deadline	The meaning set forth in Section 5.3 (*Completion Deadlines*).
Supplemental Specifications	MDOT approved additions and revisions to the Standard Specifications.
Supplier	Any Person other than employees of Design-Builder not performing Work at the Site that supplies machinery, equipment, materials or systems to Design-Builder or any Subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	Each properly licensed surety company Approved by MDOT which has issued the Payment and Performance Bond.
Technical Provision	The documents developed during the Preconstruction Services that govern the Design-Builder obligations, duties, and responsibilities during the Construction Services, conformance with which is a condition of Acceptance of, and payment for Work by MDOT.
Total Construction GMP	The meaning set forth in Section 13.2 (*Total Construction GMP*).

Transportation Management Plan	A document that describes how the Design-Builder will meet all MOT requirements for each Buildable Unit and Work Package as appropriate. MOT requirements will be determined in collaboration between the Design-Builder and MDOT.
Utility	Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems and street lighting systems, which directly or indirectly serve the public. The term "Utility" shall also mean the utility company inclusive of any wholly owned or controlled subsidiary. 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."
Utility Agreement	An Agreement made between MDOT and a Utility related to Utility relocation or accommodation.
Utility and Third-Party Coordination Plan	A document related to utility and third-party coordination obligations of the Design-Builder including a Utility Disposition Plan and Utility Reference Plan Sheet.
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 Design-Builder'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	A legal document used to grant permission to private, governmental, and public entities for occupying, constructing, operating, using, or maintaining specified operations or facilities within the state highway ROW.
Utility Relocation Plans	The design plans for Relocation of a Utility impacted by the Project to be prepared by Design-Builder or the Utility Owner.
Utility Removal Work	Work necessary to remove any Utilities for which leaving the Utilities in-place is not feasible or not permitted, or which Design-Builder otherwise proposes to be removed in order to accommodate or permit construction of the Project, regardless of whether or not replacements for such Utilities are being installed in other locations.

Utility Work	(a) The Work associated with Relocation of Utilities, including the design, construction, installation, manufacture, supply, testing and inspection, adjustments (including manholes and valves), and otherwise required by the Contract Documents, including all labor, Materials, Equipment, supplies, utilities and subcontracted services provided or to be provided by Design-Builder and/or the Utility Owners, and (b) any Betterments added to the Work.
Validation Phase	The initial portion of the Preconstruction Services wherein the Design-Builder performs the Work identified in Exhibit D (*Validation Phase Scope and Fee*)
Work	Depending upon the placement and context of its use, Work shall mean one or more of the Preconstruction Work, Construction Work, or all or any combination of the foregoing. In general, Work shall include, in totality and in each of the Preconstruction Services, and Construction Services, as applicable, all duties, services, and items to be furnished and provided by Design-Builder as required by the Contract Documents. In certain cases, the term is also used to mean the products of the Work.
Work Package	The meaning set forth in Section 2.2.2 (*Work Package Contract Modifications*).
Work Package Contract Modification	A Contract Document modification establishing the commencement of a Work Package and satisfying the requirements set forth in Section 2.2.2 (*Work Package Contract Modifications*) and Exhibit B, Section 17 (*Work Package Contract Modifications).*
Work Package GMP	The maximum amount of compensation payable by MDOT identified in any Work Package Contract Modification.
Working Day	Any Calendar Day other than Saturday, Sunday, a Holiday, all days between and including December 24 to January 1, and MDOT furlough days as directed by the State of Michigan. A Working Day is deemed over at 3:00PM Eastern Standard Time.
Working Drawings	Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which illustrate the construction of the Work.

Exhibit B – Preconstruction Services Requirements

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1 Introduction

1.1 Project Description

1.1.1 General Description

The Project is located in Emmett and Marshall townships and the city of Marshall in Calhoun County, and includes construction for the following major items of Work:

- Anticipated project improvement limits include:
  - JN 217737 – M-96 (Michigan Avenue) from east of Eden Street to South 15 Mile Road and associated local road connections
  - JN 218872 – I-69/Michigan Avenue Interchange, I-94/I-69 Interchange, I-69 from south of Michigan Avenue to the I-94 Interchange and I-94 from 13 Mile Road to the I-69 Interchange
  - JN 219004 – Michigan Avenue from Strongwood Avenue to Wheatfield Parkway and from M-311 (11 Mile Road) to East of Eden Street.11 Mile Road from the MDOT owned, Amtrak maintained Railroad tracks to north of H Drive North, and associated local road connections.
  - JN 219007 – I-94 from west of Michigan Avenue to 13 Mile Road and the I-94/11 Mile Road/I-94BL Interchange
- Anticipated Project phasing
  - Phase 1 – complete improvements to M-96 from the western edge of the anticipated initial development site east to south 15 Mile Road
    - This phase must be completed to accommodate opening of economic development by 2026. Substantial construction completion (roadway open to traffic with available access to properties) needs to be completed to ensure facilitation of the anticipated traffic volumes due to development in the area.
  - Phase 2 – complete improvements along I-94 and I-69 along with interchange upgrades at I-94/I-69 and I-69/M-96
  - Phase 3 – complete improvements along M-311 and the interchange of I-94/M-311
  - Phase 4 – complete improvements along M-96 from M-311 to the POB of Phase 1.

Do not rely on the physical description in this Section 1.1.1 to identify all Project components. Determine the full scope of the Project by thorough examination of the RFP and the Project Site, or as may be reasonably inferred from such examination.

1.1.2 Other Projects Within the Corridor

Coordinate all Work and cooperate with the holders of separate contracts on or near the Work, both present and future, and their forces.

Conduct the operations so as to cooperate with and interfere as little as possible with activities of other contractors, Utilities, or any public authority on or near the Work, and as directed by MDOT. MDOT may perform other work and permit Public Utility companies and others to do work on or near the Project. Perform the Work to ensure public convenience and safety and complete coordination efforts associated with maintaining traffic.

The following projects are known or anticipated at this time:

A. I-69 Design Build Eaton and Calhoun Counties

B. I-94 Calhoun Design Build

C. I-69 Tree Clearing (M-60 to M-96)

D. MAEDA (City of Marshall) – Water and Sewer Infrastructure

E. MAEDA (City of Marshall) – MAJOR Industrial Park Site Readiness Infrastructure

2 Project Management

This project will be managed with a document control Project Website. All Project deliverables and submittals shall be submitted in electronic format to a secure Project Website, unless otherwise noted. The Design-Builder is not responsible for providing a Project Website. If a submittal is too large to submit to the Project Website or is submitted to MDOT by means other than the Project Website, coordinate with MDOT's Project Manager to determine the most suitable method for transmitting the submittal to MDOT.

Work within the parameters of the Project Website to receive Project information notifications via e-mail and download Project information from the Project Website. MDOT reserves the right to limit security levels. The Design-Builder is responsible for information provided to MDOT by their personnel via the Project Website.

Deliverables submitted to the Project Website shall be in portable document format (PDF) unless otherwise noted.

MDOT intends to use Bluebeam® Revu® software to provide and consolidate comments in response to the Design-Builder's submittal(s). All responses from the Design-Builder to MDOT comments shall be done using Bluebeam® Revu ® and it will be the Design-Builder's responsibility to obtain a licensed copy of the software.

A training session for the Project Website and Bluebeam® Revu® will be provided by MDOT or its representative.

2.1 Preconstruction Services Administrative Requirements

Conduct all Preconstruction Services Work necessary to meet the requirements of the Contract Documents, including preparing, documenting, revising, and submitting information that details the Work and changes to the Work.

2.1.1 Design-Builder Directory and Organization

Following execution of the PDB Contract, the Design-Builder shall submit a directory containing the contact information for all Key Personnel and discipline leadership personnel identified by function. The directory shall include the following information for each contact:

A. Title/role for the Project;

B. Area of responsibility;

C. E-mail address;

D. Mobile telephone number; and

E. Office information:

   i. Location/address; and

   ii. Main office telephone number.

The Design-Builder shall also submit an organization chart in electronic format that includes, at a minimum, personnel responsible for the following positions and/or functions:

A. Key Personnel;

B. All Quality Control and Quality Assurance positions;

C. Environmental compliance;

D. Subcontracts and procurement;

E. Design for each discipline;

F. Coordination lead for each Third Party;

G. Safety positions; and

H. Project controls.

The organization chart shall depict lines of authority, reporting structure, and stop-work authority (as applicable). The directory and the organization chart shall be provided in a location accessible to MDOT (e.g., the document management system). The Design-Builder shall manage the directory and the organization chart throughout the course of the Project.

2.1.1.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Draft Organizational Chart	Review	Within 30 Calendar Days of executing the Progressive Design-Build Contract	2.1.1
Updates, if applicable	Review	Monthly	2.1.1
Final Organizational Chart	Acceptance	Within 5 Working Days of receiving MDOT comments	2.1.1

2.1.2 Standards

The Design-Builder shall complete the Work, including the development of Technical Provisions and Management Plans, in accordance with the requirements of the standards in Table 1 (*Standards*). Modifications to the standards may be requested for:

A. any portion of the Project where the design does not meet the minimum values or ranges established in the standards provided in Table 1; and

B. any portion of the Project where the design criteria does not meet minimum values or ranges established for the Project as set by the 10 controlling criteria as defined by "AASHTO – A Policy on Geometric Design of Highway and Streets" (i.e., Design Exceptions).

The Design-Builder shall submit requests for modification as they become aware of a need to deviate from the standards described below. Approval is required prior to incorporating the deviation in the Base Plan Buildable Unit Submittal or the Preliminary Plan Buildable Unit Submittal as described in Section 2.2 (*Design Submittals & Milestones*). The Design-Builder shall incorporate documentation of Approval into the Work Package Contract Modifications.

Additional documents may be added to Table 1 during Preconstruction Services prior to execution of Work Package Contract Modifications. All documents in Table 1 shall be the most recent version unless

otherwise identified and shall also include any supplemental, additional, amended, or auxiliary documents.

Table 1: Standards

Availability Legend:

IS = Industry Standard, Design-Builder's responsibility to acquire.
W = Standard is available as a download on the organization's Website, Design-Builder's responsibility to acquire.
E = Document to be given to Design-Builder in electronic format.

Organization	*Standard*	*Availability*
AASHTO	A Policy on the Accommodation of Utilities Within Freeway Right-of Way, 5th Edition, 2005	IS
AASHTO	A Guide for Accommodating Utilities Within Highway Right-of Way, 4th Edition, 2005	IS
AASHTO	A Guide for Transportation Landscape and Environmental Design, 2nd Edition, 1991	IS
AASHTO	A Guide for Achieving Flexibility in Highway Design, 1st Edition, 2004	IS
AASHTO	A Policy on Geometric Design of Highways and Streets, 7th Edition, 2018	IS
AASHTO	A Policy on Design Standards Interstate System, 6th Edition, 2016	IS
AASHTO	Roadway Lighting Design Guide, 7th Edition, 2018	IS
AASHTO	Construction Handbook for Bridge Temporary Works, 1st Edition 1995 with (2008) Current Interims	IS
AASHTO	Guide Design Specifications for Bridge Temporary Works,1st Edition, 1995 with (2008) Current Interims	IS
AASHTO	Guide for Design of Pavement Structures,4th Edition, 1993 with 1998 Supplement	IS
AASHTO	Guide for Park-and –Ride Facilities, 2nd Edition, 2004	IS
AASHTO	Guide for the Development of Bicycle Facilities, 4th Edition, 2012	IS
AASHTO	Guide for the Planning, Design, and Operation of Pedestrian Facilities, 1st Edition, 2004	IS
AASHTO	Guide Specifications for Design of Pedestrian Bridges, 2nd Edition, 2009	IS
AASHTO	Guide Specifications for Horizontally Curved Steel Girder Highway Bridges, 2003 and Errata	IS
AASHTO	LRFD Bridge Construction Specifications, 2nd Edition with (2008) Current Interims	IS
AASHTO	LRFD Bridge Design Specifications, 8th Edition (2017)	IS
AASHTO	LRFD Guide Specifications for the Design of Pedestrian Bridges, 2nd Edition, 2009 with 2015 Interim Revisions	IS
AASHTO	Manual for Bridge Evaluation, 3rd Edition (2018), with Current Interims	IS
AASHTO	Manual on Subsurface Investigation ,1st Edition, 1988	IS
AASHTO	Provisional Standards, 2014 Edition	IS
AASHTO	Roadside Design Guide, 4th Edition, 2011	IS
AASHTO	Right of Way and Utilities Guidelines and Best Practices, 2004	IS
AASHTO	Standard Specification for Transportation Materials and Methods of Sampling and Testing, 29th Edition and AASHTO Provisional Standards, 2009 Edition	IS
AASHTO	Standard Specifications for Highway Bridges, 17th Edition with Current Interims	IS
AASHTO	Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 6th Edition (2013) with Current Interims	IS
AASHTO	Steel Bridge Erection Guide Specification, 2014	IS

Organization	*Standard*	*Availability*
AASHTO	AASTHO Guide Specifications – Thermal Effects in Concrete Bridge Superstructures, 1st Edition	IS
AASHTO	AASHTO/AWS D1.5M/D1.5:2010 Bridge Welding Code, 6th Edition	IS
AASHTO/NSBA Steel Bridge Collaboration	Guide Specification for Application of Coating Systems with Zinc-Rich Primers to Steel Bridges, S8.1-2014 https://www.aisc.org/globalassets/nsba/aashto-nsba-collab-docs/s-8.1-2014-guide-specification-for-application-of-coating-systems.pdf	W
AASHTO/NSBA Steel Bridge Collaboration	Shop Detail Drawing Review/Approval Guidelines, G 1.1-2000 https://www.aisc.org/globalassets/nsba/aashto-nsba-collab-docs/g-1.1-2020-shop-detail-drawing-review-approval-guidelines.pdf	W
AASHTO/NSBA Steel Bridge Collaboration	Shop Detail Drawing Presentation Guidelines, G1.3-2002 https://www.aisc.org/globalassets/nsba/aashto-nsba-collab-docs/g-1.3-2002-shop-detail-drawing-presentation-guidelines.pdf	W
AASHTO/NSBA Steel Bridge Collaboration	Steel Bridge Bearing Design and Detailing Guidelines, G9.1-2004 https://www.aisc.org/globalassets/nsba/aashto-nsba-collab-docs/g-9.1-2004-steel-bridge-bearing-design-and-detailing-guidelines.pdf	W
AASHTO/NSBA Steel Bridge Collaboration	Steel Bridge Erection Guide Specification, S10.1-2019 https://www.aisc.org/nsba/design-and-estimation-resources/aashto-nsba-collaboration/aashto-nsba-collaboration2/	W
AASHTO/NSBA Steel Bridge Collaboration	Steel Bridge Fabrication Guide Specification, S 2.1-2008 https://www.aisc.org/globalassets/nsba/aashto-nsba-collab-docs/s2.1-2018-steel-bridge-fabrication-guide-specification.pdf	W
AASHTO/NSBA Steel Bridge Collaboration	Steel Bridge Fabrication QC/QA Guide Specification, G 4.1-2019 https://www.aisc.org/globalassets/nsba/aashto-nsba-collab-docs/g-4.1-2019-steel-bridge-fabrication-qc_qa-guidelines.pdf	W
ACI	318-08: Building Code Requirements for Structural Concrete and Commentary	IS
ADA	ADA Standards for Accessible Design http://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm	W
Aluminum Association for Alloy	Number 319.0	IS
American Congress on Surveying and Mapping and the American Society of Civil Engineers	Definitions of Surveying and Associated Terms stolen	IS
ANSI	B2.1	IS
ANSI	American Standards for Nursery Stock, ANSI Z60.1	IS
AREMA	Manual for Railway Engineering, 2014	IS
ASCE	Practical Highway Esthetics	IS
ASCE	Recommended Practice for Plugging Soil Borings, 1969	IS
ASTM	Standards	IS
ATSSA	Quality Guidelines for Temporary Traffic Control Devices & Features	IS
AWWA	Standards	IS
Telcordia	Document No. GR-326, Issue 4, Generic Requirements for Single-Mode Optical Fiber Connectors and Jumper Assemblies	IS
Code of Federal Regulations	Title 23 (Highways), Chapter 1, Part 752 Landscape and Roadside Development https://www.ecfr.gov/current/title-23/part-752	W
CTS	Context Sensitive Design, THE ROAD BEST TRAVELLED, Executive Summary https://www.dot.mn.gov/context-sensitive-solutions/pdf/csd-summary050800.pdf	W

Organization	*Standard*	*Availability*
EIA/TIA Collaboration	TIA/EIA-455-171-A FOTP-171	IS
EIA/TIA Collaboration	TIA/EIA-455-203 FOTP-203	IS
Electronics Industries Alliance (EIA)	Standards	IS
EGLE/MDNR	A Guide to the Control and Management of Invasive Phragmites https://www.michigan.gov/invasives/-/media/Project/Websites/invasives/Documents/Action/egle-ais-guide-phragmites.pdf?rev=caf5cf02609645a9bbcb09fa6a1de9fe&hash=723D0940444367112DC3A63EB9D2DB10	W
EGLE	Computing Flood Discharges for Small Ungaged Watersheds https://www.michigan.gov/documents/deq/wrd-scs_558239_7.pdf	W
EGLE	Geological Survey Division, Stratigraphic Lexicon for Michigan, 2001 http://www.michigan.gov/documents/deq/GIMDL-BU08_216121_7.pdf	W
FHWA	Bicycle and Pedestrian Planning, Program, and Project Development, September 2019 https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/guidance_2019.pdf	W
FHWA	Corrosion / Degradation of Soil Reinforcements for Mechanically Stabilized Earth Walls and Reinforced Soil Slopes, (FHWA-NHI-09-087), November 2009 http://www.fhwa.dot.gov/engineering/geotech/pubs/nhi09087/nhi09087.pdf	W
FHWA	Geotechnical Engineering Circular No. 12 – Design and Construction of Driven Pile Foundations, Volumes I and II (FHWA-NHI-16-009 and FHWA-NHI-16-010), July 2016 https://www.fhwa.dot.gov/engineering/geotech/pubs/gec12/index.cfm	W
FHWA	Geotechnical Engineering Circular No. 10 – Drilled Shafts: Construction Procedures and LRFD Design Methods, (FHWA-NHI-18-024), September 2018 https://www.fhwa.dot.gov/engineering/geotech/foundations/	W
FHWA	Geotechnical Engineering Circular No. 11 – Design and Construction of Mechanically Stabilized Earth Walls and Reinforced Soil Slopes, (FHWA-NHI-10-024 and FHWA-NHI-10-025), November 2009 https://www.fhwa.dot.gov/engineering/geotech/pubs/nhi10024/	W
FHWA	Flexibility in Highway Design, (FHWA-PD-97-062) https://www.fhwa.dot.gov/environment/publications/flexibility/	W
FHWA	Geotechnical Engineering Circular Number 4, Ground Anchors and Anchored Systems, (FHWA-IF-99-015), June 1999 http://www.fhwa.dot.gov/engineering/geotech/pubs/if99015.pdf	W
FHWA	Geotechnical Engineering Circular No. 9 – Design and Analysis of Laterally Loaded Deep Foundations, (FHWA-NHI-18-031), April 2018 https://www.fhwa.dot.gov/engineering/geotech/foundations/	W
FHWA	Geotechnical Engineering Circular No. 13 – Ground Modification Methods Reference Manual, Volumes I and II, (FHWA-NHI-16-027), April 2017 https://www.fhwa.dot.gov/engineering/geotech/pubs/nhi16027.pdf	W
FHWA	Highway Traffic Noise: Analysis and Abatement Guidance, December 2011 http://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guidance/revguidance.pdf	W
FHWA	Hydraulic Design Series Number 7, Hydraulics Design of Safe Bridges, (FHWA-HIF-12-018), April, 2012 http://www.fhwa.dot.gov/engineering/hydraulics/pubs/hif12018.pdf	W
FHWA	Hydraulic Design Series Number 4, Introduction to Highway Hydraulics, (FHWA-NHI-08-090), June 2008 https://www.fhwa.dot.gov/engineering/hydraulics/pubs/08090/HDS4_608.pdf	W

Organization	*Standard*	*Availability*
FHWA	Hydraulic Engineering Circular Number 5, Hydraulic Design of Highway Culverts, Third Edition (FHWA-HIF-12-026), April, 2012 http://www.fhwa.dot.gov/engineering/hydraulics/pubs/12026/hif12026.pdf	W
FHWA	Hydraulic Engineering Circular Number 14 (HEC-14), Hydraulic Design of Energy Dissipaters for Culverts and Channels, (FHWA-NHI-06-086), July 2006 https://www.fhwa.dot.gov/engineering/hydraulics/pubs/06086/hec14.pdf	W
FHWA	Hydraulic Engineering Circular Number 18 (HEC-18), Evaluating Scour at Bridges, (FHWA-HIF-12-003), April, 2012 http://www.fhwa.dot.gov/engineering/hydraulics/pubs/hif12003.pdf	W
FHWA	Hydraulic Engineering Circular Number 21 (HEC-21), Design of Bridge Deck Drainage Systems, (FHWA-SA-92-010), May 1993 http://www.fhwa.dot.gov/engineering/hydraulics/pubs/hec/hec21.pdf	W
FHWA	Hydraulic Engineering Circular Number 22 (HEC-22), Urban Drainage Design Manual, Third Edition(FHWA-NHI-10-009), September, 2009 https://www.fhwa.dot.gov/engineering/hydraulics/pubs/10009/10009.pdf	W
FHWA	Hydraulic Engineering Circular Number 23 (HEC-23), Bridge Scour and Stream Instability Countermeasures - Experience, Selection and Design Guidance, Third Edition, Volume1 and Volume 2(FHWA-NHI-009-111/112), September, 2009 http://www.fhwa.dot.gov/engineering/hydraulics/pubs/09111/09111.pdf http://www.fhwa.dot.gov/engineering/hydraulics/pubs/09111/09112.pdf	W
FHWA	Manual for Design & Construction Monitoring of Soil Nail Walls, (FHWA-SA-96-069R), August 1999	W
FHWA	Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines, (FHWA-NHI-00-043), March 2001	W
FHWA	Micropile Design and Construction Reference Manual, (FHWA-NHI-05-039), 2005	IS
FHWA	Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects http://www.fhwa.dot.gov/reports/utilguid/if03014.pdf	W
FHWA	Public Involvement Techniques for Transportation Decision-Making (FHWA-HEP-15-044) 2015 https://www.fhwa.dot.gov/planning/public_involvement/publications/pi_techniques/page00.cfm	W
FHWA	Publication No. FHWA-RD-00-067: Roundabouts: An Informational Guide https://www.fhwa.dot.gov/publications/research/safety/00067/index.cfm	W
FHWA	The Cone Penetration Test	IS
FHWA	The Pressuremeter Test for Highway Applications	IS
FHWA	Geotechnical Engineering Circular No. 5 – Geotechnical Site Characterization, (FHWA-NHI-16-072) https://www.fhwa.dot.gov/engineering/geotech/subsurface/	W
Great Lakes –Upper Mississippi River Board (GLUMRB)	Recommended Standards for Water Works, 2018	W
Great Lakes –Upper Mississippi River Board (GLUMRB)	Recommended Standards for Wastewater Facilities, 2014 https://www.health.state.mn.us/communities/environment/water/tenstates/standards.html	W
Institute of Electrical and Electronic Engineers (IEEE)	National Electrical Safety Code	IS

Organization	*Standard*	*Availability*
Illuminating Engineering Society of North America (IES)	American National Standard Practice for Design and Maintenance of Roadway and Parking Facility Lighting, RP-8-18, ANSI Approved	IS
Institute of Transportation Engineers (ITE)	Standards	IS
International Code Council (ICC)	International Building Code	IS
International Municipal Signal Association	Specification No. 50-2	IS
International Society of Arboriculture (ISA)	Guide for Plant Appraisal, 9th Edition	IS
ISO	ISO 9000, 2000 Revision	IS
ISO	ISO 9001, 2008 Revision	IS
MDEQ	Computing Flood Discharges for Small Ungaged Watersheds https://www.michigan.gov/egle/about/organization/Water-Resources/hydrologic-data/computing-flood-discharges	W
MDEQ	Geological Survey Division Stratigraphic Lexicon for Michigan 2001 http://www.michigan.gov/documents/deq/GIMDL-BU08_216121_7.pdf	W
MDNR	Invasive Species – Best Control Practices for Autumn olive https://www.michigan.gov/invasives/-/media/Project/Websites/invasives/Documents/Best-Control-Practices/Autumn_Olive-BCP.pdf?rev=0e738ffc050e4e069ee376b3b3982259&hash=EEA5D5C591AFA490C2B751DB70C64D79	W
MDNR	Invasive Species – Best Control Practices for Japanese knotweed https://www.michigan.gov/invasives/-/media/Project/Websites/invasives/Documents/Best-Control-Practices/knotweed_BCP.pdf?rev=ba3b880428034e1eb6983889ce7e0015&hash=DE7500069E6E06F18618E497A265BCFD	W
MDOT	Administrative Rules regulating Driveways, Banners and Parades https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Business/Permits/Right-of-Way-Construction/Public-Act-200-Admin-Rules-Regulat-Driveways-Banners-Parades.pdf?rev=9e420527478d4646b518e8db4c95e947&hash=7109BC99561BABBC7854595A05E83675	W
MDOT	Bridge Analysis Guide https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Programs/Bridges-and-Structures/Load-Rating/2009-Interim-MDOT-Bridge-Analysis-Guide-Revised-Sections.pdf?rev=8b57f481f817471e91a30c12eb39c2e1&hash=380603B9097B9086A243B4F5A600D81C https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Programs/Bridges-and-Structures/Load-Rating/2009-Interim-MDOT-Bridge-Analysis-Guide-Part2.pdf?rev=371ff5e988c94704ad91b9906372b928&hash=88792A6579F544FBD34C868BC5B19BE1	W
MDOT	Bridge Boring Sample Plan	W
MDOT	Bridge Design Guides https://mdotjboss.state.mi.us/stdplan/englishbridgeguides.htm	W

Organization	*Standard*	*Availability*
MDOT	Bridge Design Manual https://mdotjboss.state.mi.us/stdplan/englishbridgemanual.htm	W
MDOT	CADD Workspaces http://mdotwiki.state.mi.us/design/index.php/Chapter_2_-_Data_Requirements#2.2.1_MDOT_Workspace	W
MDOT	Certified Payroll Status Record https://search.michigan.gov/AppBuilder/logging_redirect/https%253A%252F%252Fwww.michigan.gov%252Fmdot%252F-%252Fmedia%252FProject%252FWebsites%252FMDOT%252FBusiness%252FConstruction%252FStandard-Specifications-Construction%252FCFS-Reference%252FCertifiedPayrollStatusRecord.xls%253Frev%253D02c28923f7cf429881b13ea186850254%2526hash%253DDCB10EE3CB2B3AB1137432480CFA50B7?button=search&ctx=SOM&entity_id=112ce39c3560189d0dcd93dcfed17607&entity_title=CPR+Status+Record&entity_type=som-mdot-entity&q=certified+payroll+status+record&rank=0&type=&utf8=%E2%9C%93	W
MDOT	Construction Site Soil Erosion & Pollution Prevention Pocket Guide https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Programs/Highway-Programs/Environmental-Efforts/Stormwater-Management/Education/Construction-Site-Soil-Erosion-Pollution-Prevention-Pocket-Guide.pdf?rev=14bf25edefc640f0a631cdb8001b2603&hash=4100856D6E3088CC92BB13447B5BE08C	W
MDOT	Construction & Technology Research Reports https://www.michigan.gov/mdot/programs/research/research-projects	W
MDOT	Context Sensitive Solutions Information	W
MDOT	Density Testing and Inspection Manual http://www.michigan.gov/documents/mdot/MDOT_DensityTestingAndInspectionManual_322964_7.pdf	W
MDOT	Design Survey Manual https://mdotjboss.state.mi.us/stdplan/surveymanual.htm	W
MDOT	Diverging Diamond Interchange (DDI) Informational Guide https://mdotjboss.state.mi.us/TSSD/getCategoryDocuments.htm?categoryPrjNumbers=1403850,1403851&category=Geometrics	W
MDOT	Drainage Manual https://www.michigan.gov/mdot/business/design/drainage-manual	W
MDOT	Form 3702 Application Requirements for Trenchless Installations https://mdotjboss.state.mi.us/webforms/FormDetails.htm?formNumber=3702	W
MDOT	Frequently Used Special Provisions The following Frequently Used Special Provisions shall be excluded from the Project: 20SP-501R, 20SP-501S, 20SP-501T, 20SP-501U.	W
MDOT	Geometric Design Guides https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Geotechnical Manual https://www.michigan.gov/documents/mdot/MDOT_Geotechnical_Manual_642589_7.pdf	W
MDOT	Guidelines for Plan Preparation, Road Sample Plans http://mdotwiki.state.mi.us/design/index.php/Chapter_7_-_Plan_and_Proposal_Preparation	W
MDOT	Guidelines for Plan Preparation, Bridge Sample Plans http://mdotwiki.state.mi.us/design/index.php/Chapter_7_-_Plan_and_Proposal_Preparation	W

Organization	*Standard*	*Availability*
MDOT	Guidelines for Stakeholder Engagement https://www.michigan.gov/documents/mdot/MDOT_Guidelines_For_Stakeholder_Engagement_264850_7.pdf	W
MDOT	HMA Production Manual http://www.michigan.gov/documents/mdot_HMA_ProductionManual_79005_7.pdf	W
MDOT	Maintaining Traffic Typicals https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Manual for Michigan Test Methods (MTM'S) https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Business/Construction/Standard-Specifications-Construction/CFS-Manuals/MTM_CombinedManual.pdf?rev=892d7294b5d54929b33b59299446d07f&hash=E13A9663F78740B2A2B3703BB888B5CA	W
MDOT	Materials Quality Assurance Procedures Manual https://www.michigan.gov/mdot/business/construction/materials-quality-assurance-procedures	W
MDOT	Materials Source Guide http://www.michigan.gov/documents/mdot/MDOT-MaterialSourceGuideComplete_Linked_181739_7.pdf	W
MDOT	MDOT Design Survey Manual https://mdotjboss.state.mi.us/stdplan/surveymanual.htm	W
MDOT	Michigan Structure Inventory and Appraisal Coding Guide https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Programs/Bridges-and-Structures/Inspections/Michigan-Structure-Inventory-Appraisal-Bridges.pdf?rev=b4e5daf52413454eb174c9a23a83cee7&hash=9674FC4E82427D8D529C11EEEC786E29	W
MDOT	Michigan Manual of Uniform Traffic Control Devices (MMUTCD) https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Pavement Design and Selection Manual http://www.michigan.gov/documents/mdot/MDOT_Pavement_Design_and_Selection_Manual_257723_7.pdf	W
MDOT	Pavement Marking Standards and Special Details https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Percent Within Limits (PWL) Spreadsheet https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Business/Construction/Pavement-Operations/Materials/Concrete-PWL-Worksheet-20SP-1003A-01.xlsx?rev=398bfba10c404f11b76ddfa5d4f2b1b7&hash=FEF6F24F150BBEB0B0366F31B42E8D0F	W
MDOT	Phase II Stormwater Management Program (October 2021) in compliance with EGLE Statewide General Permit MI0057364 (MDOT-Statewide MS4) https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Programs/Highway-Programs/Environmental-Efforts/Stormwater-Management/Stormwater-Plan/SWMP-Phase-I.pdf?rev=f84a47a1d85e4eeb99f949cd2ce0001f&hash=0DEE87CBBA4B2ECB5BC70C4CFC2032DE	W
MDOT	Program/Project Management System Task Manuals https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Business/Design/Manuals-and-Guides/Preconstruction-Task-Manual.pdf?rev=a6cf274dfa64434d9c2baa7119bbbc96&hash=F706C492F659724594FEF00095554EC2	W

Organization	*Standard*	*Availability*
MDOT	Real Estate Procedure Manual	E
MDOT	Road Boring Sample Plan	W
MDOT	Road Design Manual https://mdotjboss.state.mi.us/stdplan/englishroadmanual.htm	W
MDOT	Roundabout Design Aid https://mdotjboss.state.mi.us/TSSD/searchCategoryDocuments.htm?keyword=roundabout%20aid	W
MDOT	Soil Erosion And Sedimentation Control Manual http://www.michigan.gov/documents/2006_SESC_Manual_165226_7.pdf	W
MDOT	Special Details https://mdotjboss.state.mi.us/stdplan/spdetails.htm	W
MDOT	Standard Highway Signs https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Standard Plans https://mdotjboss.state.mi.us/stdplan/standardPlansHome.htm	W
MDOT	2020 Standard Specifications for Construction https://mdotjboss.state.mi.us/SpecProv/specBookHome.htm	W
MDOT	State Transportation Commission Policy on Context Sensitive Solutions (May 2005) http://www.michigan.gov/documents/MDOT_CSS_Policy_159545_7.pdf	W
MDOT	Supplemental Specifications, 2020 https://mdotjboss.state.mi.us/SpecProv/viewDocumentSet.htm?documentsetid=32	W
MDOT	Survey Standards of Practice http://mdotwiki.state.mi.us/design/index.php/Land_Surveying	W
MDOT	System Operations Advisories	W
MDOT	Traffic and Safety Notes https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Traffic Signal Details https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Traffic Signing Standards and Special Details https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Traffic Standards and Special Details https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Traffic Standards, Typicals, Guides and Guidelines https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Work Zone Devices https://mdotjboss.state.mi.us/TSSD/tssdHome.htm	W
MDOT	Work Zone Safety and Mobility Manual https://www.michigan.gov/documents/mdot/MDOT_Work_Zone_Safety_and_Mobility_Manual-January_2020_679362_7.pdf	W
MDOT	Work Zone Safety and Mobility Policy https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Business/Work-Zone-Mobility/Work-Zone-Safety-Mobility-Manual.pdf?rev=91d4045cb1d6492fb02c87bdfb30fa9e&hash=D96B26C27570F1B35E841C763387C89C	W
MIOSHA	MIOSHA Website http://www.michigan.gov/dleg/0,1607,7-154-11407_15368---,00.html	W
Military Specifications	MIL-A-8625C	IS

Organization	*Standard*	*Availability*
National Cooperative Highway Research Program (NCHRP)	Report 672 Roundabouts: An Informational Guide https://nacto.org/docs/usdg/nchrprpt672.pdf	W
NCHRP	Report 350, Recommended Procedures for the Safety Performance Evaluation of Highway Features http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_350-a.pdf	W
National Electrical Manufacturers Association (NEMA)	Standards	IS
National Fire Protection Agency (NFPA)	National Electric Code, Current Edition	IS
National Fire Protection Agency (NFPA)	NFPA 502: Standard for Road Tunnels, Bridged, and Other Limited Access Highways, 2014 Edition	IS
National Spatial Data Infrastructure (NSDI)	Geospatial Positioning Accuracy Standards, Part 3: National Standards for Spatial Data Accuracy, FGDC-STD-007.3-1998 http://www.fgdc.gov/standards/projects/FGDC-standards-projects/accuracy/part3	W
National Transportation Communications for ITS Protocol Standards (NTCIP)	Standards	IS
NEMA Joint Publication/ Insulated Cable Engineers Association (ICEA)	NEMA WC70-2009	IS
NEMA Joint Publication/ Insulated Cable Engineers Association (ICEA)	NEMA WC71-1999	IS
NEMA Joint Publication/ Insulated Cable Engineers Association (ICEA)	NEMA WC74-2010	IS
NEMA Joint Publication / Insulated Cable Engineers Association (ICEA)	NEMA WC57-2004	IS
Telecommunications Industries Association (TIA)	Standards	IS
The Society for Protective Coatings	QP 2, Hazardous Paint Removal Contractor Qualification	W
TIA	455-59-FOTP-59	IS
TIA	492AAAA	IS
TIA	526-14-A-OFSTP-14	IS
TRB	Highway Capacity Manual	IS
US National Archives and Records Administration	Code of Federal Regulations https://www.govinfo.gov/app/collection/cfr/2019/	W

Organization	*Standard*	*Availability*
US Army Corps of Engineers (COE)	Wetlands Delineation Manual, January 1987 https://www.lrh.usace.army.mil/Portals/38/docs/USACE%2087%20Wetland%20Delineation%20Manual.pdf	W
US Department of Transportation	National ITS Architecture https://highways.dot.gov/public-roads/septoct-1998/national-its-architecture	W
USDA	Rural Utilities Service (RUS) Specifications	IS
USDA	RUS 7 CFR 1755.900 https://www.govinfo.gov/content/pkg/CFR-2009-title7-vol11/pdf/CFR-2009-title7-vol11-sec1755-900.pdf	W
US Access Board	Public Rights of Way Access Guidelines (PROWAG)	IS
US Access Board	Special Report: Accessible Public Rights-of-Way Planning and Design for Alterations	IS
US General Services Administration	Federal Color Standard, 595, Rev B	IS

2.1.3 Meeting Minute Requirements

Provide meeting minutes in electronic format to all meeting attendees for all meetings the Design-Builder attends to document decisions made on the Project. Meeting minutes shall include the meeting title, date of the meeting, meeting purpose, list of attendees (name, company, e-mail address, and telephone), outline or overview of topics discussed, decisions made and action items as a result of the meeting. Action items shall include the task, person responsible for completing the task, and the completion date or timeframe in which the task shall be completed.

Complete and submit draft meeting minutes and submit to meeting attendees for review. MDOT will review the minutes and return comments within 5 Working Days.

MDOT's Project Manager may elect to establish the agenda and record the meeting minutes for construction progress meetings.

2.1.3.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Draft Meeting Minutes	Review	Within 5 Working Days of the meeting	2.1.3
Final Meeting Minutes	Acceptance	Within 5 Working Days of receiving MDOT comments	2.1.3

2.2 Design Submittals and Milestones

The Design-Builder shall prepare a list of Buildable Units it intends to prepare for delivery of the Project. In addition to the list of Buildable Units, the Design-Builder shall prepare a detailed submittal schedule outlining when it intends to provide each Buildable Unit to MDOT for Review and Comment. In support of the Work Package Plans described in Section 5 (*Work Package Plan*), the Design-Builder shall identify which Work Package each Buildable Unit will be a part of. At a minimum, the Design-Builder shall submit Buildable Units to MDOT at the milestones described in Table 2 (*Design Submittals*).

Table 2: Design Submittals

Submittal	*Description*
Base Plan	Approximately 30 percent complete design. Includes plans, studies, concepts and reports that capture all major items, elements, and portions of the Work specific to the Buildable Unit. For Phase 1 submittal will confirm sufficiency of the NEPA footprint and Right-of-Way limits. For all other Phases submittal will establish the NEPA footprint and preliminary Right-of-Way Limits. Includes documentation for any deviations of design standards as described in Table 1 (*Standards*), and any deviations from the approved NEPA footprint.
Preliminary Plan	Approximately 60-75 percent complete design. Includes plans, specifications studies, worksheets, and reports that capture all major items (such as drainage), elements, preliminary CPM Schedule, and portions of the Work specific to the Buildable Unit such that the Design-Builder can demonstrate a comprehensive understanding of the Project. For Phases other than Phase 1, submittal shall include final Right-of-Way limits. Includes documentation for any deviations of design standards as described in Table 1 (*Standards*) and resolution of comments from the base plan submittal
Released for Construction	100 percent complete design. Includes plans, specifications, quantities, updated draft CPM Schedule, and reports for each respective element and discipline of the Buildable Unit. Includes resolution of comments from preliminary plan submittal.

2.3 Design Requirements

2.3.1 Design Review Process; Compliance with Design

2.3.1.1 Design Reviews Required by Third Parties

Design-Builder shall be responsible for obtaining all design reviews required by Utility Owners, Railroads, local and federal agencies, and any other Persons other than MDOT, as applicable.

2.3.1.2 Compliance with PDB Contract Documents and Design

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

2.3.2 Ownership of Design

Released for Construction Documents and other Professional Services Work Product become MDOT's property upon Acceptance by MDOT. Other documents prepared or obtained by Design-Builder in connection with the performance of its obligations under the PDB Contract, including Construction Documents, studies, manuals, As-Built Documents, calculations, technical and other reports and the like, become MDOT's property upon Design-Builder's preparation or MDOT receipt thereof.

3 Preconstruction Services Quality Management Plan

3.1 Responsibilities

3.1.1 Design-Builder Responsibility

The Design-Builder is responsible for the quality of the Preconstruction Work. The Design-Builder shall perform Design-Builder Quality Assurance independent from production and quality control for all design activities. Design-Builder Quality Assurance for design shall include a documented review of the design processes to assure that all required Design-Builder Quality Control checks and reviews have been performed, that corresponding records are available, and that Design-Builder Quality Control activities were effective to meet the PDB Contract requirements. The Design-Builder shall identify a Design Quality Assurance Manager (DQAM) and other staff focused on quality functions.

During Preconstruction Services, the Design-Builder shall submit a Preconstruction Services Quality Management Plan (PSQMP) to MDOT for Approval. At a minimum, this shall include a description of the procedures for the following components:

A. The document management system, including routing; filing records; and naming conventions;

B. A Submittals Matrix identifying all documents submitted to MDOT including the recipient and the date provided;

C. Design and development planning;

D. Organization and process chart(s) depicting the hierarchy and reporting structure of design personnel, including Key Personnel; the flow of design production, quality control and quality assurance procedures for various submittal types (e.g., drawings, studies, technical memos, calculations); and

E. Design-Builder Quality Control and Design-Builder Quality Assurance for design Work.

3.1.2 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. If the Design-Builder begins design before Acceptance of the PSQMP, the Design-Builder shall do so at its sole risk. Once the PSQMP is Accepted, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
PSQMP	Acceptance	Within 30 Calendar Days of Award	3
Updates, if applicable	Review	Monthly	3
Updated PSQMP	Acceptance	Within 10 Working Days of receiving MDOT comments	3

4 Preconstruction Services Schedule Management Plan

The Design-Builder shall submit a Preconstruction Services Schedule Management Plan for Approval that addresses coordination with MDOT and assigns responsibilities to positions within the Design-Builder's organization with respect to the Project Schedule during the Preconstruction Services. The Preconstruction Services Schedule Management Plan shall include:

A. A workflow outlining how the Design-Builder will develop, review, coordinate with MDOT for Approvals, and maintain the Project Schedules; and

B. An organization chart, table, or other appropriate document identifying which positions within the Design-Builder's organization (including field personnel) will be responsible for developing and progressing the schedules. For Design-Builder Quality Control and Design-Builder Quality Assurance of the schedules, the Design-Builder shall indicate what each individual will be responsible to perform, and how these efforts will be coordinated with each other and with MDOT.

During the Preconstruction Services, the Design-Builder shall:

A. Develop an initial Preconstruction Services Project Schedule and submit to MDOT within 30 Calendar Days following execution of the PDB Contract. The Preconstruction Services Project Schedule shall include all submittals and MDOT reviews of submittals included in the Submittals Matrix, key milestones (including Project Completion of all Work Packages), review timeframes, Completion Deadlines, and incorporate Professional Services Work Product and Construction Work through Final Acceptance.

B. Update the Preconstruction Services Project Schedule on a monthly basis and submit to MDOT for Review and Comment throughout Preconstruction Services.

4.1.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Preconstruction Services Schedule Management Plan is Accepted, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Preconstruction Services Project Schedule	Acceptance	Within 30 Calendar Days of Award	4
Updates, if applicable	Review	Monthly	4
Preconstruction Services Schedule Management Plan	Approval	Within 30 Calendar Days of Award	4

5 Risk Management

The Design-Builder shall collaborate with MDOT and MDOT's representatives for the Project in the development and maintenance of the Risk Register for the Project utilizing MDOT's Risk Tool found on the MDOT Innovative Contracting Website. The Risk Register shall be updated in a Risk Workshop setting at each OPCC and periodically during the Preconstruction Services.

The Design-Builder shall participate in all Risk Workshops during the Preconstruction Services to:

A. identify risks;

B. consolidate risks identified in other meetings;

C. assess probability and impact of risks;

D. prioritize risks;

E. discuss possible risk mitigation strategies;

F. explore risk sharing concepts; and

G. update the Risk Register.

Risk Workshops will focus on risk mitigation and how risks may affect GMP Line Items. For high-priority risks, associated GMP Line Items will be identified and the affected pricing components (production rates, labor, materials cost, etc.) will be summarized by the Design-Builder.

6 Work Package Plan

6.1 Preliminary Work Package Plan

The Design-Builder shall identify and describe the Buildable Units of the Project that are anticipated to be constructed as part of one or more Work Packages to achieve the Project goals. If agreed upon by the Parties, the Design-Builder shall submit an updated Preliminary Work Package Plan to MDOT for Review and Comment whenever the Design-Builder believes that additional Work Package Contract Modifications will be advantageous for the Project.

6.2 Final Work Package Plan

As a condition precedent to execution of the Construction Services Contract Modification, the Design-Builder shall submit a Final Work Package Plan for Approval with additional detail including:

A. An estimate of each Work Package and estimated Total Construction Guaranteed Maximum Price (GMP);

B. Schedule durations;

C. Summary of any Right-of-Way, utility relocation, permits, Third-Party Agreements, or other items needed to obtain authorization of construction for the Work Package;

The Design-Builder shall submit the Final Work Package Plan at least 30 Calendar Days prior to submission of the Construction Services Contract Modification.

6.2.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Final Work Packaging Plan is Approved, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Preliminary Work Package Plan	Review and Comment	TBD	6
Updates, if applicable	Review	Monthly	6
Final Work Package Plan	Approval	At least 30 Calendar Days prior to Construction Services Contract Modification Execution	6

7 Cost Estimating

This Section 7 is intended to describe cost estimating and pricing requirements to achieve a fair price so that all Parties understand how the cost estimating and pricing strategy will be implemented. MDOT's goal is to have less than 5% deviation from estimates developed by the Design-Builder and MDOT at the time the Total Construction GMP is determined.

The Design-Builder, MDOT, and advisors to MDOT will work as a team to maximize scope, value, and quality within the Project budget. The Parties will emphasize collaboration and transparency, and create value through integrity, fairness, accountability, innovation, and risk management. MDOT's goal is to develop Work Package GMPs that represent a fair market price. During the Preconstruction Services, the Parties will implement the following processes and principles in the development of cost estimates:

A. A collaborative team environment that fosters communication, accountability, and trust;

B. An Independent Cost Estimator (ICE) consultant that is familiar with the scope, schedule, and risks of the Project, is involved in key team meetings and is aware of decisions;

C. Effective risk and opportunity/innovation workshops;

D. Interactive design process to incorporate mitigation strategies and innovations into the design;

E. Plan and specification reviews and quantity reconciliation meetings at major milestones;

F. Pre-estimating meetings to discuss and document assumptions for bid items and measurement and payment;

G. Opinions of Probable Construction Cost (OPCCs) at the submission of the Base and Preliminary Plans and other instances as agreed upon by the Parties where the ICE is blinded, and a range established to identify items that are in discrepancy;

H. Reconciliation meetings to review differences in the assumptions of those items; and

I. Protect and maintain the independent estimate of the ICE.

7.1 Initial Approach to Construction Cost Development

Before any pricing of the Construction Work begins, the Design-Builder, MDOT, and advisors to MDOT will meet to discuss and agree on how the team will develop and evaluate price for purposes of Work Packages. In addition to reviewing the overall pricing strategy, the Design-Builder and MDOT will seek agreement on how certain elements of price will be handled. The following issues will be discussed:

A. Definition of fair market price;

B. Acceptable percentage of price difference between the Design-Builder and MDOT, which will use an estimate prepared by an ICE procured by MDOT;

C. Expectation of design build cost versus low bid;

D. Labor and equipment rates;

E. Subcontractor quotes and self-performed work; and

F. Number of Opinions of Probable Construction Cost in addition to the two OPCCs for Base and Preliminary Plans.

7.2 Cost Model and Alignment Meeting

The Design-Builder shall develop a cost model on an Open Book Basis. The Design-Builder shall submit the cost model to MDOT for Review and Comment at least 30 Calendar Days prior to the first Base Plan submittal. The cost model shall include:

A. Quantity take-offs;

B. Material costs, subcontracted work costs, equipment rates, labor rates (labor rates shall include employee benefits, payroll taxes, and other payroll burdens), crew sizes, shifts per day, hours per shift, and production rates for direct costs;

C. Risk assumptions, assignment of risks, and schedule and cost contingencies associated with each risk;

D. Work Breakdown Structure designating cost estimating "buckets" to align items of work between the Parties;

E. Costs to mobilize equipment and materials to construct the Project and other facility related costs necessary for the proper execution of the Work;

F. Copies of quotations from Subcontractors and Suppliers;

G. Field indirect costs, bonds, taxes, and insurance;

H. A written narrative regarding the cost model that identifies the means, methods, assumptions, and risks that were used to price the Work; and

I. A Draft Construction Services Schedule Management Plan

7.3 Construction Cost Estimate Development and Progress Meetings

In accordance with the cost model, the Design-Builder shall develop and submit an OPCC to MDOT's designated Price Facilitator for any Work Packages at the Base Plan Submittal and at other times as determined by MDOT during the Preconstruction Services. The OPCC shall also be provided with the Work Package GMP.

7.4 Construction Cost Estimate Review

MDOT, through its ICE consultant, will prepare a production-based cost estimate (the Independent Cost Estimate) for the same scope of work included in each OPCC submitted in accordance with Section 7.3 (*Construction Cost Estimate Development*). The Independent Cost Estimate will be based on the construction schedule developed by the ICE consultant. Upon receipt of an OPCC, the Price Facilitator will compare the costs for each item in the Design-Builder's OPCC and develop a OPCC comparison report that identifies all items that vary from the Independent Cost Estimate by more than the divergence percentage identified in accordance with Section 7.1 (*Initial Approach to Construction Cost Development*). Additionally, the total cost of each OPCC will be compared by the Price Facilitator to ensure that the OPCCs are within the Project budget. The Price Facilitator will provide the OPCC comparison report to the Design-Builder.

7.5 Construction Cost Reconciliation Meetings

The Design-Builder shall meet with MDOT to discuss the assumptions for items that have a discrepancy greater than MDOT-determined divergence factor. Costs will not be discussed. Rather, the factors that contribute to the costs will be shared by the Design-Builder and discussed. The goal of the Cost Reconciliation Meeting is to clarify and resolve differences, where possible, between estimates. The goal is that the cost of the Construction Work for the Work Package be consistent with the principles described in Section 7.1 (*Initial Approach to Construction Cost Development*) at the time the Work Package GMP is determined.

7.6 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Design-Builder Cost Model is Approved, do not revise any portion without concurrence of MDOT.

Deliverable	***For Acceptance or Approval***	***Submittal Schedule***	***Reference Section***
Design-Builder Cost Model	Approval	At least 30 Calendar Days prior to the first Buildable Unit Submittal	7.2
Updates, if applicable	Review	Monthly	7.2

8 Safety Management Plan

The Design-Builder shall develop and submit its Safety Management Plan, which includes the Incident Management Plan, to MDOT for review, comment, and Approval prior to the commencement of any Work that requires a physical presence on the Project. The Design-Builder's Safety Management Plan shall address safety in connection with the specific needs of the Project, all Laws, and the PDB Contract Documents. The Design-Builder is encouraged to enter a partnership with the Michigan Division of Occupational Safety and Health Administration, and Michigan State Police, as appropriate.

8.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Safety Management Plan is Approved, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Safety Management Plan	Approval	Prior to the commencement of any Work that requires a physical presence on the Project	8
Updates, if applicable	Review	Monthly	8

9 Subcontracting Management Plan

The Subcontracting Plan shall identify the Design-Builder's subcontracting process for Construction Services. The Subcontracting Plan shall include:

A. Details of the Design-Builder's contracting plans and Subcontractor plans;

B. Design-Builder's competitive selection process;

C. Approach to advertise subcontracting opportunities;

D. Procurement process; and

E. Information regarding subcontractor availability and local economic conditions.

Any Subcontracts the Design-Builder wishes to select for best value shall be approved by MDOT prior to competitive selection. MDOT shall approve all Subcontracts, regardless of selection type, prior to Subcontract award. The Design-Builder shall have an Approved Subcontracting Plan from MDOT prior to soliciting offers for Subcontractors for Construction Work.

9.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Subcontracting Management Plan is Approved, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Subcontracting Management Plan	Approval	Prior to soliciting offers for Subcontractors for Construction Work	9
Updates, if applicable	Review	Monthly	9

10 Material Sourcing Management Plan

The Material Sourcing Plan outlines the materials required for the construction of major items and specialty items required for the construction of the Project. The Design-Builder shall develop and submit an Initial Materials Sourcing Plan, consistent with the logic and durations defined in the approved Preconstruction Services Schedule and/or Work Package Plan to MDOT for Review and Comment within 90 Calendar Days of PDB Contract execution. The Design-Builder shall submit an updated Material Sourcing Plan with the Final Design Submittal for any Work Packages to MDOT for Review and Comment.

10.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Material Sourcing Management Plan is Approved, do not revise any portion without concurrence of MDOT.

Deliverable	***For Acceptance or Approval***	***Submittal Schedule***	***Reference Section***
Initial Material Sourcing Management Plan	Review and Comment	Prior to the Construction Services Contract Modification	10
Updates, if applicable	Review	Monthly	10
Updated Material Sourcing Management Plan	Approval	To be submitted with the Final Design submittal for any Work Package	10

11 Environmental Management Plan

11.1 Environmental Management Plan Requirements

Develop and maintain an Environmental Management Plan (EMP) for the Work to ensure environmental compliance. The EMP shall obligate the Design-Builder to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment through design efforts and during construction activities of the Project. The EMP shall reflect and incorporate all applicable regulatory permits, commitments, and mitigation requirements necessary to perform the Work in accordance with the Contract Documents.

The EMP shall effectively demonstrate in detail the Design-Builder's knowledge of all applicable Project Environmental Approvals, permits, and applicable Environmental Laws as set forth in the Contract Documents, and shall describe the processes that will be followed during the course of the Work to comply with those Environmental Approvals, permits, Environmental Laws, as well as the documentation required to validate compliance. All monitoring and reporting activities shall be concise and in accordance with the requirements set forth in the Environmental Laws and MDOT policies. The EMP shall also effectively describe the QC and QA measures that will be implemented to verify the compliance of the EMP with all applicable Environmental Laws.

The EMP shall establish a goal of zero environmental violations during the performance of all Work activities. However, should violations occur, the EMP shall set forth detailed processes for rectifying such violations in an appropriate and timely manner.

The Design-Builder shall monitor and document Work activities and develop a monthly report that provides evidence of compliance. The report must document weekly site visits. Provide photos for any non-conformance events and areas where best management practices are being implemented effectively. Document any noted non-compliances, dates when the non-compliance event occurred and when it was resolved, and measures taken to rectify and resolve the non-compliance. Reports will be submitted monthly, as an attachment to the Progress Report. Reports shall certify on behalf of the Environmental Compliance Manager and Design Quality Assurance Manager that all Professional Services Work Product submitted in the relevant month conform with and meet all requirements set forth in the EMP, and that all Construction Work completed in the relevant month conform with the Professional Services Work Product. Payment of any invoice shall be conditioned on approval of the relevant monthly ECM report.

11.2 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Environmental Management Plan is Approved, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Draft Environmental Management Plan	Approval	Within 30 Calendar Days of PDB Contract execution.	11.1
Updates, if applicable	Review	Monthly	11.1
Final Environmental Mitigation Plan	Approval	At least 30 days prior to execution of the Construction Services Contract Modification	11.1

12 Utilities and Third-Party Agreement Plan

The Design-Builder shall manage and coordinate all activities necessary to perform the Work. The Design-Builder shall prepare a Utility and Third-Party Coordination Plan within 30 Calendar Days of PDB Contract execution. The Utility and Third-Party Coordination Plan shall identify known Utility companies and third-parties and detail the approach to coordination with these entities. The Utility and Third-Party Coordination Plan shall be updated within 30 Calendar Days prior to execution of the Construction Services Contract Modification.

12.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Utility and Third-Party Coordination Plan, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Initial Utility and Third-Party Coordination Plan	Approval	30 Calendar Days prior to Construction Services Contract Modification.	12
Updates, if applicable	Review	Monthly	12
Final Utility and Third-Party Coordination Plan	Approval	Updated prior to the Construction Services Contract Modification	12

13 Right-of-Way Acquisition Plan

13.1 Pre-Acquisition Activities

In the event the Design-Builder's proposed design requires additional right-of-way, then the following shall apply to the additional right-of-way needed:

MDOT will be responsible for pre-acquisition activities such as tax map and roll, title searches, legal/right-of-way survey, preliminary interviews with property owners, appraisal preparation, and review. Payment for pre-acquisition activities will be made by MDOT and deducted from the Design-Builder's final payment. The cost of pre-acquisition activities for additional right-of-way required by the Design-Builder's design shall be included in the Contract Price.

13.2 Acquisition Activities

In the event the Design-Builder's proposed design requires permanent or temporary right-of-way in addition to that shown on the Right-of-Way Work Map, then the following shall apply:

MDOT will be responsible for the acquisition of the additional right-of-way at the Design-Builder's cost. The cost of additional right-of-way required by the Design-Builder's design shall be included in the Contract Price.

13.2.1 Eminent Domain – Condemnation

In the event the Design-Builder's proposed design requires right-of-way in addition to that shown in the Right-of-Way Work Map and Condemnation proceedings are required for this additional right-of-way, then the following shall apply:

As needed, MDOT will be responsible for Condemnation activities. The Design-Builder shall provide all materials and exhibits for hearings and/or trials as required by MDOT. The Design-Builder shall reimburse MDOT for all costs associated with Condemnation proceedings.

13.2.2 Identification of Additional Right-of-Way

If the Design-Builder determines that additional permanent right-of-way is necessary or required by a Contract Modification, the Design-Builder shall prepare and submit a written request to MDOT for consideration. This request shall identify the additional right-of-way sought, along with a justification for its need, and shall include drawings depicting proposed construction limits and cross-sections. MDOT will review the request, determine whether the acquisition is acceptable and within the scope of the environmental documentation, and notify the Design-Builder in writing regarding the schedule and process required to complete the acquisition. MDOT is responsible for obtaining any required Municipal Consent, if necessary, due to the additional right-of-way acquisition. The Design-Builder shall reimburse MDOT for all costs associated with such acquisitions.

13.2.3 Property Management

The Design-Builder is responsible for management of all Project right-of-way and improvements at the time MDOT acquires the right-of-way and gives written notice to the Design-Builder in accordance with the Contract Documents. The Design-Builder shall remove all structures and appurtenances, if necessary, according to the Standard Specifications, unless otherwise specified.

14 Public Information Management Plan

Conduct all Work necessary to meet the requirements of public information. This includes developing, implementing, and maintaining a Public Information Plan (PIP) that meets the requirements set forth in MDOT's Work Zone Safety and Mobility Policy and complies with specific maintenance of traffic (MOT) requirements for public information found elsewhere in the Contract Documents.

In addition, notify MDOT Project staff of any major stage changes in the Project within the time depicted in the Contract Documents. Prepare public notification of this information to be forwarded to MDOT Project Staff for media/public dissemination. For this purpose, Project staff includes MDOT’s Project Manager, construction engineer, assistant construction engineer, traffic and safety engineer, region communications representative, technicians, inspectors, and/or consultants acting in any of those capacities.

Provide ample notice to MDOT Project staff for any action that requires advanced communications for notifying the motoring public, Project stakeholders, area residents and businesses directly impacted by the Project. Unless otherwise noted, ample notice is defined as 10 Working Days prior to changes in project staging. Project staging changes include, but are not limited to, traffic switches, additional lane restrictions, changes in detours, and any approved closures of the roadway or any arterial adjacent to, or leading to, roadway of influence. MDOT will bear the responsibility of notifying the media. MDOT Project staff or its representatives will bear primary responsibility of notifying stakeholders and businesses impacted by the Work, although the Design-Builder will be required to hold and actively participate in informational meetings with stakeholders and businesses impacted by the work as outlined in this Section 3.

14.1 Public Information

- MDOT will be responsible for all correspondence with the public. The Design-Builder shall assist or lead the communications efforts as directed by MDOT.

15 Technical Provisions and Management Plans

The Design-Builder shall collaborate with MDOT and MDOT's representatives for the Project in the development of Technical Provisions and Construction Services Management Plans that will be incorporated into the Construction Services Contract Modification and any Work Package Contract Modifications. The Parties will work collaboratively to determine the level of detail for each Technical Provision and Construction Services Management Plan to provide the best value for the Project. The purpose of the Technical Provisions is to establish requirements to govern the continuing design and construction of the Project to the extent requirements are needed at the point the Project moves to Construction Services. The purpose of the Construction Services Management Plans is to describe how the Design-Builder will administer the Construction Work. It is anticipated that the Technical Provisions will address the following topics:

A. Construction requirements;
B. Roadway location, design, and grading;
C. Drainage;
D. Maintenance of traffic (MOT);
E. Permanent traffic control;
F. Intelligent Transportation Systems;
G. Structures;
H. Geotechnical;
I. Pavement;
J. Utilities;
K. Land Surveying
L. Landscaping;
M. Project Maintenance; and
N. Sidewalk Facilities

It is anticipated that the following Construction Services Management Plans will be developed:

A. Safety Management Plan;
B. Transportation Management Plan;
C. Permitting and Environmental Mitigation Plan;
D. Utility and Third-Party Coordination Plan;
E. Project Management Plan;
F. DBE/Workforce Participation Plan;
G. Construction Quality Management Plan;
H. Construction Schedule Coordination Plan; and

I. Public Information Plan

15.1 Deliverables

Unless otherwise indicated, all deliverables shall be submitted in PDF files. Once the Technical Provisions and Construction Services Management Plans are approved, do not revise any portion without concurrence of MDOT.

Deliverable	*For Acceptance or Approval*	*Submittal Schedule*	*Reference Section*
Technical Provisions	Approval	Prior to Construction Services Contract Modification or Work Package Contract Modification, as applicable	16
Construction Services Management Plans	Approval	Prior to Construction Services Contract Modification or Work Package Contract Modification, as applicable	16

16 Construction Services Contract Modification

The Construction Services Contract Modification shall include:

A. The Approved Final Work Package Plan;

B. The Approved Safety Management Plan;

C. The Approved Transportation Management Plan;

D. The Approved Environmental Management Plan;

E. The Approved Utility and Third-Party Coordination Plan;

F. The Approved Project Management Plan;

G. The Approved Construction Services Quality Management Plan;

H. The Approved Construction Schedule Coordination Plan;

I. The Approved Public Information Plan;

J. The Approved Subcontracting Plan;

K. The Approved Material Sourcing Plan;

L. The Approved MDOT Specification Modifications;

M. The Approved Technical Provisions; and

N. Any other documentation and information reasonably required by MDOT to allow for advancement of the Project.

17 Work Package Contract Modifications

All Work Package Contract Modifications shall include details of the scope of work including:

A. The Work Package GMP;

B. The Risk Register;

C. The estimated cost of additional Construction Work required to reach Final Acceptance not accounted for in currently executed Work Package Contract Modifications;

D. A Schedule of Values allocating the applicable Work Package GMP;

E. The current Baseline Work Package Schedule;

F. The Professional Services Work Product;

G. Description of agreed Liquidated Damages, if any;

H. Any increase to the Performance and Lien Bond Penal Sum, policy limits, additional endorsements, or additional insurance as required by the PDB Contract;

I. The Approved Technical Provisions;

J. The Approved Construction Services Management Plans; and

K. Any other documentation and information reasonably required by MDOT to allow for advancement of the Project.

Exhibit C – Design-Build Team

Entities/Joint Ventures	
Lead Contractor	
Lead Designer	
Key Personnel/Committed Personnel	
Project Manager	
Construction Manager	
Construction Quality Control Manager	
Design Manager	
Design Quality Control Manager	
Environmental Compliance Manager	
Lead Cost Estimator	
Lead Geotechnical Engineer	
Lead Hydraulics Engineer	
Lead Structures Engineer	
Lead Road Engineer	
Lead Traffic Engineer	
Lead Maintenance of Traffic Engineer	
Lead Utility Engineer	

Exhibit D – Validation Phase Scope and Fee

SCOPE OF SERVICES

Marshall Modernization Progressive Design Build

Initial Preconstruction Services Validation Phase Scope and Fee

BACKGROUND

The Project is located in Emmett and Marshall townships and the city of Marshall in Calhoun County, and includes construction for the following major items of Work:

- Anticipated project improvement limits include:
    - JN 217737 – M-96 (Michigan Avenue) from east of Eden Street to South 15 Mile Road and associated local road connections
    - JN 218872 – I-69/Michigan Avenue Interchange, I-94/I-69 Interchange, I-69 from south of Michigan Avenue to the I-94 Interchange and I-94 from 13 Mile Road to the I-69 Interchange
    - JN 219004 – Michigan Avenue from Strongwood Avenue to Wheatfield Parkway and from M-311 (11 Mile Road) to East of Eden Street.11 Mile Road from the MDOT owned, Amtrak maintained Railroad tracks to north of H Drive North, and associated local road connections.
    - JN 219007 – I-94 from west of Michigan Avenue to 13 Mile Road and the I-94/11 Mile Road/I-94BL Interchange
- Anticipated Project phasing:
    - Phase 1 – complete improvements to M-96 from the western edge of the anticipated initial development site east to south 15 Mile Road
        - This phase must be completed to accommodate opening of economic development by 2026. Substantial construction completion (roadway open to traffic with available access to properties) needs to be completed to ensure facilitation of the anticipated traffic volumes due to development in the area.
    - Phase 2 – complete improvements along I-94 and I-69 along with interchange upgrades at I-94/I-69 and I-69/M-96
    - Phase 3 – complete improvements along M-311 and the interchange of I-94/M-311
    - Phase 4 – complete improvements along M-96 from M-311 to the POB of Phase 1.

The scope of Work for this Project includes progressive design-build services for roadway improvements surrounding the Marshall Modernization. The project will be delivered in two (2) subphases with one or more tasks within each subphase:

- Preconstruction Services
- Construction Services

The scope of services, presented herein, is for certain Preconstruction Services Validation Phase Work tasks. A detailed description of the Preconstruction Services Validation Phase Work tasks is provided below.

SCOPE TASKS

The following Preconstruction Services Validation Phase tasks have been developed by MDOT. Future Preconstruction Services Contract Modifications will be needed to progress the design through the different milestones defined in Exhibit B of the PDB Contract.

TASK 1 – MEETINGS/PROJECT MANAGEMENT

The Design-Builder will participate in various meetings and workshops. The Design-Builder will perform administrative tasks including preparation of agendas and meeting notes. The following tasks identify the meetings and workshops that the Design-Builder will participate in with the number of attendees included (virtual or in-person).

Kick-off Meeting: Intent of the meeting is to establish project goals and schedule. Design-Builder Attendance will include all Key Personnel and will be in-person.

Project Status Meetings: Weekly meeting to discuss high level project status. Design-Builder Attendance will be limited to Project Manager, Design Manager, and Construction Manager. All meetings will be virtual. It is assumed that there will be 16 Project Status Meetings.

Concept Review Meetings: Intent is to review project details with the MDOT. Design-Builder Attendance will include Project Manager, Design Manager, Construction Manager, and other Subject Matter Experts as needed. All attendance will be virtual. It is assumed that there will be 4 Concept Review Meetings.

Task Force Meetings: Intent is to update MDOT on project progress specific to a discrete discipline or disciplines. Anticipated meetings are as follows:

1. Traffic Operations (1) - One meeting with the MDOT to review the traffic study. Meeting to be virtual.
2. Utilities (2) – meeting with the MDOT utility coordinator to provide update on project progress and utility coordination efforts. It is assumed that there will be 2 virtual Utility Task Force Meetings.

Design-Builder Attendance will include Design Manager, Subject Matter Experts, and design team members as required.

Risk Management & Project Schedule Meetings: Monthly meeting focused on project schedule status and consolidating identified risks from other meetings and incorporating this information into the Risk Register. Design-Builder Attendance will include Project Manager, Design Manager, and Construction Manager. It is assumed that there will be 2 in-person Risk Management and Schedule Meetings.

Cost Estimating Working Group Meetings: As needed meeting between Design-Builder Project Manager and Independent Cost Estimator (ICE) to align on construction cost estimating approach and format in accordance with Exhibit B Section 7.1 (*Initial Approach to Construction Cost Development*). Design-Builder Attendance to include Project Manager and Lead Cost Estimator. It is assumed that there will be 1 in-person meeting during this Preconstruction Services Validation Phase.

Partnering Meetings: Bi-monthly meeting to facilitate team building. Design-Builder attendance will include Project Manager, Design Manager, Construction Manager, Lead Cost Estimator, Road Lead, and Traffic Lead. All attendance will be in- person. It is assumed that there will be 1 Partnering Meeting.

Internal Design-Builder Coordination Meetings: Weekly meetings within the project team to discuss updates, constructability, seek input, coordinate schedule, etc.

TASK 2 – INITIAL PRELIMINARY ENGINEERING AND PROJECT DEVELOPMENT

The Design-Builder will prepare and submit for approval all items including:

1. Design-Builder Directory and Organization Chart

2. Design Milestone 1 –

    a. Review and provide technical input on provided RID documents (ie; traffic study, geotechnical report, preferred alternative layout, etc.) with the MDOT team and collaboratively develop the work scope for each subsequent phase.

    b. Develop a scoping level design and construction estimate for all phases.

    c. Send initial utility request (MDOT Form 2480) and begin utility conflict evaluation. Submit Initial Utility and Third-Party Coordination Plan for approval.

    d. Develop and maintain RID Reliance Log as a living document throughout design. Communicate specific information relied on from RID documents and obtain approval via the log.

    e. Design-Builder to support the MDOT and the MDOT's Public Information Consultant with as-needed workshops.

TASK 3 – PRECONSTRUCTION SERVICES QUALITY MANAGEMENT PLAN

In accordance with Section 3 of Exhibit B of the PDB Contract, the Design-Builder will provide Quality Assurance independent from production and quality control for all design activities. The Design-Builder will provide this through the following items:

1. Prepare and submit an acceptable Preconstruction Services Quality Management Plan. The Plan will identify a Design Quality Assurance Manager (DQAM).

TASK 4 – PRECONSTRUCTION SERVICES SCHEDULE MANAGEMENT PLAN

In accordance with Section 4 of Exhibit B of the PDB Contract, the Design-Builder will provide management of the project schedule through the following items:

1. Prepare and submit a Preconstruction Services Schedule Management Plan.
2. Develop an initial Preconstruction Services Project Schedule within 30 days following execution of the PDB Contract.
3. Update the Preconstruction Services Project Schedule on a monthly basis.

TASK 5 – RISK MANAGEMENT

In accordance with the PDB Contract, the Design-Builder will provide risk management through the following items:

1. Collaborate with the MDOT in the development and maintenance of the Risk Register. Specific tasks include identifying risks and assessing the probability and severity of those risks.

TASK 6 – WORK PACKAGE PLAN

It is assumed that all items listed in the PDB Contract will be incorporated in a future Preconstruction Services Contract Modification and are not required under this Preconstruction Services Validation Phase Scope.

TASK 7 – COST ESTIMATING

In accordance with Section 7 of Exhibit B of the PDB Contract, the Design-Builder will prepare and attend the Initial Approach to Construction Cost Development Meeting described in Section 7.1 of Exhibit B of the PDB Contract.

TASK 8 – SAFETY MANAGEMENT PLAN

It is assumed that all items listed in the PDB Contract will be incorporated in a future Preconstruction Services Contract Modification and are not required under this Preconstruction Services Validation Phase Scope.

TASK 9 – SUBCONTRACTING PLAN

In accordance with the Section 9 of Exhibit B of the PDB Contract, the Design-Builder will prepare and submit for approval the following items:

1. Subcontracting Plan

TASK 10 – PUBLIC INFORMATION / COMMUNICATIONS SUPPORT

The Design-Builder will provide support to the MDOT in its public involvement and communication processes. Additionally, the Design-Builder will prepare and submit for approval the following items:

1. Public Information Plan

TASK 11 – TECHNICAL PROVISIONS AND PLANS

Unless indicated elsewhere in this Preconstruction Services Validation Phase Scope, it is assumed that items listed in Section 15 of Exhibit B will be incorporated in a future Preconstruction Services Contract Modification. It is assumed that the Design-Builder will progress the development of the Technical Provisions and Plans once Design Milestone 1 has been achieved. It is assumed that no formal submissions are to be submitted under this initial Preconstruction Services Scope and that formal submissions will be incorporated into future Preconstruction Services Contract Modifications.

TASK 12 – CONSTRUCTION SERVICES CONTRACT MODIFICATION

It is assumed that no items listed in Section 16 of Exhibit B of the PDB Contract are incorporated in this Preconstruction Services Validation Phase Scope.

TASK 13 – WORK PACKAGE CONTRACT MODIFICATION

It is assumed that no items listed in Section 17 of Exhibit B are incorporated in this Preconstruction Services Validation Phase Scope.

FEE

The Preconstruction Services Fee for the above referenced Work shall be $500,000.

Exhibit E – Validation Phase Schedule of Values

Tasks	Task Total	Subtask Total
Task 1 - Meetings/Project Management	**$ 130,000.00**	
• 30th day of Month 1		*$ 30,000*
• 30th day of Month 2		*$ 25,000*
• 30th day of Month 3		*$ 25,000*
• 30th day of Month 4		*$ 25,000*
• 30th day of Month 5		*$ 25,000*
Task 2 - Preliminary Design/Project Development	**$ 295,000.00**	
• (a) Submittal of draft scope of work for each phase of project		*$ 42,500*
• (a) MDOT approval of work scope for each phase of project		*$ 42,500*
• (b) Submittal of draft scoping level construction estimate for each phase of project		*$ 97,500*
• (b) MDOT approval of scoping level construction estimate for each phase of project		*$ 97,500*
• (c) Submittal of draft Utility and Third-Party Coordination Plan		*$ 5,000*
• (c) MDOT approval of Utility and Third-Party Coordination Plan		*$ 5,000*
• (d) Submittal of draft RID reliance log		*$ 2,500*
• (d) MDOT approval of RID reliance log		*$ 2,500*
Task 3 - Preconstruction Services Quality Management Plan	**$ 5,000.00**	
• Submittal of draft Quality Management Plan		*$ 2,500*
• MDOT approval of Quality Management Plan		*$ 2,500*
Task 4 - Preconstruction Services Schedule Management Plan	**$ 5,000.00**	
• Submittal of draft Preconstruction Services Schedule Management Plan		*$ 2,500*
• MDOT approval of Preconstruction Services Schedule Management Plan		*$ 2,500*
Task 5 - Risk Management	**$ 20,000.00**	
• Submittal of Preliminary Risk Register		*$ 10,000*
• Conclusion of Validation Phase		*$ 10,000*

Task 7 - Cost Estimating	**$ 20,000.00**	
• Prepare for and attend Initial Approach to Construction Cost Dev. Mtg		*$ 10,000*
• MDOT acceptance of the Initial Approach to Construction Cost Dev. Mtg Minutes		*$ 10,000*
Task 8 - Safety Management Plan	**$ 5,000.00**	
• Submittal of draft Safety Management Plan		*$ 2,500*
• MDOT acceptance of Safety Management Plan		*$ 2,500*
Task 9 - Subcontracting Plan	**$ 5,000.00**	
• Submittal of draft Subcontracting Plan		*$ 2,500*
• MDOT acceptance of Subcontracting Plan		*$ 2,500*
Task 10 - Public Information/Communication Support	**$ 15,000.00**	
• Submittal of draft Public Information Plan		*$ 2,500*
• MDOT acceptance of Public Information Plan		*$ 2,500*
• Provide requested materials for Public Meeting		*$ 5,000*
• Attendance of Public Meeting		*$ 5,000*
Total	**$ 500,000.00**	*$ 500,000*

Exhibit F – Contract Bond

[Insert Prior to Execution]

Exhibit G – MDOT Requirements

MDOT Special Provision for Pavement Warranty

[Insert as needed]

Exhibit G-1 – Prohibition of Discrimination in State Contracts

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

Exhibit H – Design-Builder Key Personnel Requirements

Key Personnel Position	Preferred Requirements
Project Manager	The Design-Builder's Project Manager shall have experience managing the design and construction of highway construction projects with a similar scope of work and must have Design-Build experience. A minimum of 10 years of experience is required for this position. The Design-Builder's Project Manager will be responsible for the overall design, construction, quality management and contract administration for the Project and will: i. have full responsibility for the prosecution of the Work; ii. act as agent and be a single point of contact in all matters on behalf of Design-Builder; iii. be available (or the Approved designee will be available) at all times that Work is performed; and iv. have authority to bind Design-Builder on all matters relating to the Project.
Construction Manager	The Construction Manager shall have experience managing field operations on highway construction projects of similar scope. A minimum of 10 years of experience is required for this position. The Construction Manager must be on site during all construction activities (or the Approved designee must be on site). The Construction Manager must work under the direct supervision of Submitter's Project Manager. The Construction Manager is responsible for ensuring that the Project is constructed in accordance with the Project requirements. The Construction Manager is responsible for managing the Design-Builder construction personnel, scheduling of the construction activities and administering all construction requirements of the Contract.
Construction Quality Control Manager	The Construction Quality Control Manager shall have experience overseeing the inspection and materials testing on highway construction projects of similar scope. A minimum of 10 years of experience is required for this position. The Construction Quality Control Manager must manage the Design-Builder's Quality Control functions and will: i. not be assigned any other duties or responsibilities on the Project; ii. visit the site as necessary to validate construction quality, respond to any quality issues, and report on that visit to MDOT's Project Manager; iii. attend at least one progress meeting per month to report on construction quality issues; iv. be independent of direct scheduling or production activities and reports directly to the Design-Builder's management team; v. be available whenever any construction activities are being performed; and vi. have the authority to stop any and all Work that does not meet the standards, specifications or criteria established for the Project.
Design Manager	The Design Manager shall have experience in managing the design of highway construction projects and must be a licensed Professional Engineer in the State of Michigan now or by the award of the Project. 10 years or more of experience is preferred for this position. The

Key Personnel Position	Preferred Requirements
	Design Manager is expected to have recent relevant project experience managing similar types of projects and must have Design-Build experience. The Design Manager will be responsible for ensuring that the overall Project design is completed, and design criteria requirements are met. The Design Manager will: i. be responsible for managing the Design-Builder's design personnel and administering all design requirements of the PDB Contract; ii. be available whenever design activities are being performed; iii. work under the direct supervision of the Design-Builder's Project Manager; and iv. regularly attend design and construction progress meetings.
Design Quality Control Manager	The Design Quality Control Manager shall have experience managing the design quality component of highway construction projects of similar scope and complexity and must be a licensed Professional Engineer in the State of Michigan now or by the award of the Project. A minimum of 10 years of experience is required for this position. The Design Quality Control Manager will be responsible for design quality control for the Project. The Design Quality Control Manager will: i. be independent of design production and associated activities; ii. be available whenever design activities are being performed; and iii. work under the direct supervision of Design-Builder's management team.
Environmental Compliance Manager	The Environmental Compliance Manager shall be employed by the Lead Designer or a subconsultant providing professional services and must have recent experience on projects with similar environmental conditions including wetland impacts, regulated stream impacts, threatened and endangered species restrictions (Indiana Bat, Northern Long-eared Bat, and Eastern Massasauga Rattlesnake), non-hazardous contaminated materials handling and disposal, and soil erosion and sedimentation control (SESC) measures. 10 years or more of experience is preferred for this position. The ECM will: i. be responsible for assuring and reporting compliance of all on-site activities with the requirements of all permits and regulatory requirements; ii. report directly to MDOT and the Design-Builder's Project Manager simultaneously; iii. have the authority to stop work that is not in compliance with environmental requirements; and iv. visit the site at least once per week and attend progress meetings at least monthly to report on environmental items.
Lead Cost Estimator	The Lead Cost Estimator is preferred to have recent, relevant experience on projects preparing production-based cost estimates for projects of similar scope. The Cost Estimator must work under the direct supervision of the Design-Builder's Project Manager. 10 years or more of experience is preferred for this position. The Lead Cost Estimator is responsible for ensuring that the milestone estimates and GMP are developed in accordance with Project requirements and reflects discussion and correspondence with the Project Team. The Cost Estimator will: i. clearly communicate the basis of the estimate to MDOT;

Key Personnel Position	Preferred Requirements
	ii. identify missing or incomplete information needed for current or future estimates; and iii. collaborate with the Project Team to reach a common understanding of Project costs.
Lead Geotechnical Engineer	The Lead Geotechnical Engineer shall be experienced in geotechnical engineering as required for this Project and must be a registered Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Hydraulics Engineer	The Lead Hydraulic Engineer shall be experienced in hydraulic engineering as required for this Project. This experience should be focused on freeway storm sewer design, ditch and culvert design, and water detention/retention system design. The Lead Hydraulics Engineer shall be a registered Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Structures Engineer	The Lead Structures Engineer shall be experienced in structure design of the size required to accomplish the scope of work for structures on this Project. The Lead Structures Engineer shall be a licensed Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Road Engineer	The Lead Road Engineer shall be experienced in roadway design related to roadway reconstruction and rehabilitation projects, including large roadway corridor projects of similar scope. The Lead Road Engineer shall be a licensed Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Traffic Engineer	The Lead Traffic Engineer shall be experienced in signing design, pavement marking design, traffic signal design, and have significant recent experience in traffic engineering, traffic management, and capacity analysis on similar projects. This experience should be focused on freeways and conventional interchanges. The Lead Traffic Engineer shall be a licensed Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Maintenance of Traffic Engineer	The Lead Maintenance of Traffic Engineer shall be experienced in work zone safety, work zone traffic control design, and have significant recent experience in maintenance of traffic engineering and traffic management on similar projects. This experience should be focused on freeways and conventional interchanges, and unique maintaining traffic concepts in narrow corridors. The Lead Maintenance of Traffic Engineer shall be a registered Professional Engineer in the State of Michigan now or by the award of the Project.
Lead Utility Engineer	The Lead Utility Engineer shall have recent relevant experience with coordinating and resolving utility conflicts on similar projects, including Design-Build projects. They shall demonstrate their ability to work with multiple utilities at once and how conflicts are identified, mitigated, and resolved.

Exhibit I – Affidavit of Authorizations and Representations

I, _____ (Affiant Name), as _____ (owner/title) of

_____ (Design-Builder), affirm under oath the following statements:

1. I have full authority to sign all Contract Documents on behalf of the Design-Builder;
2. That the Design-Builder is jointly and severally liable for all Design-Builder obligations and liabilities in the Contract Documents; and
3. That no singular Design-Builder joint venture member, partner, or member, as applicable, is entitled to stop, hinder, or delay Work on the Project.

Under penalties of perjury, I declare that I have read the foregoing Affidavit of Authorizations and Representations and that the facts stated in it are true.

_____ _____

Affiant Signature Date