



REQUEST FOR PROPOSALS (RFP)

RFP Number: 001-15-05

**To Design and Construct Project Neon
Through a Design-Build Contract**

CONTRACT

Volume II

November 9, 2015



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DESIGN-BUILD CONTRACT

Project Neon DB Phase

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DESIGN-BUILD CONTRACT

Project Neon Design-Build Project

This design-build contract ("Contract") is entered into and effective as of November 9, 2015 by and between the STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "Department") and KIEWIT INFRASTRUCTURE WEST CO., a Delaware corporation ("Design-Builder"), with reference to the definitions contained in Appendix 1 hereto and the following facts:

A. The Department wishes to undertake certain capital improvements in the City of Las Vegas, Nevada, along Interstate 15 ("I-15") and major street connections, related improvements and Utility Adjustments from south of the Sahara Avenue / I-15 Interchange to the I-15 / U.S. Route 95 / Interstate 515 Interchange, otherwise known as Project Neon – DB Phase (the "Project").

B. Nevada Revised Statutes (NRS) sections 408.3875 to 408.3887, inclusive, set forth the conditions under which the Department may use the design-build delivery method for the Project.

C. At a public meeting held on August 18, 2014, the State Transportation Board made the determinations required by NRS 408.388 and 408.3881 allowing use of the design-build delivery method for the Project.

D. In accordance with NRS 408.3883, the Department advertised in a newspaper of general circulation a request for preliminary proposals ("Request for Qualifications" or "RFQ") for the design and construction of the Project, and issued an RFQ.

E. The Department received statements of qualifications in response to such request and selected at least three but not more than five finalists from among the firms that submitted a statement of qualifications, after having determined that those finalists met the requirements set forth in NRS 408.3884 and 408.3885.

F. In accordance with NRS 408.3886, the Department provided to each finalist a request for final proposals for the Project ("Request for Proposals" or "RFP") which set forth the factors the Department used to select the Design-Builder to design and construct the Project, including the relative weight assigned to each factor; and set forth the date by which proposals were to be submitted to the Department.

G. The Design-Builder was one of the shortlisted proposers and timely submitted a responsive proposal ("Proposal").

H. The Department determined that the Design-Builder's Proposal was the best value proposal submitted, based on evaluation of the factors set forth in the Request for Proposals.

I. In accordance with NRS 408.3886(6), the State Transportation Board reviewed and ratified the selection of the Design-Builder at a public meeting held on November 9, 2015.

NOW, THEREFORE, in consideration of the sums to be paid by the Department to Design-Builder, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

SECTION 1. COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Certain Definitions

Appendix 1 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.

1.3 Order of Precedence

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

(a) For design and other non-construction Work:

1. Change Orders and Contract amendments;
2. This Contract, including all appendices;
3. Technical Provisions including all attachments to the Technical Provisions, except that Project Standards listed in Table 26-1 of the Technical Provisions have a lower order of precedence as noted below;
4. Project Standards;
5. Design-Builder's Proposal Commitments (as set forth in Appendix 12); and
6. Design-Builder's Proposal.

(b) For construction-related standards, specifications and requirements, the same order of precedence shall apply, except that the Final Design Documents shall also be considered Contract Documents and shall be added following the Proposal Commitments in the order of precedence; provided, however, that (i) specifications contained therein shall have precedence over plans, (ii) no conflict shall be deemed to exist between the Final Design Documents and the other Contract

Documents with respect to requirements of the Final Design Documents that the Department determines are more beneficial than the requirements of the other Contract Documents; and (iii) any other Deviations contained in the Final Design Documents shall have priority over conflicting requirements of other Contract Documents only to the extent that the conflicts are specifically identified to the Department by Design-Builder and such Deviations are approved in writing by the Department.

1.3.2 Notwithstanding the order of precedence among Contract Documents set forth in Section 1.3.1, in the event and to the extent that Appendix 12 expressly specifies that it is intended to supersede specific provisions of the Contract Documents, Appendix 12 shall control over the specified provisions. Moreover, if the Proposal includes statements, offers, terms, concepts and designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains statements, offers, terms, concepts, or designs which the Department considers to be more advantageous than the requirements of the other Contract Documents, Design-Builder's obligations hereunder shall include compliance with all such statements, offers, terms, concepts or designs which shall have the priority of Contract amendments and Technical Provision amendments, as applicable. The commitments set forth in Appendix 12 hereto and Design-Builder's Proposal shall be considered part of this Contract.

1.3.3 Portions of the Reference Design and other Reference Information Documents are referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. The Reference Information Documents shall be deemed incorporated in the Contract Documents to the extent that they are so expressly referenced, with the referenced aspects having the same order of priority as the Contract Document in which the reference occurs.

1.3.4 Additional details and more stringent requirements contained in a lower priority Contract Document will control except to the extent they irreconcilably conflict with the requirements of the higher level Contract Document.

1.3.5 Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.3, if a Contract Document contains differing provisions on the same subject matter than another Contract Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards will prevail. Further, in the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision that use more stringent standards or better performance will apply, unless the Department, in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other Party in writing of the conflict. The Department shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.4 Interpretation of Contract Documents

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; unless otherwise indicated, references to Codes are to the codified laws of the State; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; unless otherwise indicated, references to sections, appendices or schedules are to the Contract; words such as “herein,” “hereof” and “hereunder” shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which 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 Entities, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall 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 acknowledges and agrees that it had the opportunity and obligation, prior to the Proposal Date, to review the terms and conditions of the Contract Documents (including those Reference Information Documents that are referenced in the Contract Documents and, pursuant to Section 1.3.3 above, are considered Contract Documents) and to bring to the attention of the Department any conflicts, errors, inconsistencies or ambiguities contained therein. 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 provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Party that prepared them, and instead other rules of interpretation and construction shall be used. The Department’s interim or final answers to the questions posed during the Proposal process for the Contract Documents 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 (as determined by the Department). On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.5 Referenced Standards and Specifications

1.5.1 Effective Dates and Versions of Standards and Specifications

Except as otherwise specified in the Contract Documents or otherwise directed by the Department, material and workmanship 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 Setting Date.

1.5.2 In interpreting Project Standards, the following apply:

- (a) References to the project owner shall mean the Department.

(b) References to the “Engineer” in the context of provider of compliance judgment may mean Design-Builder’s Quality Manager or it may mean a Department representative, depending on the context, as determined by the Department, in its good faith discretion.

(c) References to “plan(s)” shall mean the Final Design Documents.

(d) Cross-references to measurement and payment provisions contained in the Project Standard shall be deemed to refer to the measurement and payment provisions contained in the Contract Documents.

1.6 Explanations; Omissions and Misdescriptions

Design-Builder shall not take advantage of or benefit from any apparent or actual Error in the Contract Documents. 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 request in writing such further written explanations from the Department as may be necessary and shall comply with the explanation provided. Design-Builder shall promptly notify the Department in writing of all Errors which it may discover in the Contract Documents (including the Reference Design and those other Reference Information Documents that are referenced in the Contract Documents, and pursuant to Section 1.3.3 above, are considered Contract Documents), and shall obtain specific instructions in writing from the Department 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, 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 Change Order hereunder except as specifically allowed under Section 13.

1.7 Computation of Periods

References to “days” contained in the Contract Documents shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding day which is a Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 5.3.1, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

1.8 Standard for Approvals

In all cases where approvals, consents, or other determinations are required to be provided by the Department hereunder, such approvals or consents or other determinations shall be governed by the standards and other provisions set forth in Sections 3.3.4 through 3.3.9. In all cases where approvals, consents, or other

determinations are required to be provided by Design-Builder hereunder, such approvals or consents shall not be withheld unreasonably.

1.9 Reference Information Documents

1.9.1 The Department has provided and disclosed the Reference Information Documents to Design-Builder. Except as expressly provided in Section 1.3.3: (a) the Reference Information Documents are not mandatory or binding on Design-Builder, (b) Design-Builder is not entitled to rely on the Reference Information Documents as presenting a feasible, complete, accurate, viable or desirable technical, design, engineering, construction, operations or maintenance solution or other direction, means or methods for complying with the requirements of the Contract Documents, Governmental Approvals or Governmental Rules; (c) use by Design-Builder of any element, aspect or portion of the Reference Information Documents shall be at the sole risk of Design-Builder; and (d) the Reference Information Documents are provided without any representation or warranty by, or recourse to, the Department, all of which representations and warranties are hereby disclaimed in their entirety.

1.9.2 Subject to Design-Builder's right to schedule or monetary relief available hereunder as set forth in Section 13 of this Contract, the Department shall not be responsible or liable in any respect for any suits, judgments, proceedings, investigations, causes of action, claims or Losses whatsoever suffered or incurred by any DB-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

1.10 Incorporation of ATCs

1.10.1 In the event that ATCs incorporated into the Contract Documents require additional Environmental Approvals, analysis, or assessment prior to implementation, Design-Builder shall (a) be solely responsible for the cost and schedule impact of any related review, analysis, assessment, approvals, permits and findings; (b) be solely responsible for the risk that any approvals, permits or findings are not granted, issued, approved or obtained or timely granted, issued, approved or obtained; and (c) not be entitled to any increase in the Contract Price or extension of the Completion Deadlines as a result of any delay or cost associated with the environmental review, analysis, approvals, permits or findings related to such ATC, including the inability to obtain such approvals, permits or findings.

1.10.2 If the Contract Documents incorporate any approved ATCs and: (a) Design-Builder does not comply or is unable to comply with one or more of the Department conditions of pre-approval for the ATC (including the obligation to obtain any required additional Environmental Approvals, analysis or assessment), (b) Design-Builder is unable to obtain a third party approval required for the ATC, or (c) the ATC otherwise proves to be infeasible, then Design-Builder shall comply with the Contract Document requirements that would have been applicable but for the ATC, without any increase in the Contract Price, extension of the Completion Deadlines or any other Change Order. In such case and depending upon the circumstances (including if Design-Builder fails to use all reasonable efforts to implement the ATC or obtain any required Environmental Approvals or other Governmental Approvals), the Department

may also be entitled to (i) a reduction in the Contract Price in an amount equal to the estimated value of the ATC on the Proposal Price, as reasonably determined by the Department, but which in no event shall be less than cost (plus mark-up and profit) of the ATC as reflected in the Proposal Price, and (ii) a reduction in the time allowed to achieve Substantial Completion in an amount equal to the estimated schedule savings as a result of the ATC not being implemented, as reasonably determined by the Department.

1.10.3 ATCs contained in proposals submitted by unsuccessful proposers may, in the Department's sole discretion, be presented to Design-Builder as a Change Notice in accordance with Section 13.2.1 of this Contract.

1.11 Federal Requirements

The Work to be performed under this Contract will be financed in part with federal funds and is therefore subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the requirements set forth in Appendix 13. Design-Builder shall comply and require its Subcontractors to comply with all applicable federal requirements, including those requirements set forth in Appendix 13. In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

**SECTION 2. OBLIGATIONS OF DESIGN-BUILDER;
REPRESENTATIONS, WARRANTIES AND COVENANTS;
DESIGN REQUIREMENTS**

2.1 Performance Requirements

2.1.1 Performance of Work; Project Management Plan

The Work shall include the design and construction of the Project, conforming to the Basic Configuration as set forth in the Reference Design and otherwise complying with the requirements of the Contract Documents, except as otherwise approved in writing by the Department, in its sole discretion. All 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. Design-Builder shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly or indirectly impacted by the Work. Subject to the terms of Section 13, the costs of all Work, including all such materials, services and efforts are included in the Contract Price.

2.1.1.1 Design-Builder shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in the Contract Documents, including Section 20.2.1 of the Contract, Section 1.5.1 of the Technical Provisions, Governmental Approvals, Governmental Rules and Good Industry Practice. The Project Management Plan shall include all the parts and other documentation identified in Attachment 01-3 to the Technical Provisions.

2.1.1.2 Design-Builder shall submit to the Department, for approval in its good faith discretion, in accordance with the procedures described in Section 3 and the time line set forth in Section 3.2 of the Contract and Attachment 01-3 to the Technical Provisions, each component part, plan and other documentation of the Project Management Plan, including the Project Schedule. Design-Builder shall submit to the Department, for approval in its good faith discretion, (a) any proposed changes or additions to or revisions of any such component part, plan or other documentation in accordance with the procedures and time lines set forth in Section 1.5.1 of the Technical Provisions and (b) any updates or revisions to the Project Schedule in accordance with Section 1.6.1 of the Technical Provisions. It is deemed good faith for the Department to disapprove and/or require changes to comply with Good Industry Practice, applicable provisions of the Contract Documents, FHWA oversight requirements, Governmental Approvals or applicable Governmental Rules.

2.1.1.3 Except as authorized by the Contract, including Section 1.1.5 of the Technical Provisions with respect to NTP1 Work, Design-Builder shall not commence or permit the commencement of any aspect of the Work before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by the Department in

accordance with the procedures described in this Section 2.1, Section 3 and the time line set forth in Attachment 01-3 to the Technical Provisions.

2.1.1.4 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to the Department for approval in its good faith discretion at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to the Department.

2.1.1.5 Design-Builder shall ensure that the Project Management Plan meets all requirements set out in Section 1.5.1 of the Technical Provisions and Attachment 2-1 to the Technical Provisions as well as all requirements of Good Industry Practice, including those for quality assurance and quality control, and all FHWA oversight requirements.

2.1.1.6 Design-Builder is responsible for all quality assurance and quality control activities necessary to manage the Work pursuant to Sections 2, 3 and 4 of the Technical Provisions. Design-Builder shall undertake all aspects of Quality Assurance and Quality Control for the Project and Work in accordance with the approved Project Management Plan, the Contract Documents, Governmental Approvals, Governmental Rules and Good Industry Practice. The Quality Manager shall have authority independent of the Project Manager and at least equivalent in level of authority to that of the Project Manager.

2.1.1.7 Design-Builder shall carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan.

2.1.1.8 Design-Builder shall cause each of its Subcontractors at every level to comply with the applicable requirements of the approved Project Management Plan.

2.1.2 Performance Standards

2.1.2.1 Design-Builder shall furnish all aspects of the Work and shall construct the Project as designed, free from defects (except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents), and in accordance with: (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the Contract Documents, (c) the Project Schedule, (d) all Governmental Rules, (e) the requirements, terms and conditions set forth in all Governmental Approvals, (f) the approved Project Management Plan and all component plans prepared or to be prepared thereunder, and (g) the Construction Documents, in each case taking into account the Planned ROW Limits and other constraints affecting the Project.

2.1.2.2 The Project design and construction shall be subject to certification pursuant to the procedure contained in the approved Project Management Plan.

2.1.2.3 Design-Builder acknowledges that, prior to the Effective Date, it had the opportunity to identify any provisions of the Contract Documents, including the Technical Provisions, that are erroneous or create a potentially unsafe condition, and the opportunity and duty to notify the Department in writing of such fact and of the changes to the provision that Design-Builder believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes to the Contract Documents, including the Technical Provisions, after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for any adjustment to the Contract Price, Completion Deadline or other Claim, unless: (a) Design-Builder neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) Design-Builder knew of and reported to the Department the erroneous or potentially unsafe provision prior to the Effective Date and the Department did not adopt reasonable and necessary changes. If Design-Builder commences or continues any Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Design-Builder shall bear any additional costs and schedule delay associated with redoing the Work already performed. Inconsistent or conflicting provisions of the Contract Documents shall not be treated as erroneous provisions under this Section 2.1.2.3, but instead shall be governed by Section 1.3.

2.1.2.4 Design-Builder may apply for Department approval of Deviations from applicable requirements of the Contract Documents, including the Technical Provisions, regarding the design or construction of the Project. All applications shall be in writing. Where Design-Builder requests a Deviation as part of the submittal of a component plan of the Project Management Plan, including the Project Schedule and any updates thereto, Design-Builder shall specifically identify and label the proposed Deviation. The Department shall consider requested Deviations in its sole discretion, but has no obligation to approve any such application. Design-Builder shall bear the burden of persuading the Department that the Deviation sought constitutes sound and safe engineering consistent with Governmental Approvals, Governmental Rules and Good Industry Practice and achieves the Department's applicable safety standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in a writing signed by the Department's Authorized Representative. The Department's affirmative written approval of a component plan of the Project Management Plan shall constitute: (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless the Department takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. The Department's lack of issuance of a written Deviation within fourteen (14) days after Design-Builder applies therefor in writing shall be deemed a disapproval of such application.

2.1.2.5 References in the Technical Provisions to manuals or other publications governing the Work shall mean the most recent editions in effect on the Setting Date, unless expressly provided otherwise. Any changes to the Technical Provisions related to the Work shall be subject to the Change Order process for a Department-Directed Change in accordance with Section 13.

2.1.3 Performance as Directed

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

2.2 General Obligations of Design-Builder

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

2.2.1 Furnish all design and other services, provide all materials, equipment, and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Contract Documents specify will be undertaken by the Department or other Persons) (a) to design and construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, the Project Schedule, all Governmental Rules, all Governmental Approvals, the approved Project Management Plan and all component plans prepared or to be prepared thereunder, the approved Design-Builder's Safety Plan, the approved Construction Documents and all other applicable safety, environmental and other requirements, taking into account the Planned ROW Limits and other constraints affecting the Project, so as to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines, and (b) otherwise to do everything required by and in accordance with the Contract Documents.

2.2.2 At all times provide a Project Manager approved by the Department who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of Design-Builder, (c) will be present (or its approved designee will be present) at the Site at all times that Work is performed, and (d) will be available to execute instructions and directions from the Department or its Authorized Representatives.

2.2.3 Use the design firm or firms identified in the Proposal to perform the design services required by the Contract Documents (or other firms approved in writing by the Department, which approval shall not be withheld provided that the Department shall first have determined, in its reasonable discretion, that such firm has the demonstrated competence and professional qualifications necessary for the satisfactory performance of the required design services, and that the designated key personnel at such firm have sufficient experience with requirements applicable to the Project). Design-Builder shall not shift design Work from one firm to another without the prior written approval of the Department, in its good faith discretion.

2.2.4 Obtain and pay the cost of obtaining all Governmental Approvals required in connection with the Project (except for Department-Provided Approvals and New Approvals for which the Department has expressly agreed to be responsible therefor under Section 6.12); and prior to beginning any construction activities in the

field, furnish the Department with fully executed copies of all Governmental Approvals (other than the Governmental Approvals obtained by the Department) required for such portion of the Project.

2.2.5 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 performance of all environmental mitigation measures required by the Contract Documents, except to the extent that responsibility for performance of such measures is expressly assigned to another Person in the Contract Documents.

2.2.6 Provide such assistance as is reasonably requested by the Department in dealing with any Governmental Entity and/or in prosecuting and defending lawsuits in any and all matters relating to the Project. Such assistance may include providing information and reports regarding the Project as well as executing declarations and attending meetings and hearings. This provision is not intended to require Design-Builder to provide legal services for the benefit of the Department.

2.2.7 Comply with, and require all Subcontractors to comply with, all requirements of all applicable Governmental Rules, including:

(a) The State labor requirements and implementing regulations and federal labor requirements, including requirements with respect to prevailing wages, non-discrimination, and employment and training of apprentices, as more specifically described in Section 7 and in Appendix 13;

(b) All Environmental Laws, including environmental mitigation and monitoring measures required for the Project, including those set forth in Sections 7.3 and 7.4 of, and Attachment 07-1 to, the Technical Provisions, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Materials;

(c) The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., including any amendments, as well as all applicable regulations and guidelines; and

(d) All other applicable Federal Requirements, including those set forth in Appendix 13.

2.2.8 Cooperate fully with the Department, the Department's consultants, and Governmental Entities with jurisdiction over the Project in review and oversight of the design or construction of the Project, performing oversight and conducting inspections during the construction of the Project, and other matters relating to the Work.

2.2.9 Supervise and be responsible to the Department for acts, omissions, negligence, fraud, recklessness, intentional misconduct, or breach of applicable Governmental Rules, contract or Governmental Approvals by any and all DB-Related Entities, as though all such Persons were directly employed by Design-Builder.

2.2.10 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 Entity, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

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

2.2.12 Provide and maintain field offices as described in Section 2 of the Technical Provisions for the exclusive use of the Department and its consultants for the Project, as well as for FHWA and other third parties as directed by the Department.

2.2.13 Ensure labor harmony on the Site during all stages of the Project, including taking appropriate steps to prevent strikes, walkouts, Work stoppages, Work slowdowns, Work curtailments, cessations or interruptions of production due to labor disputes. If failure to maintain labor harmony results in delay in completion of the Project, Design-Builder shall not be entitled to a time extension or increase in compensation under Section 13.

2.3 Representations, Warranties and Covenants

Design-Builder represents, warrants and covenants that:

2.3.1 During all periods necessary for the performance of the Work, Design-Builder and its design and construction Subcontractor(s) will maintain all required authority, license status, professional ability, skills, and capacity to perform the Work, and shall perform them in accordance with the requirements contained in the Contract Documents.

2.3.2 Design-Builder has evaluated the constraints affecting design and construction of the Project, including the Basic Configuration, Planned ROW Limits, the Department's schedule for acquisition of property within the Planned ROW Limits, conditions of the Department-Provided Approvals, Preliminary Utility Work Packages, and draft Construction and Maintenance Agreement as described in Sections 17 and 18 of the Technical Provisions, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

2.3.3 Design-Builder has evaluated the feasibility of performing the Work within the time and for the amount herein, accounting for constraints affecting the Project and has reasonable grounds for believing and does believe that such performance (including achievement of Substantial Completion and Final Acceptance by the applicable Completion Deadline, for the Contract Price) is feasible and practicable.

2.3.4 To the extent Design-Builder deems it necessary or advisable for submittal of a Proposal, Design-Builder has, prior to submitting its Proposal, in accordance with Good Industry Practice, reviewed the Contract Documents and Reference Information Documents, inspected and examined the Site and surrounding locations, performed or had the opportunity to perform appropriate field studies and geotechnical investigations of the Site, investigated and reviewed available public and private records and undertaken other appropriate activities sufficient to familiarize itself with surface and subsurface conditions, including the presence of Utilities, Hazardous

Materials, Contaminated Groundwater, archeological, paleontological, biological, cultural, and other protected resources, and threatened or endangered species affecting the Site or surrounding locations. As a result of such review, inspection, examination and other activities, Design-Builder is familiar with and accepts the physical requirements of the Work, subject to Design-Builder's right to seek relief under Section 13. Design-Builder further acknowledges and agrees that changes in conditions at the Site may occur after the date hereof, and that Design-Builder shall not be entitled to any Change Order in connection therewith except as specifically permitted under Section 13. Before commencing any Work on a particular aspect of the Project, Design-Builder shall verify all governing dimensions at the Site, and shall examine all adjoining work which may have an impact on such Work. Design-Builder shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5 Design-Builder acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Governmental Rules and the conditions of any required Governmental Approvals prior to entering into the Contract. Except as specifically permitted under Section 13, Design-Builder shall be responsible for complying with the foregoing at its sole cost and without any increase in Contract Price or extension of any Completion Deadline on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. 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 in a timely fashion and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

2.3.6 All Work furnished by Design-Builder shall be performed by or under the supervision of Persons who hold all necessary and valid licenses to perform the Work in the State, by personnel who are careful, skilled, experienced, and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents, and other documents prepared or checked by them.

2.3.7 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 approved Project Schedule, including furnishing such employees, materials, facilities, and equipment and working such hours, extra shifts, overtime operations, Sundays and holidays as may be necessary to achieve such goal, all at Design-Builder's own cost except as otherwise specifically provided in Section 13.

2.3.8 Design-Builder is a corporation, duly organized and validly existing under the laws of the State of Delaware, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Design-Builder is a duly qualified business, and is in good standing, in the State, and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

Guarantor is duly organized and validly existing under the laws of the State of Delaware, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted.

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

2.3.10 The Contract constitutes the legal, valid, and binding obligation of Design-Builder and, if applicable, of each member of Design-Builder, in accordance with its terms, subject only to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity. The Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

2.3.11 There is no action, suit, proceeding, investigation or litigation pending and served on Design-Builder which challenges Design-Builder's authority to execute, deliver or perform, or the validity or enforceability of, the Contract, or which challenges the authority of Design-Builder's official executing the Contract Documents; and Design-Builder has disclosed to the Department any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Design-Builder is aware.

2.3.12 As of the Proposal Date, Design-Builder disclosed to the Department in writing all organizational conflicts of interest of Design-Builder and DB-Related Entities of which Design-Builder was actually aware; and between the Proposal Date and execution of this Contract, Design-Builder has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Design-Builder or its Subcontractors identified in its Proposal which have not been approved in writing by the Department. For this purpose, organizational conflict of interest has the meaning set forth in the Instructions to Proposers under which Design-Builder submitted its Proposal.

2.3.13 Design-Builder is aware of the provisions of Section 408.373 of the Nevada Revised Statutes which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of NRS Chapters 612 and 616A to 617, inclusive, and Design-Builder will comply with such provisions before commencing performance of the Work under the Contract Documents and at all times during the term hereof, whether by provision of its own insurance or self-insurance.

2.3.14 Design-Builder is aware that it shall not assign or sublet any of its Work under this Contract without first obtaining the Department's approval pursuant to NRS

408.377 and acknowledges that its Subcontractors and assignees shall comply with the workers' compensation requirements pursuant to NRS 408.373.

2.3.15 Design-Builder's Proposal listed certain of Design-Builder's Subcontractors pursuant to the requirements of NRS 338.141. Design-Builder acknowledges that it must comply with the provisions of such statute in its substitution of such Subcontractors.

2.3.16 Design-Builder is aware that it must comply with all Governmental Rules, including licensing requirements and the payment of sales and use taxes pursuant to NRS 338.153.

2.4 Survival of Representations and Warranties

The representations and warranties of Design-Builder contained herein shall survive expiration or earlier termination of this Contract.

**SECTION 3. INFORMATION SUPPLIED TO
DESIGN-BUILDER; SUBMITTALS, DESIGN REQUIREMENTS AND DISCLAIMER;
ROLE OF FHWA;
GOVERNMENTAL APPROVALS**

3.1 Information Supplied

The Department has made available to Design-Builder information which is described in the Technical Provisions and has allowed Design-Builder access to the Site for purposes of inspection and testing.

3.2 Submittals

3.2.1 General

3.2.1.1 This Section 3.2 sets forth terms and procedures that shall govern all Submittals to the Department pursuant to the Contract Documents or Project Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 3.2 and any other provisions of the Contract Documents or Project Management Plan and component plans thereunder concerning submission, review and approval procedures, this Section 3.2 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 3.2.

3.2.1.2 Whenever Design-Builder provides FHWA, a Local Agency, other Governmental Entity, Utility Owner, Railroad, or property owners with a submittal, notice, application, or other communication relating to the Project, Design-Builder shall also concurrently submit a duplicate thereof to the Department. Design-Builder shall also provide the Department with copies of all correspondence or communications by or between Design-Builder and FHWA, Local Agencies, other Governmental Entities, Utility Owners, Railroad, or property owners relating to the Project.

3.2.2 Time Periods

3.2.2.1 Except as otherwise provided in this Section 3.2.2, whenever the Department is entitled to review, comment on, or to affirmatively approve or accept, a Submittal, the Department shall have a period of up to twenty-eight (28) days to act after the date it receives an accurate and complete Submittal in conformity with the Contract Documents, together with all necessary information and documentation concerning the subject matter.

3.2.2.2 Notwithstanding the provisions of Section 3.2.2.1, and except as otherwise mutually agreed by the Parties at the Design Workshop, whenever the Department is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal consisting of Design Documents or Construction Documents, the Department shall have a period of up to fourteen(14) days to act after the date it receives an accurate and complete Submittal or re-submittal in conformity with the Contract Documents, together with all necessary or requested information and documentation concerning the subject matter. If a Submittal consisting

of Design Documents or Construction Documents requires review by the City of Las Vegas, in accordance with Section 3.9 of the Technical Provisions, the Department's period to act pursuant to this Section 3.2.2.2 shall be extended to twenty-one (21) days. If the Department determines that a Submittal of Design Documents or Construction Documents is not complete, it will notify Design-Builder of such determination within seven (7) days if the Submittal does not require review by the City of Las Vegas and within fourteen (14) days if the Submittal does require review by the City of Las Vegas. The Parties shall agree in good faith upon any necessary extensions or shortening of the review-comment-and approval period to accommodate particularly complex or comprehensive Submittals, less complex Submittals, or previously reviewed Submittals.

3.2.2.3 If any other provision of the Contract Documents expressly provides a longer or shorter period for the Department to act, such period shall control over the time periods set forth in Sections 3.2.2.1 and 3.2.2.2. If the time period for the Department to act should end on a day when the Department is closed, the time period shall automatically be extended to the next day when the Department is open.

3.2.2.4 If at any given time the Department is in receipt of more than (a) ten (10) concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals agreed to in writing by Department and Design-Builder) that are subject to the Department's review and comment or approval, except Submittals of parts or components of the Project Management Plan prior to issuance of NTP2, or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the Contract Documents, the Department may extend the applicable period for it to act to that period in which the Department can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the Contract Documents, and no such extension shall constitute a Department-Caused Delay, Department-Directed Change or other basis for any Claim. However, if at any time the Department is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether the Department may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to the Department under this Section 3.2.2 regarding such Submittals either entirely or partially overlap. Whenever the Department is in receipt of excess concurrent Submittals, Design-Builder may establish by written notice to the Department an order or priority for processing such Submittals; and the Department shall comply with such order of priority.

3.2.2.5 All time periods for the Department to act shall be extended by the period of any delay caused, in whole or in part, by the acts, omissions, negligence, fraud, recklessness, intentional misconduct, or violation of applicable Governmental Rules, breach of contract or breach of Governmental Approvals by any DB-Related Entity.

3.2.2.6 The Department shall endeavor to reasonably accommodate a written request from Design-Builder for expedited action on a specific Submittal, within the reasonable and practical limitations on availability of the Department personnel appropriate for acting on the types of Submittal in question; provided Design-Builder sets forth in its request specific, abnormal and exigent circumstances, not caused by

any DB-Related Entity, demonstrating the need for expedited action. Such accommodation, if undertaken, may result in extension of the time period for review, response and/or approval of other Submittals. This provision shall not apply, however, during any time described in Section 3.2.2.5.

3.2.2.7 Whenever the Department is entitled to affirmatively approve a Submittal or other matter under the Contract Documents, and the Department delivers no approval, disapproval, acceptance, consent, denial, determination, decision or other action within the applicable time period under this Section 3.2.2, then Design-Builder may deliver to the Department, a written notice stating the date within which the Department was to have decided or acted and that if the Department does not decide or act within five- (5-) Business Days after receipt of Design-Builder's notice, delay from and after such five- (5-) Business Day period may constitute a Department-Caused Delay for which Design-Builder may be entitled to relief under Section 13.

3.3 Responsibility for Design

3.3.1 Design-Builder Responsibility

Design-Builder agrees that it has full risk and responsibility for the design of the Project and that Design-Builder will furnish the design of the Project, regardless of the fact that aspects of the Reference Design have been provided to Design-Builder prior to the Effective Date, as a preliminary basis for Design-Builder's design. Design-Builder specifically acknowledges and agrees that:

(a) Except to the extent specifically permitted in the Contract Documents, Design-Builder is not entitled to rely on (i) the Reference Design, except as expressly specified in Section 3.3.2.2, (ii) the other Reference Information Documents, or (iii) any other documents or information provided by or on behalf of the Department.

(b) Design-Builder is responsible for correcting any Errors in the Reference Design through the design and/or construction process without any increase in the Contract Price, extension of a Completion Deadline or any other relief, subject only to the right to a Change Order with respect to any Necessary Basic Configuration Changes to the extent permitted by Section 13.8.

(c) The Department's liability for Errors in the Reference Design is limited to its obligations relating to Necessary Basic Configuration Changes and provision of access to parcels within the Department-Provided Property, and is subject to the requirements and limitations of Section 13.

(d) Design-Builder's warranties and indemnities hereunder cover Errors in the Project even though they may be related to, result from or arise out of Errors in the Reference Design.

(e) Design-Builder is responsible for verifying all calculations and quantity takeoffs contained in the Technical Provisions or otherwise provided by the Department.

3.3.2 Reference Design

3.3.2.1 Design-Builder acknowledges and agrees that constraints set forth in the Contract Documents, including Planned ROW Limits, the Basic Configuration, the Department's schedule for acquisition of property within the Planned ROW Limits, conditions of the Department-Provided Approvals, and Site conditions, will impact Design-Builder's ability to revise the concepts contained in the Reference Design.

3.3.2.2 Design-Builder may rely on the Planned ROW Limits identified in the ROW Plans, and shall have the right to obtain a Change Order for Necessary Basic Configuration Changes as provided herein, but acknowledges that the Reference Design is otherwise conceptual in nature and cannot be relied upon as presenting a design solution that is feasible, practical or complies with all of the requirements of the Contract Documents. Design-Builder's entitlement to an increase in the Contract Price or extension of Completion Deadlines in connection with any changes in the Reference Design is limited to Necessary Basic Configuration Changes.

3.3.3 Design Review Process and Compliance with Final Design Documents

3.3.3.1 Design-Builder, through the appropriately qualified and licensed design professionals identified in Design-Builder's Project Management Plan shall prepare designs, plans, and specifications in accordance with the Contract Documents. Design-Builder shall cause Responsible Engineers to sign and seal all Final Design Documents.

3.3.3.2 Design-Builder shall furnish the Design Documents and Construction Documents to the Department and shall obtain Department approval of any Deviations from Project Standards as specified in Section 2.1.2.4 herein and Section 3.13 of the Technical Provisions. The Department shall have the right to review and comment on all Design Documents and Construction Documents for compliance with the requirements of the Contract Documents in accordance with Section 3.2 and this Section 3.3.3 of the Contract, and Sections 3 and 4 of the Technical Provisions, and shall have rights to approve certain other Submittals as set forth in the Contract Documents.

3.3.4 Department Discretionary Approvals

If the Submittal or other approval, consent, determination, acceptance, decision or other action or matter is one for which the Contract Documents indicate approval, consent, determination, acceptance, decision or other action is required from the Department in its sole discretion or good faith discretion, then the Department's lack of approval, consent, determination, acceptance, decision or other action within the applicable time period under Section 3.2.2 shall be deemed disapproval. If the approval, consent, determination, acceptance, decision or other action is subject to the sole discretion of the Department, then its approval, consent, determination, decision or other action (including a failure to act which constitutes a disapproval) shall be final, binding, and not subject to dispute resolution, and such approval, consent,

determination, acceptance, decision or other action shall not constitute a Department-Caused Delay, Department-Directed Change or other basis for any Claim. If the approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) is subject to the good faith discretion of the Department, then its approval, consent, determination, acceptance, decision or other action shall be binding, unless it is finally determined through the Dispute Resolution Procedures by clear and convincing evidence that such approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) or matter was arbitrary or capricious, and if determined to be arbitrary or capricious through such Dispute Resolution Procedures and causes delay, it will constitute and be treated as a Department-Caused Delay.

3.3.5 Other Department Approvals

3.3.5.1 Whenever the Contract Documents indicate that a Submittal or other matter is subject to the Department's approval or consent but the approval or consent is one not governed by Section 3.3.4 concerning discretionary approvals or the Submittal or other matter is subject to the Department's reasonable discretion, then the standard shall be reasonableness.

3.3.5.2 If the reasonableness standard applies and the Department delivers no approval, consent, determination, decision or other action within the applicable time period set forth in Section 3.2.2, then Design-Builder must comply with the requirements of the Contract Documents, including Section 3.2.2.7, in order to be eligible for relief under Section 13.

3.3.6 Department Review and Comment

Whenever the Contract Documents indicate that a Submittal or other matter is subject to the Department's review, comment, review and comment, disapproval or similar action not entailing a prior approval and the Department delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.2.2, then Design-Builder may proceed thereafter at its election and risk, without prejudice to the Department's rights to later object or disapprove on any of the grounds set forth in Section 3.3.8.1. No such failure or delay by the Department in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.2.2 shall constitute a Department-Caused Delay, Department-Directed Change or other basis for any Claim. When used in the Contract Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) the Department has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without the Department providing any comments, exceptions, objections, rejections or disapprovals.

3.3.7 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the Contract Documents indicate that Design-Builder is to deliver a Submittal to the Department but express no requirement for the Department to review, comment, disapprove, provide prior approval or other Department action, then Design-

Builder is under no obligation to provide the Department any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and the Department shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 3.3.8.1. No failure or delay by the Department in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute a Department-Caused Delay, Department-Directed Change or other basis for any Claim.

3.3.8 Resolution of Department Comments and Objections

3.3.8.1 If the Submittal or other approval, consent, determination, acceptance, decision or other action or matter is one not governed by Section 3.3.4, the Department's exception, objection, rejection or disapproval shall be deemed reasonable, valid, and binding if based on any of the following grounds or other grounds set forth elsewhere in the Contract Documents:

(a) The Submittal or subject provision thereof fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard (including Safety Standards), term or provision of the Contract Documents or Project Management Plan and component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than Good Industry Practice;

(c) Design-Builder has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, provided that (i) the Department assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, and (ii) Design-Builder shall have the subsequent opportunity to resubmit the Submittal with the required content or information;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Governmental Rule or Governmental Approval; or

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are (i) inconsistent with the Contract Documents, the Project Management Plan (and component plans thereunder), applicable Governmental Rules, the requirements of Good Industry Practice, or the Department's policies (except for policies that are incompatible with the Project's design-build contracting methodology) or (ii) not usual and customary arrangements that the Department offers or accepts for addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the Project's design-build contracting methodology).

3.3.8.2 Design-Builder shall respond in writing to all of the Department's comments, exceptions, disapprovals, and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments, exceptions, disapprovals, and objections, in accordance with the review processes set forth in this Section 3.3. Design-Builder acknowledges that the Department may provide comments, exceptions, disapprovals, and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 3.3.8.1. Design-Builder agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments, exceptions, disapprovals, or objections through the review processes described in this Section 3.3. However, if the Submittal is not governed by Section 3.3.4, the foregoing shall in no way be deemed to obligate Design-Builder to incorporate any comments or resolve exceptions, disapprovals or objections that (a) are not on any of the grounds set forth in Section 3.3.8.1 (and not on any other grounds set forth elsewhere in the Contract Documents), (b) are otherwise not reasonable with respect to subject matter or length, and (c) would result in a significant delay to a Critical Path on the Project Schedule or significant increase in Design-Builder's costs, except pursuant to a Department-Directed Change. If, however, Design-Builder does not accommodate or otherwise resolve any comment, exception, disapproval, or objection, Design-Builder shall deliver to the Department within a reasonable time period, not to exceed fourteen (14) days after receipt of the Department's comments, exceptions, disapprovals or objections, a written explanation as to why modifications based on such comment, exception, disapproval or objection are not required. The explanation shall include the facts, analyses, and reasons that support the conclusion.

3.3.8.3 The foregoing shall in no way be deemed to obligate Design-Builder to incorporate any comments or resolve exceptions, disapprovals, and objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a Department-Directed Change.

3.3.8.4 If Design-Builder fails to notify the Department within the time period set forth in Section 3.3.8.2, the Department may deliver to Design-Builder written notice stating the date by which Design-Builder was to have addressed the Department's comments and that if Design-Builder does not address those comments within five (5) Business Days after receipt of such notice, then that failure shall constitute Design-Builder's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without a right to a Department-Caused Delay, Change Order or other Claim, including any Claim that the Department assumes design or other liability.

3.3.8.5 After the Department receives Design-Builder's explanation as to why the modifications are not required as provided in Sections 3.3.8.2, 3.3.8.3 and 3.3.8.4, if the Department is not satisfied with Design-Builder's explanation, the Parties shall attempt in good faith to resolve the Dispute. If they are unable to resolve the Dispute and the Submittal or other matter is not one subject to the sole discretion of the Department under Section 3.3.4, the Dispute shall be resolved according to the Dispute Resolution Procedures; provided that if the Department elects to issue a Directive Letter pursuant to Section 13.1.1.2 with respect to the matter in Dispute, Design-Builder shall

proceed in accordance with the Department's Directive Letter while retaining any Claim as to the matter in Dispute.

3.3.9 Limitations on Design-Builder's Right to Rely

3.3.9.1 No review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification (including certificates of Substantial Completion and Final Acceptance), or oversight by or on behalf of the Department, including review and approval of the Project Management Plan and Project Baseline Schedule, and no lack thereof by the Department, shall constitute acceptance by the Department of materials or Work or waiver of any legal or equitable right under the Contract Documents, Governmental Rules, or in equity. The Department shall be entitled to remedies for unapproved Deviations, Nonconforming Work, and Design-Builder Defaults and to identify additional Work which must be done to bring the Work and Project into compliance with requirements of the Contract Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification, or oversight was conducted or given by the Department. Regardless of any such activity or failure to conduct any such activity by the Department, Design-Builder at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. Design-Builder agrees and acknowledges that any such activity or failure to conduct any such activity by the Department:

- (a) Is solely for the benefit and protection of the Department;
- (b) Does not relieve Design-Builder of its responsibility for the selection and the competent performance of all DB-Related Entities;
- (c) Does not create or impose upon the Department any duty or obligation toward Design-Builder to cause it to fulfill the requirements of the Contract Documents;
- (d) Shall not be deemed or construed as any kind of warranty, express or implied, by the Department;
- (e) May not be relied upon by Design-Builder or used as evidence in determining whether Design-Builder has fulfilled the requirements of the Contract Documents;
- (f) Shall not be deemed or construed as any assumption of risk by the Department as to design, construction, performance or quality of Work or materials; and
- (g) May not be asserted by Design-Builder against the Department as a defense, legal or equitable, to, or as a waiver of or relief from, Design-Builder's obligation to fulfill the requirements of the Contract Documents.

3.3.9.2 Design-Builder shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the Contract Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 3.3.9.1 or failure to conduct any such activity by the

Department. Such activity by the Department shall not relieve Design-Builder from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work, or Design-Builder Defaults.

3.3.9.3 To the maximum extent permitted by applicable Governmental Rules, Design-Builder hereby releases and discharges the Department from any and all duty and obligation to cause Design-Builder's Work or the Project to satisfy the standards and requirements of the Contract Documents.

3.3.9.4 Notwithstanding the provisions of Sections 3.3.9.1, 3.3.9.2 and 3.3.9.3:

(a) Design-Builder shall be entitled to rely on written approvals and acceptances from the Department (i) for the limited purpose of establishing that the approval or acceptance occurred or (ii) that are within the Department's sole or absolute discretion, but only to the extent that Design-Builder is prejudiced by such approval or acceptance, or by a subsequent decision of the Department to rescind such approval or acceptance; and

(b) Design-Builder shall be entitled to rely on specific written direction from the Department, including Deviations the Department approves under Section 2.1.2.4;

3.3.9.5 Design-Builder shall be responsible for coordination and the timing of all design reviews by, and obtaining all required design approvals from (a) Governmental Entities (other than the Department and Local Agencies), (b) Railroad, and (c) Utility Owners in connection with the Work in accordance with Sections 3.9, 17 and 18 of the Technical Provisions.

3.3.9.6 Design-Builder shall construct the Project in accordance with the Final Design Documents and the Construction Documents. The Final Design Documents may be changed only with prior written approval of the Department.

3.3.9.7 Review of the Design Documents, Construction Documents, and other Submittals by the Department under this Section 3.3 (including agreement to the release for construction of specific Submittals in accordance with Section 3 of the Technical Provisions) shall not relieve Design-Builder of any responsibility for that Submittal or any Work relating thereto, including responsibility for accuracy of dimensions and details. Design-Builder shall remain responsible for the conformity of its designs and completed Work with the Contract Documents, including Final Design Documents.

3.3.10 Basic Configuration Changes

3.3.10.1 If, as the result of an Error in the Reference Design, it becomes apparent that the Basic Configuration must be materially modified, such modification shall be considered a Necessary Basic Configuration Change and shall be eligible for a potential Change Order as provided in Section 13.8.

3.3.10.2 If a VECP results in a change in Basic Configuration, any cost savings from such VECP shall be shared in accordance with Section 22.

3.3.10.3 Design-Builder shall not make any change in the Basic Configuration, except as approved by the Department and authorized by a Change Order in accordance with Section 13, and subject to the limitations contained in Section 6.12. A Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on Design-Builder's costs or schedule.

3.3.10.4 Except for a Department-Directed Change or Necessary Basic Configuration Change involving more than \$5,000.00 in additional direct costs or involving a delay to a Critical Path, Design-Builder shall not be entitled to an adjustment in the Contract Price or a Completion Deadline or any other relief for any changes in the Basic Configuration.

3.4 Reference Information Documents

3.4.1 Except to the extent that the Department has specifically agreed herein that Design-Builder shall be entitled to an increase in the Contract Price and/or extension of a Completion Deadline with respect to such matter, Design-Builder understands and agrees that the Department shall not be responsible or liable in any respect for any Losses whatsoever suffered by any DB-Related Entity by reason of any use of any information contained in the Reference Design or other Reference Information Documents (including any information, reports, or studies about site conditions, geotechnical conditions, Utilities, or structures and bridge design, and any interpretations, extrapolations, analyses, and recommendations contained therein), 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 the Department, 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.

3.4.2 Design-Builder acknowledges and agrees that (i) the Reference Design and/or the other Reference Information Documents may include interpretations, extrapolations, analyses, and recommendations concerning data, design solutions, technical issues and solutions and constructions means and methods; (ii) such interpretations, extrapolations, analyses and recommendations are preliminary in nature and, in many cases, are obsolete; (iii) such interpretations, extrapolations, analyses and recommendations are not intended to express the views or preferences of the Department or any other Governmental Entity or represent any statement of approval or acceptance thereof by the Department or any other Governmental Entity; (iv) such interpretations, extrapolations, analyses, and recommendations are not intended to form the basis of Design-Builder's design solutions, technical solutions or construction means and methods; and (v) Design-Builder is not entitled to rely on such interpretations, extrapolations, analyses and recommendations and the use or consideration thereof by

Design-Builder is at the sole risk of Design-Builder and without representation or warranty by, or recourse to, the Department or any other Governmental Entity.

3.4.3 SUBJECT TO SECTION 1.3.3, THE DEPARTMENT DOES NOT REPRESENT OR WARRANT, AND HEREBY DISCLAIMS, THAT THE INFORMATION CONTAINED IN THE REFERENCE DESIGN OR OTHER REFERENCE INFORMATION DOCUMENTS IS EITHER COMPLETE OR ACCURATE OR SUITABLE FOR USE OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF DEPARTMENT-PROVIDED APPROVALS, OTHER CONTRACT DOCUMENTS, GOVERNMENTAL APPROVALS, OR GOVERNMENTAL RULES. THE DEPARTMENT DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE TECHNICAL PROVISIONS. THE FOREGOING SHALL IN NO WAY AFFECT THE DEPARTMENT'S LIABILITY FOR NECESSARY BASIC CONFIGURATION CHANGES AS SPECIFIED HEREIN OR TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13.

3.5 Design Professional Licensing Requirements

The Department does not intend to contract for, pay for, or receive any Professional Services which are in violation of any professional licensing or registration laws, and by execution of the Contract, Design-Builder acknowledges that the Department has no such intent. It is the intent of the Parties that Design-Builder is fully responsible for furnishing the Professional Services of the Project through Subcontracts with licensed/registered Professional Services firm(s) as provided herein. Any references in the Contract Documents to Design-Builder's responsibilities or obligations to "perform" the Professional Services portions of the Work shall be deemed to mean that Design-Builder shall "furnish" the Professional Services for the Project. The terms and provisions of this Section 3.5 shall control and supersede every other provision of all Contract Documents.

3.6 Role of FHWA

Design-Builder acknowledges and agrees that FHWA will have certain review and approval rights with respect to the Project (including rights to approve the Project design and certain Change Orders), as well as the right to provide certain oversight and technical services with respect to the Project. Design-Builder shall fully cooperate with FHWA in the exercise of its duties and responsibilities in connection with the Project.

3.7 Role of City of Las Vegas

Design-Builder acknowledges and agrees that the City of Las Vegas will have certain approval, review, and compensation rights with respect to the Project. Design-Builder shall fully cooperate with the City of Las Vegas in the exercise of its duties and responsibilities in connection with the Project.

3.8 Governmental Approvals and Third Party Agreements

3.8.1 Design-Builder shall obtain all Governmental Approvals other than the Department-Provided Approvals required in connection with the Project, the Project

ROW or the Work, including any New Approvals for which Design-Builder is responsible pursuant to Section 6.12.

3.8.2 Upon Design-Builder's receipt of any Governmental Approval for which Design-Builder is responsible under the Contract Documents, Design-Builder shall submit to the Department a copy of the issued permit and related documentation. Prior to submitting to a Governmental Entity any application for a Major Environmental Approval, Design-Builder shall submit the same, together with any supporting environmental or technical studies, data, and analyses, to the Department for review and comment. In addition, Design-Builder shall submit to the Department copies of all correspondence, between the Governmental Entity and Design-Builder, related to all Major Environmental Approvals.

3.8.3 If Design-Builder wishes to pursue Additional Properties, or any deviation from any Governmental Approvals, including Department-Provided Approvals, Design-Builder shall first comply with, and obtain any consent, approval or waiver required pursuant to, then-existing agreements between the Department and other Governmental Entities.

3.8.4 Upon Design-Builder's request, the Department will reasonably cooperate with Design-Builder in providing Design-Builder with copies of the applicable agreements between the Department and other Governmental Entities.

3.8.5 If any Governmental Approvals required to be obtained by Design-Builder (including Major Environmental Approvals) must formally be issued in the name of the Department, Design-Builder shall undertake all efforts to obtain such approvals subject to the Department's reasonable cooperation with Design-Builder, at Design-Builder's expense (except in connection with Governmental Approvals required solely due to a Department-Directed Change), including execution and delivery of appropriate applications and other documentation in form approved by the Department. Design-Builder shall assist the Department in obtaining any Government Approvals which the Department may be obligated to obtain, including providing information requested by the Department and participating in meetings regarding such approvals. In the event that the Department must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of Design-Builder, Design-Builder shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents, and applications.

3.8.6 Design-Builder shall comply with all conditions and constraints imposed by and undertake all actions required by and all actions necessary to obtain, maintain in full force and effect, and renew all Governmental Approvals, including performance of all environmental mitigation measures required by the Contract Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to the Department in the Contract Documents.

3.8.7 Design-Builder shall not enter into any agreement with any Governmental Entity, Utility Owner, Railroad, property owner or other third party having

regulatory jurisdiction over any aspect of the Project or the Work or having any property interest affected by the Project or the Work that in any way purports to obligate the Department or states or implies that the Department has an obligation to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the expiration or termination of this Contract, unless the Department otherwise approves such agreement in writing, in its sole discretion. Design-Builder has no power or authority to act as an agent or representative of the Department or to enter into any such agreement with a third party in the name or on behalf of the Department.

3.8.8 Except as provided in Section 6.12.6, Design-Builder shall not be entitled to any increase in the Contract Price or extension of the Completion Deadlines as a result of any delay, inability or cost associated with securing those Governmental Approvals that the Contract Documents specify are the responsibility of the Design-Builder.

SECTION 4. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; PROJECT SCHEDULE AND PROGRESS

4.1 Time of Essence; Notices to Proceed

4.1.1 As a material consideration for entering into this Contract, Design-Builder hereby commits, and the Department is relying upon Design-Builder's commitment, to design and construct the Project in accordance with the time periods set forth in this Contract. Except where this Contract expressly provides for an extension of time, the time limitations set forth in the Contract Documents for Design-Builder's performance of its covenants, conditions, and obligations are of the essence, and Design-Builder waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require the Department to accept such performance.

4.1.2 Authorization allowing Design-Builder to proceed with Work shall be provided by the Department's issuance of a Notice to Proceed. The Department anticipates issuing NTP1 concurrently with the execution and delivery of this Contract. Conditions to issuance of NTP1 shall be (i) satisfaction of all conditions to award set forth in the ITP (including Section 6.1 thereof); (ii) receipt by the Department of the Performance Bond and the Payment Bond, in form and from a surety approved by the Department, as required under Section 8, and Design-Builder has delivered to the Department certified and conformed copies of the originals of each such bond, with the original of each such bond delivered to Design-Builder; (iii) the Guarantees, if any, required under Section 8.3 have been obtained and delivered to the Department and are in full force and effect; and (iv) that all insurance required to be in effect as of NTP1 shall be in full force and effect. Issuance of NTP1 authorizes Design-Builder to perform (or, continue performance of) the portion of the Work set forth in Section 1.1.5 of the Technical Provisions. Issuance of NTP1 also authorizes Design-Builder to enter the Project ROW that the Department has acquired in order to perform other items of Work as set forth in Section 1.1.5 of the Technical Provisions; provided, however, that any such activities shall be subject to Sections 7 and 21 of the Technical Provisions.

4.1.3 The Department shall issue NTP2 the later of (a) 90 days after issuance of NTP1 and (b) satisfaction of all of the following conditions: (i) the Department's approval of all the deliverables, plans and documentation set forth in Sections 1.1.5 and 1.5.1 of the Technical Provisions that are designated as requiring approval prior to issuance of NTP2, including the Project Baseline Schedule; (ii) Design-Builder's submittal to the Department of all other deliverables set forth in Section 1.5.1 of the Technical Provisions that are designated as requiring submittal prior to issuance of NTP2; (iii) each Performance Bond and Payment Bond required under Section 8 has been obtained and is in full force and effect; (iv) the Guarantees, if any, required under Section 8.3 have been obtained and delivered to the Department and are in full force and effect; (v) all insurance required to be in effect as of NTP2 shall be in full force and effect; (vi) the Department's approval of Design-Builder's DBE Performance Plan, pursuant to Section 7.1.3; (vii) the Department's approval of Design-Builder's Workforce Diversity Plan, pursuant Section 7.3.2; (viii) Design-Builder's provision of the Department's office space available for occupancy, in accordance with Section 1.6.6 of

the Technical Provisions; and (ix) completion of the initial partnering workshop pursuant to Section 19.1.2 and development of the Partnering Charter pursuant to Section 19.1.3.2.

4.1.4 Design-Builder shall begin performance of the Work as directed in the applicable Notice to Proceed.

4.2 Completion Deadlines

4.2.1 Substantial Completion Deadline

Design-Builder shall achieve Substantial Completion within 1,338 days after the effective date of NTP1. Said date for achieving Substantial Completion, as it may be extended pursuant to Section 13, is referred to herein as the “Substantial Completion Deadline.”

4.2.2 Final Acceptance Deadline

Design-Builder shall achieve Final Acceptance within 120 days after the Substantial Completion Date. Such deadline for achieving Final Acceptance, as it may be extended hereunder, is referred to herein as the “Final Acceptance Deadline.”

4.2.3 Interim Milestones

Design-Builder shall achieve the Interim Milestone Completion by the Interim Milestone Completion Durations set forth in Appendix 23.

4.2.4 No Time Extensions

Except as otherwise specifically provided in Section 13, the Department shall have no obligation to extend a Completion Deadline and Design-Builder shall not be relieved of its obligation to comply with the Project Schedule and to achieve Interim Milestone Completions, Substantial Completion, and Final Acceptance by the applicable Completion Deadlines for any reason.

4.3 Scheduling of Design, Construction and Payment

4.3.1 Project Schedule

The Work shall be undertaken and completed in accordance with the Project Schedule prepared in conformance with Section 1.6.1 and Attachment 01-4 of the Technical Provisions. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the Work and as the basis for determining the amount of monthly progress payments to be made to Design-Builder. Design-Builder shall submit to the Department, for approval in its good faith discretion, any updates or revisions to the Project Schedule in accordance with Section 1.6.1 of the Technical Provisions.

4.3.2 Float

All Float contained in the Project Baseline Schedule or generated thereafter shall be considered a Project resource available to either Party or both Parties as needed to

absorb delays caused by any event and achieve schedule milestones, interim completion dates and/or Completion Deadlines. All Float shall be shown as such in the Project Schedule on each affected schedule path. Identification of (or failure to identify) Float on the schedule shall be examined by the Department in determining whether to approve the Project Schedule. Once identified, Design-Builder shall monitor, account for and maintain Float in accordance with critical path methodology.

4.4 Conditions to Commencement of Construction

4.4.1 Construction Work Generally

Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project prior to occurrence of all the following events except with the prior written approval of the Department, in its sole discretion, and Design-Builder shall commence such construction promptly following occurrence of such events:

- (a) The Department shall have delivered NTP2 to Design-Builder.
- (b) The Department has approved the deliverables set forth in Section 1.1.5 of the Technical Provisions that are designated as requiring approval prior to commencement of Construction.
- (c) The Department shall have approved the Transportation Management Plan in accordance with Section 1.5 of the Technical Provisions.
- (d) All requirements of the Construction Quality Management Plan which are a condition to commencement of construction shall have been met.
- (e) Design-Builder has delivered to the Department, and obtained all required approvals from the Department and any other applicable Governmental Entity with respect to, the Submittals relating to the construction Work required by the Project Management Plan and Contract Documents, in the form and content required by the Project Management Plan and Contract Documents, as applicable.
- (f) The Department has reviewed and commented on all applicable Release for Construction Design Documents and Construction Documents relating to such portion of the Project and Design-Builder has addressed and incorporated such comments in accordance with Section 3.3.
- (g) All Governmental Approvals necessary for construction of the applicable portion of the Project shall have been obtained and Design-Builder has furnished to the Department fully executed copies of such Governmental Approvals;
- (h) All conditions of Governmental Approvals necessary for construction of the applicable portion of the Project which are a prerequisite to commencement of such construction shall have been performed and satisfied.
- (i) Each Performance Bond and Payment Bond, in form and from a surety approved by the Department, required under Section 8 has been obtained and is in full

force and effect, and Design-Builder has delivered to the Department certified and conformed copies of the originals of each such bond, with the original of each such bond delivered to Design-Builder.

(j) All insurance policies required to be delivered to the Department hereunder prior to commencement of construction shall have been received and approved by the Department and shall remain in full force and effect.

(k) The Guarantees, if any, required under Section 8.3 have been obtained and delivered to the Department and are in full force and effect.

(l) All rights of access acceptable to the Department in its good faith discretion for such portion of the Project ROW necessary for commencement of construction of the applicable portion of the Project shall have been identified, conveyed, and recorded to the Department, the Department has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms acceptable to the Department and the Department or Design-Builder, as applicable, has issued the ROW Certification for the applicable portion of the Project.

(m) All pre-construction environmental surveys and mitigation have been completed as required by the Governmental Approvals or otherwise under the Contract Documents for the area(s) proposed for construction, and Design-Builder shall have performed all other survey work and delivered all notices required by the Contract Documents to be delivered prior to commencement of construction on such portion of the Project.

(n) All representations and warranties of Design-Builder set forth in Section 2.3 shall be and remain true and correct in all material respects.

(o) There exists no uncured Event of Default for which Design-Builder has received written notice from the Department.

(p) Design-Builder has provided to the Department at least ten- (10-) days advance written notification of the date Design-Builder determines that it will satisfy all of the conditions set forth in this Section 4.4.

(q) The Department has received Design-Builder's Utility Conflict Matrix identifying all Utilities impacted for the applicable portion of the Project.

As used in this Section 4.4.1, the term "construction" specifically excludes potholing and geotechnical investigations incidental to design Work, Hazardous Materials Management, mobilization, Site security and establishment of work yard(s) and storage sites.

4.4.2 DB Utility Work

Design-Builder shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the construction Work until the Department issues NTP2, all of the conditions set forth in Section 4.4.1 that are

applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

(a) Except with respect to City of Las Vegas Utilities, the Utility Adjustment is covered by an executed Utility Agreement;

(b) The review and comment process has been completed or the Department's approval has been obtained, as applicable for the Utility Plans covering the Utility Adjustment; and

(c) Any other required approvals have been obtained for the Utility Plans covering the Utility Adjustment.

4.5 Recovery Schedule

4.5.1 If at any time, the Work on any Critical Path item is delayed for a period which exceeds the greater of either thirty (30) days in the aggregate or that number of days in the aggregate equal to 5% of the days remaining until a Completion Deadline (including delays to which Design-Builder may be entitled to a time extension under Section 13), then Design-Builder, within ten (10) days after Design-Builder first becomes aware of such schedule delay or otherwise at the request of the Department, shall prepare and submit to the Department for review and approval a Recovery Schedule demonstrating Design-Builder's proposed plan to regain lost schedule progress and to achieve the original contractual milestones in accordance with this Contract, including Substantial Completion by the Substantial Completion Deadline. Design-Builder's submittal shall comply with Section 1.6.1.4 of the Technical Provisions. The Department shall notify Design-Builder within ten (10) days after receipt of each such Recovery Schedule whether the schedule is accepted or rejected. Within five (5) days after the Department's rejection of the schedule, Design-Builder will resubmit a revised Recovery Schedule incorporating the Department's comments. When the Department accepts Design-Builder's Recovery Schedule, Design-Builder shall, within five (5) days after the Department's acceptance, incorporate and fully include such schedule into the Project Schedule and deliver same to the Department.

4.5.2 All costs incurred by Design-Builder in preparing, implementing and achieving the Recovery Schedule shall be borne by Design-Builder and shall not result in a change to the Contract Price, except to the extent that a change in the Contract Price is permitted in accordance with Section 13.

4.5.3 In the event that Design-Builder fails to provide an acceptable Recovery Schedule within thirty (30) days of Design-Builder's receipt of a notice to do so, Design-Builder shall have no right to receive progress payments until such time as Design-Builder has prepared and the Department has approved such Recovery Schedule. Any failure or delay in the submittal or approval of a Recovery Schedule shall not result in any time extension or increase in the Contract Price or other compensation under the Contract Documents.

SECTION 5. CONTROL OF WORK

5.1 Control and Coordination of Work

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

5.2 Safety

5.2.1 Design-Builder shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of the Department and its consultants, employees of FHWA and the City of Las Vegas, visitors to the Site and members of the public who may be affected by the Work. Design-Builder shall at all times comply with all safety requirements of the Contract Documents, the approved Safety Plan, and all such requirements under applicable Governmental Rules.

5.2.2 The Department has the authority to stop any Work activity that constitutes or is perceived to present a threat of imminent danger. If, in the discretion of the Department, any conditions or activities may present an imminent danger that could result in serious injury, death, extensive property damage or material loss of revenues, the affected portion of the Work will be stopped immediately and shall not recommence until the practices or conditions are corrected to the satisfaction of the Department. In the event the Work or any portion thereof is suspended by the Department or any other Governmental Entity because of an unsafe condition, such suspension shall be treated in accordance with Section 14.2, and Design-Builder shall have no right to any Change Order, including any adjustment in the Contract Price or Completion Deadline(s) in connection with such suspension.

5.3 Process To Be Followed Upon Discovery of Certain Site Conditions

5.3.1 Notification to the Department

5.3.1.1 If Design-Builder becomes aware of (a) any on-Site material that Design-Builder believes may contain Hazardous Materials required to be removed or treated, or (b) any Differing Site Conditions, as a condition precedent to Design-Builder's right to a potential Change Order, Design-Builder shall immediately notify the Department thereof telephonically or in person, to be followed immediately by written notification. Design-Builder shall immediately stop Work in and secure the area. In such event, the Department will view the location within five (5) Business Days of receipt of notification and shall advise Design-Builder at that time whether Work should be resumed or whether further investigation or other action is required.

5.3.1.2 Notwithstanding the foregoing, Design-Builder shall not be obligated to stop Work upon discovery of any materials or conditions that the Contract Documents or Technical Provisions indicate are present in the location in question;

provided, however, that Design-Builder shall provide prompt notice to the Department of any such discovery. Furthermore, if 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. Refer to Section 6.11.1 for additional requirements relating to Hazardous Materials.

5.3.2 Further Investigation

The Department shall promptly conduct such further investigation as the Department deems appropriate. The Department shall use reasonable efforts to determine within three (3) Business Days after receipt of such notification whether the situation falls within the scope of Section 5.3.1.1(a) or (b), and shall immediately notify Design-Builder of its determination once it is made. The Department shall, at that time, also advise Design-Builder of any action to be taken regarding the situation. If Hazardous Materials or Contaminated Groundwater is involved, the notice shall describe the type of remediation measures, if any, which Design-Builder is to undertake with respect thereto.

5.3.3 Recommencement of Work

The Department 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. Design-Builder shall promptly recommence Work in the area upon receipt of notification from the Department to do so. Upon 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 the Department's determination or preliminary determination regarding the nature of the material or condition.

5.4 Obligation to Minimize Impacts

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

5.5 Oversight, Inspection and Testing

5.5.1 Design-Builder Inspection and Testing

Design-Builder shall perform the inspection, sampling, testing, Quality Control, and Quality Assurance necessary for Design-Builder to comply with its obligations under the Contract Documents.

5.5.2 Oversight and Inspection and Testing by the Department and Others

5.5.2.1 The Department and FHWA representatives shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable (as determined by each of

such entities) to comply with FHWA or other applicable federal agency requirements and verify Design-Builder's compliance with the Contract Documents and Project Management Plan. The Department shall conduct such activity in accordance with Design-Builder's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Project.

5.5.2.2 The Department shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and the Project Management Plan. Design-Builder shall provide to the Department all test results and reports within five (5) days after Design-Builder receives them.

5.5.2.3 All materials and each part or detail of the Work shall also be subject to oversight, inspection and testing by the Department, FHWA, and other Persons designated by the Department. At all points in performance of the Work at which specific inspections or approvals by the Department or FHWA are required by the Contract Documents or Project Management Plan, Design-Builder shall not proceed beyond that point until the Department or FHWA, as applicable, have made such inspection or approval or waived their respective rights to inspect or approve, which waiver shall be in writing. In addition, 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 this Contract nor will it change the rights of the Parties hereto. Design-Builder hereby irrevocably consents to such oversight, inspection and testing. Upon request from the Department, 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.

5.5.2.4 Design-Builder at all times shall coordinate and cooperate, and require its Subcontractors to coordinate and fully cooperate, with the Department and FHWA to facilitate the inspection, review, and oversight activities of the Department and FHWA. Design-Builder shall cause its representatives to be available at all reasonable times for consultation with the Department.

5.5.2.5 Without limiting the foregoing, Design-Builder shall afford the Department and FHWA, and their respective authorized representatives: (a) safe and unrestricted access to the Project at all times, (b) safe access during normal business hours to Design-Builder's Project offices and operations buildings, and (c) unrestricted access to data related to the Work, subject to Section 21.4. Without limiting the foregoing, Design-Builder shall deliver to the Department upon request accurate and complete books, records, data, and information regarding the Work, the Project, and the Utility Adjustment work, in the format required by the Technical Provisions.

5.5.2.6 Nothing in the Contract Documents shall preclude, and Design-Builder shall not interfere with, any review or oversight of Submittals or of Work that FHWA or any other applicable federal agency may desire to conduct.

5.5.3 Obligation to Uncover Finished Work

Design-Builder shall inform the Department of any part of the Work which is about to be covered or otherwise hidden from view and offer a full and adequate opportunity to the Department to inspect and test such part of the Work before it is covered. At all times before Final Acceptance, Design-Builder shall remove or uncover such portions of the finished or covered construction Work as directed by the Department. After examination by the Department and any other Persons designated by the Department, 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 any Critical Path occasioned thereby shall be at Design-Builder's cost and Design-Builder shall not be entitled to any adjustment to the Contract Price or any time extension or any other relief. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by the Department or without inspection in accordance with the Technical Provisions may be ordered uncovered, removed or restored by the Department at Design-Builder's cost and without an adjustment to the Contract Price or a time extension, or any other relief, even if the Work proves acceptable and in compliance after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path caused by uncovering, removing and restoring Work shall be considered a Department-Caused Delay, and Design-Builder shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

5.5.4 Progress Meetings

Design-Builder shall conduct regular progress meetings with the Department and other Persons designated by the Department at least weekly during the course of the Work. In addition, the Department and Design-Builder, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Work or Project. Design-Builder shall schedule all meetings with the Department at a date, time, and place reasonably convenient to both Parties and, except in the case of urgency, shall provide the Department with written notice and a meeting agenda at least two (2) Business Days in advance of each meeting.

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

5.6.1 Oversight and Acceptance

The oversight, spot checks, audits, tests, acceptances, and approvals conducted by the Department and others do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. The Department may request remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with the requirements of the Contract Documents, whether or not previous oversight, spot checks, inspections,

verifications, audits, reviews, tests, acceptances or approvals were conducted or waived by the Department or any such Persons.

5.6.2 No Estoppel

Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, verifications, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. The Department shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after Final Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by 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 or certificate, or payment made in accordance therewith, the Department shall not be precluded or estopped from recovering from Design-Builder and its Guarantor(s) or Surety(ies) such damages as the Department may sustain by reason of Design-Builder's failure to comply or to have complied with the terms of the Contract Documents.

5.7 Nonconforming Work

Nonconforming Work rejected by the Department shall be removed and replaced so as to conform to the requirements of the Contract Documents, at Design-Builder's cost and without any adjustment to the Contract Price or time extension or any other relief; and Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that the Department 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 ten (10) days of receipt of notice from the Department requesting correction, or if such Nonconforming Work cannot be corrected within ten (10) days, and Design-Builder fails to (a) provide to the Department a schedule for correcting any such Nonconforming Work acceptable to the Department within such ten- (10-) day period, (b) commence such corrective Work within such ten- (10-) day period and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then the Department may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so (plus an administrative charge equal to ten percent (10%) of the cost) from any moneys due or to become due Design-Builder and/or obtain reimbursement from Design-Builder for such cost (plus an administrative charge equal to ten percent (10%) of the cost).

SECTION 6. ACCESS TO SITE; UTILITY ADJUSTMENTS; ENVIRONMENTAL MITIGATION; COOPERATION WITH LOCAL AGENCIES

6.1 Access to Site

6.1.1 Planned ROW Limits

The ROW Plans identify the Planned ROW Limits. In the event of any changes in right-of-way requirements in connection with any Department-Directed Change or Necessary Basic Configuration Change, the Planned ROW Limits shall automatically be deemed modified to incorporate the changed requirements.

6.1.2 Access to Department-Provided Property

6.1.2.1 The Department shall be responsible for ensuring that access to each parcel included in the Department-Provided Property is provided on or before the latest date construction is scheduled to start on such parcel as set forth in the Project Schedule; provided, however, that (a) in no event shall such parcel be obtained (and construction may not be scheduled to commence) earlier than the date set forth in Section 21.3 of and Attachment 21-1 to the Technical Provisions; and (b) Design-Builder (not the Department) shall be responsible for obtaining encroachment permits and other permits and rights of entry to gain access to areas within the jurisdiction of (i) Local Agencies or (ii) Railroad. The City of Las Vegas Cooperative Agreement provides certain terms and conditions relating to the encroachment permit process applicable to City of Las Vegas ROW. Design-Builder shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting access to any Project ROW.

6.1.2.2 The Department shall notify Design-Builder in writing within ten (10) Business Days after it becomes clearly apparent to the Department that the Department will not be able to obtain any parcel(s) included in the Department-Provided Property, and shall provide a Directive Letter requiring Design-Builder to take action as necessary to accommodate the change.

6.1.2.3 Concurrently with review of the Project Baseline Schedule, Design-Builder and the Department shall discuss the access requirements associated with the scheduled activities, mutually determine which parcels are on a Critical Path and establish late dates to be included in the Project Baseline Schedule for activities associated with provision of access, which shall in all events allow the minimum time for provision of access as specified in Section 21 of the Technical Provisions (including Section 21 of and Attachment 21-1 to the Technical Provisions). The Project Baseline Schedule shall provide reasonable work-arounds, re-sequencing and redeployments to progress the Project until the scheduled access date for each parcel, and minimize dependence on the acquisition process.

6.1.2.4 Within ten (10) Business Days after the Department determines that it will be unable to provide access to a particular parcel or parcels of the Department-Provided Property by the scheduled date, the Department shall notify

Design-Builder regarding the revised projected date for delivery of access. Design-Builder shall fully cooperate with the Department to work around and re-sequence and redeploy around such parcel until access can be provided, including rescheduling Work so as to avoid any delay to the overall Project. As a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline related to the Department's delay in delivery of access, within ten (10) days after Design-Builder is advised of a projected delay, Design-Builder shall provide the Department with a written notice specifying the Project Schedule activity number, late finish date, and current total Float associated with the parcel in question, and advising the Department of any potential impacts to a Critical Path and potential costs that may be incurred as the result of a delay. Subject to the provisions of Section 13.5, if notice has been timely provided as set forth in this Section 6.1.2.4, any unavoidable delay to a Critical Path which is directly attributable to the delay in provision of access shall be considered a Department-Caused Delay provided, however, that any inability of the Department to obtain a Permission to Construct shall not be deemed a Department-Caused Delay but shall instead result in the Department's initiation of a Change Order pursuant to Section 13.6.5 of the Contract and Section 21.6 of the Technical Provisions. If such a delay occurs, Design-Builder shall take appropriate action to minimize the cost and time impact thereof. Notwithstanding any contrary provision of the Contract Documents, if Design-Builder fails to timely provide such notice, Design-Builder shall be deemed to have waived any right to later claim that a Department-Caused Delay has occurred, and shall be precluded from any relief on account of the terms for which such notice should have been given, regardless of actual notice or knowledge on the part of the Department and regardless of any alleged lack of prejudice to the Department from late notice.

6.1.3 Additional Properties

6.1.3.1 In addition to provision of access to the Department-Provided Property, the Department will obtain access rights to certain other parcels (the "Additional Properties"), as provided herein. As a condition to the Department's obligation to provide access to Additional Properties, Design-Builder shall demonstrate, to the Department's satisfaction, that (a) such property is required for permanent improvements for the Project or for temporary uses that are necessary for the construction of permanent Project improvements, and (b) acquisition thereof is otherwise consistent with applicable Governmental Rules and Governmental Approvals. Design-Builder's request for access to Additional Properties shall also comply with Section 21 of the Technical Provisions. Subject to the foregoing conditions, Additional Properties shall include any Utility Easements which are not included in the Department-Provided Property and the acquisition of which are necessitated by a Project design change described in Section 6.5. Except as required for the construction of permanent Project improvements, the Department shall have no obligation to acquire temporary interests in property (other than those included in the Department-Provided Property), but may, in its sole discretion, agree to do so following receipt of request from Design-Builder.

6.1.3.2 If Design-Builder identifies Additional Properties, Design-Builder shall submit to the Department in writing a request to acquire the Additional Properties. The request shall include a drawing of the limits necessary for each parcel

of Additional Property and the information required under Section 21.1 of the Technical Provisions. The request, drawing, and information are subject to the Department's approval. The Department shall undertake and complete acquisition of Additional Properties, including undertaking eminent domain proceedings, if necessary, after the Department approves Design-Builder's written request, drawing, and information for the requested Additional Properties.

6.1.3.3 The Department shall not be obligated to approve a request for acquisition of any other Additional Property where, in the Department's good faith judgment, (a) to do so would materially adversely affect political, community or public relations, or (b) successful timely completion of the acquisition is not likely. Within fourteen (14) days after receipt of a written request from Design-Builder identifying an Additional Property for acquisition, the Department will state in writing to Design-Builder whether the Department regards acquisition (whether by negotiation or condemnation) of the Additional Property as potentially materially adversely affecting political, community or public relations, or regards successful timely acquisition as not likely. No such statement, or lack thereof, shall preclude the Department from later changing its determination based on changed political, community or public relations events or circumstances.

6.1.3.4 The same process for scheduling provision of access to Additional Properties shall apply as set forth in Section 6.1.2, except that (a) the Department shall provide Design-Builder with written notice of the minimum time necessary for provision of access upon its approval of the acquisition, and (b) delay in acquisition shall not be considered a Department-Caused Delay except to the extent that the delay was directly attributable to negligent actions affirmatively taken by the Department.

6.1.3.5 Design-Builder shall be responsible for all costs and expenses associated with the Department's acquisition of Additional Properties, except those costs and expenses actually and properly incurred solely due to a Department-Directed Change. The Department will relocate all residences and businesses located on any Additional Properties and, except for Additional Properties required solely due to a Department-Directed Change, Design-Builder shall be responsible for such costs. In paying all such costs and expenses, Design-Builder is not acquiring, and shall not be deemed to be acquiring, any interest in real property for Design-Builder. Such costs and expenses include:

- (a) The cost of acquisition services and document preparation;
- (b) The cost of negotiations;
- (c) The cost of condemnation proceedings handled by the Attorney General of the State of Nevada and /or counsel retained by the State, as applicable, through jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, depositions, transcripts, photos, and other documents and materials production;

(d) The purchase prices, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, and attorneys' fees, or other consideration for interests in Additional Properties, whether within or outside of the Planned ROW Limits;

(e) The cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses, and other interests in real property;

(f) The costs of permitting (to the extent such permitting is required to be performed by the Department rather than Design-Builder);

(g) Closing costs associated with parcel acquisitions in accordance with NRS 37.120, 49 CFR § 24.106, and Department policies;

(h) Relocation assistance payments and costs, in accordance with NRS 342.105, 49 CFR Part 24, and Department policies;

(i) Appraisal and appraisal review services;

(j) The cost for separate property survey(s) in addition to the Planned ROW Limits survey(s); and

(k) The cost of all claims for goodwill, severance damages or inverse condemnation arising out of or otherwise related to the acquisition of the Additional Properties.

6.1.3.6 If the Department incurs any such costs and expenses on Design-Builder's behalf, the Department may submit any invoices for such costs and expenses to Design-Builder, in which case Design-Builder shall pay the invoices prior to delinquency. If the Department pays any such costs and expenses on Design-Builder's behalf, Design-Builder shall reimburse the Department within ten (10) days of the Department's submittal to Design-Builder of an invoice for such Department costs and expenses. Alternatively, the Department may deduct the amount of such costs and expenses from any sums owed by the Department to Design-Builder pursuant to this Contract. Notwithstanding the foregoing, (i) for additional real property associated with a VECP, the costs of obtaining the additional real property shall be considered in determining the Contract Price adjustment under Section 22.6, and (ii) Design-Builder shall not be responsible for costs of acquisition for any Utility Easement to the extent the Utility Owner has Cost Liability therefor. Any cost savings resulting from the acquisition of Additional Properties (including by avoiding use of retaining walls or other engineering modifications) shall be subject to the "value engineering" provisions set forth in Section 22.

6.1.3.7 In the event that the acquisition of Additional Properties necessitates New Approvals or additional Governmental Approvals, Design-Builder shall (a) be solely responsible for the cost and schedule impact of any related review, analysis, assessment, approvals, permits and findings; (b) be solely responsible for the risk that any New Approvals or Governmental Approvals are not (i) granted, issued, approved or obtained or (ii) timely granted, issued, approved or obtained; and (c) not be entitled to any increase in the Contract Price or extension of the Completion Deadlines

as a result of any delay, inability or cost associated with the New Approvals or additional Governmental Approvals related to such Additional Properties.

6.1.3.8 Notwithstanding any contrary provision of the Contract Documents, Design-Builder shall not be entitled to any increase in the Contract Price or any extension of a Completion Deadline pursuant to Section 13 or otherwise as a result of (a) Site conditions associated with any Additional Properties (including those relating to Hazardous Materials, Differing Site Conditions or Utilities); or (b) any delay, liability or cost associated with the acquisition of any Additional Properties, including Additional Properties required to implement any ATCs.

6.1.3.9 Design-Builder shall support any requests for acquisition of Additional Properties with such information as may be reasonably required by the Department, including all information required by Section 21 of the Technical Provisions. In all cases, the Department's obligation to provide such access is subject to the following conditions: (a) if requested by the Department, Design-Builder's providing an analysis regarding alternative courses of action; (b) the Department's agreement that the property acquisition is in the best interest of the Project; (c) Design-Builder's providing such evidence as the Department may require to enable issuance of a determination of necessity; and (d) if required, issuance of a determination of necessity by the Department's Transportation Board.

6.1.4 Acquisition of Temporary Interests by Design-Builder

6.1.4.1 Design-Builder's activities with respect to (a) acquisition of interests in real property to be used in connection with the Work and (b) Utility Adjustment Work performed pursuant to Sections 6.3 through 6.9 shall be completed and documented in compliance with all applicable Governmental Rules, including the Uniform Act, and the rules and regulations implementing the Uniform Act. Design-Builder shall provide the Department with a ROW Certification for all Project Specific Locations and a Utility Certification, in a form acceptable to the Department, that such activities comply with the Uniform Act and implementing regulations as well as 23 CFR § 635.309 (b) and (c). The Department reserves the right to supervise Design-Builder's activities described in this Section 6.1.4.1 to ensure Design-Builder acts in accordance with the NDOT ROW Manual and in compliance with all applicable Governmental Rules, including the Uniform Act and the rules and regulations implementing the Uniform Act.

6.1.4.2 Design-Builder, at its sole cost, shall be solely responsible for acquisition of any Project-Specific Locations or other temporary interests in property which Design-Builder determines are necessary, desirable or advisable in order to complete the Project, other than temporary interests included in the Department-Provided Property and any Additional Properties to be acquired by the Department pursuant to Section 6.1.3. Such temporary interests may include rights for temporary Project-specific activities in connection with the Construction Work outside the Project ROW, such as construction work sites, temporary work areas, lay down areas, staging areas, storage areas, stockpiling areas, earth work material borrow sites, equipment parking areas, as well as any property needed for any temporary utility facilities being constructed by Design-Builder. Design-Builder shall pay the purchase price for all such property interests directly. In the event that the property is within the limits of the

Department-Provided Property, is intended to be used for permanent improvements or for temporary uses that are necessary for the construction of permanent Project improvements or Design-Builder intends to request the Department to acquire such parcel, Design-Builder shall not negotiate with the owner(s) of such interests. Additional requirements regarding early access are set forth in Section 21 of the Technical Provisions. The Department shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests or the condition of such rights or interests, and shall not be obligated to use its powers of eminent domain in connection therewith. Design-Builder shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that the Department shall have no liability or obligations with respect thereto.

6.1.4.3 Design-Builder shall be responsible for obtaining and maintaining any New Approvals or additional Governmental Approvals necessitated by Design-Builder's acquisition or use of such Project-Specific Locations or other temporary interests. Design-Builder shall comply with all applicable Governmental Approvals and Governmental Rules in acquiring and maintaining or disposing of any such property rights or interests.

6.1.5 Avoidance of Additional Permanent Acquisitions

Design-Builder shall use its best efforts to avoid additional permanent acquisitions. To the extent reasonably possible, consideration shall be given to using retaining walls or making other engineering adjustments as an alternative to acquisition of Additional Properties.

6.1.6 Conveyance Documents

Design-Builder shall prepare all documents necessary to evidence any easements or other real property interests relating to the Project to be granted by the Department to Utility Owners and other Persons.

6.2 Railroad Agreements

6.2.1 Design-Builder shall comply with the requirements contained in the Construction and Maintenance Agreements to be entered into by and among the Department and the Railroad that apply to Work hereunder, including the obligation to enter into the Railroad Right-of-Entry Agreement attached to said agreement as Exhibit C-1 and the obligation to comply with the "Contractor Requirements" provisions attached to said agreement as Exhibit C. Design-Builder further agrees, at its sole cost, to pay, at the Department's option, Railroad or the Department, for Railroad's expenses relating to Work hereunder that the Construction and Maintenance Agreements state are payable by the Department, within the time specified in the Construction & Maintenance Agreements, including all costs associated with Railroad Flagman services. Notwithstanding anything to the contrary contained in the Construction and Maintenance Agreements, Design-Builder shall be responsible for maintenance of the structures described therein until it is relieved of maintenance liability in accordance with Section 10.2.2. The costs of all such compliance and payments required under the Construction and Maintenance Agreements are included in the Contract Price.

6.2.2 The Department shall deliver the final Construction and Maintenance Agreements to Design-Builder upon execution. Subject to the provisions of Section 13, any changes in the scope of the Work to be performed by Design-Builder as a result of material modifications contained in the final Construction & Maintenance Agreements from the requirements of this Section 6.2 and Section 17 of the Technical Provisions that (a) have a material adverse impact on Design-Builder's obligations hereunder, and (b) were not caused by modifications to the Reference Design that were initiated by Design-Builder or result from the design solutions furnished by or construction means, methods and techniques employed by Design-Builder, shall be treated as a Department-Directed Change. Within thirty (30) days after receipt of each of the Department's final agreements with the Railroad, Design-Builder shall notify the Department in writing if Design-Builder believes any such modification warrants an increase in the Contract Price or extension of a Completion Deadline pursuant to Section 13. Notwithstanding any contrary provision of the Contract Documents, if Design-Builder fails to timely provide such notice, Design-Builder shall be deemed to have waived any right to later claim that a Department-Directed Change has occurred, and shall be precluded from any relief on account of the terms for which such notice should have been given, regardless of actual notice or knowledge on the part of the Department and regardless of any alleged lack of prejudice to the Department from late notice. Any Change Order issued for such Department-Directed Change shall be in accordance with Sections 13.6.4 (for increases in price), 13.6.5 (for credits) or 13.6.6 (for both added and deleted Work).

6.2.3 Design-Builder shall assist and fully cooperate with the Department in obtaining the Construction and Maintenance Agreements and any amendments thereto, including providing complete Railroad Submittal Packages and other information requested by the Department and participating in meetings regarding such agreements and related approvals. Subject to the limitations and conditions appearing in Section 13.9.3, any failure by the Department to obtain a fully executed and recorded Construction and Maintenance Agreement and Public Utility Commission authorization, prior to the later of (i) 365 days after the Department's receipt from Design-Builder of the Railroad's written approval of the Railroad Submittal Package in accordance with Section 17 of the Technical Provisions and (ii) the late date for start of Work requiring such agreement as set forth in the approved Project Schedule shall be considered a Force Majeure Event, to the extent that it delays an activity on a Critical Path.

6.2.4 Design-Builder shall enter into any agreements with, and obtain any permits from, Governmental Entities or others that are necessary to comply with the requirements of Section 17 of the Technical Provisions or that otherwise apply to Work hereunder, except for those items expressly described in this Section 6.2 or Section 6.12.3 as being the responsibility of the Department. Compensation for such compliance and payment of any fees or expenses to be paid to Railroad, any other railroad, or any other Governmental Entity or Person are included in the Contract Price or otherwise will be the sole responsibility of Design-Builder.

6.3 Utility Adjustments

6.3.1 Design-Builder's Responsibility

6.3.1.1 Design-Builder is responsible for (and the scope of the DB Utility Work includes) causing, in accordance with the Project Schedule, all Utility Adjustments necessary to accommodate the Project except for any efforts and costs which this Section 6 or Section 18 of the Technical Provisions specifically identifies as the responsibility of the Utility Owners or of the Department or otherwise specifically excludes from the DB Utility Work. All utility Adjustment Work performed by Design-Builder shall comply with the Contract Documents. Design-Builder shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the Contract Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in this Section 6 or in Section 13, Design-Builder shall continue to be the responsible party to the Department for timely performance of all Utility Adjustment Work. Except as provided otherwise in this Section 6 or in Section 13, Design-Builder assumes all risk of increased costs and delay associated with Utility Adjustments. Accordingly, Design-Builder agrees that, except as otherwise provided in this Section 6 or in Section 13, (a) the Contract Price covers all of the DB Utility Work, (b) it is feasible to obtain and/or perform all Utility Adjustments within the time deadlines of the Contract Documents, and (c) the Contract Price includes contingencies deemed adequate by Design-Builder to account for the potential risks of additional costs and delays relating to Utility Adjustments, taking into consideration the constraints affecting the Project and the fact that Design-Builder is entitled to Change Orders only in specified situations.

6.3.1.2 Utility Adjustments may be necessitated by: (a) a physical conflict between the Utility and the Project (including their respective construction, operation, maintenance or use), and/or (b) a conflict between the Project as designed and the Utility based on the applicable Adjustment Standards, Governmental Approvals and/or Governmental Rules (even though there is no physical conflict). The limits of Adjustment of existing Utilities extend as far as is necessary to accommodate or permit construction of the Project in accordance with the foregoing, whether inside or outside the Project ROW. Design-Builder shall ensure that all Utility Adjustments are compatible with and interface properly with the Project.

6.3.1.3 Certain Utilities being Adjusted are also being modified to provide service to the Project; i.e., they are New Utilities. This Section 6.3 and all other provisions of the Contract Documents pertaining to Utility Adjustments apply to such Utilities. Such Utilities are also subject to any provisions of the Contract Documents pertaining to New Utilities. Any New Utilities that do not also involve Adjustment work are not subject to the provisions of the Contract Documents pertaining to Utility Adjustments. The scope of Design-Builder's responsibilities relating to the New Utilities is addressed in the Technical Provisions. All Work relating to New Utilities is included in the Contract Price.

6.3.1.4 Avoiding Adjustments and Minimizing Department Costs

(a) Design-Builder shall use its best efforts to minimize costs for which Design-Builder is entitled to additional compensation pursuant to Sections 6.3 through 6.10, to the extent practical and allowable pursuant to the Contract Documents.

(b) Subject to Section 6.3.1.4(a), Design-Builder shall consider the location of Utilities and the potential impact of Utility Adjustments in developing and finalizing the design of the Project, with the goal of minimizing Utility Adjustments to the extent practical and allowable pursuant to the Contract Documents.

(c) Design-Builder shall reimburse the Department for any costs the Department incurs as a result of Design-Builder's failure to comply with the requirements of this Section 6.3.1.4.

6.3.2 Utility Agreements

6.3.2.1 Design-Builder is responsible for preparing, negotiating and entering into instruction-specific, construction-detailed Utility Agreements with all Utility Owners except the City of Las Vegas, regardless of whether the Utility Owners are identified in the Reference Information Documents and regardless of whether the Department has secured a Preliminary Utility Work Package with that Utility Owner, in each case prior to commencement of any Utility Adjustment Work for each such Utility Owner. The general procedures and framework for preparing Utility Agreements and processing utility issues within the Project area shall comply with Section 18 of the Technical Provisions and shall follow the standard practices of the respective Utility Owners for such Utility Agreements, which in each case shall not be less than Good Industry Practice. Design-Builder shall cause each Design-Builder Utility Agreement it negotiates and executes to name the Department as an intended third-party beneficiary thereof and to permit assignment of Design-Builder's right, title and interest thereunder to the Department without necessity for Utility Owner consent.

6.3.2.2 Each Utility Agreement shall clearly specify and distinguish the scope of Utility Adjustment Work Design-Builder is to perform, and the scope the Utility Owner is to perform. Each Design-Builder Utility Agreement shall contain provisions for payments, payment terms, controlling specifications, and work description. Each Design-Builder Utility Agreement shall also include specific procedures for resolving scheduling, design, construction, and payment issues arising due to errors or omissions in information the Utility Owner provides to Design-Builder.

6.3.2.3 The Department agrees to cooperate as reasonably requested by Design-Builder in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. Design-Builder shall keep the Department informed of the status of any such negotiations. Design-Builder shall submit each such Utility Agreement and supplements and amendments thereto to the Department for approval in its reasonable discretion, in accordance with the procedures described in Section 3.2. Design-Builder shall deliver to the Department, within ten (10) days after execution, a true and complete copy of each such Utility Agreement entered into by

Design-Builder. The Department will not be a party to Utility Agreements, and Design-Builder shall cause each Utility Agreement to expressly provide that the Department shall have no liability under the Utility Agreement unless and until the Department receives a written assignment of Design-Builder's interests in the Utility Agreement and assumes in writing Design-Builder's obligations thereunder. Design-Builder shall not enter into any agreement with a Utility Owner that purports to bind the Department in any way, unless the Department, with the Attorney General, have executed such agreement as a party thereto (the Department's signature indicating approval or review of an agreement between Design-Builder and a Utility Owner, or its status as a third-party beneficiary, shall not satisfy this requirement).

6.3.2.4 Design-Builder is solely responsible for the terms and conditions of all Utility Agreements into which it enters (subject to the requirements of the Contract Documents, including Section 18 of the Technical Provisions). Design-Builder is responsible for proper completion of the Utility Adjustment Work required for the Project, in accordance with the Contract Documents and applicable Governmental Rules, regardless of the nature or provisions of the Utility Agreements and regardless of whether Design-Builder or the Utility Owner or its contractors, is performing the Utility Adjustment Work.

6.3.2.5 If a conflict occurs between the terms of an agreement between Design-Builder and a Utility Owner and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Design-Builder and the Department; if the foregoing criteria are not relevant to the terms at issue, then the Contract Documents shall prevail, unless expressly provided otherwise in the Contract Documents.

6.3.2.6 Design-Builder shall comply with and timely perform all obligations imposed on Design-Builder by any Utility Agreement.

6.3.3 Allocation of Work Responsibility

6.3.3.1 For each known Utility identified as requiring Adjustment, the initial allocation of responsibility for performing Adjustment design, construction, and/or materials procurement as between Design-Builder and the Utility Owner shall be determined in accordance with the Preliminary Utility Work Package and Section 18 of the Technical Provisions. For purposes of this Section 6.3 and Section 18 of the Technical Provisions, references to responsibility for performing Utility Adjustment design and construction include all tasks customarily associated therewith; provided, however, that Design-Builder shall be responsible for all coordination with Utility Owners that is necessary in order to accomplish the Utility Adjustments in compliance with the requirements of the Contract Documents.

6.3.3.2 Design-Builder is responsible for scheduling all Utility Adjustments so as to meet all applicable Completion Deadlines, without regard to whether a Utility Adjustment is performed by Design-Builder or by the affected Utility Owner (or its contractors). Accordingly, under no circumstances shall any reallocation

of responsibility for Utility Adjustment work between Design-Builder and a Utility Owner be considered grounds for a time extension.

6.3.3.3 No increase or decrease in the Contract Price shall be made pursuant to this Section 6.3.3 on account of any change in the allocation of responsibility for Incidental Utility Work, or any other matter for which the Contract Documents specify how liability, cost or risk is to be allocated between the Department and Design-Builder.

6.3.4 Utility Adjustment Costs

6.3.4.1 Design-Builder is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Utility Easements, Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding (a) costs for acquisition of any other real property interests shown on the ROW Plans (for which the Department is responsible to acquire), (b) costs attributable to Betterments, and (c) any other costs for which the Utility Owner is responsible under applicable Governmental Rules. Design-Builder shall fulfill this responsibility either by performing at its own cost the Utility Adjustment Work itself if permitted by the Utility Owner (except that any assistance provided by any DB-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work), or by reimbursing the Utility Owner for its Utility Adjustment Work. Design-Builder is solely responsible for collecting directly from the Utility Owner any reimbursement due to Design-Builder for Betterment costs or other costs incurred by Design-Builder for which the Utility Owner is responsible under applicable Law.

6.3.4.2 For each Utility Adjustment under Utility Agreements, the eligibility of Utility Owner costs (both indirect and direct) for reimbursement by Design-Builder, as well as the determination of any Betterment or other costs due to Design-Builder, shall be established in accordance with applicable Governmental Rules, including rules pertaining to Existing Utility Property Interests, and the applicable Utility Agreement(s).

6.3.4.3 Except for costs for acquisition of any other real property interests shown on the ROW Plans (for which the Department is responsible to acquire), Design-Builder shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith.

6.3.4.4 If for any reason Design-Builder is unable to collect any amounts due to Design-Builder from any Utility Owner, then (a) the Department shall have no liability for such amounts, (b) Design-Builder shall have no right to collect such amounts from the Department or to offset such amounts against amounts otherwise owing from Design-Builder to the Department, and (c) Design-Builder shall have no right to stop Work, sue for mandamus, or to exercise any other remedies against the Department on account of such failure to pay.

6.3.4.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Design-Builder shall coordinate with the Department and such local Governmental Entity regarding accounting for and approval of those costs.

6.3.4.6 Design-Builder shall maintain a complete set of records for the costs of each Utility Adjustment under each Utility Agreement (whether incurred by Design-Builder or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and Design-Builder costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Design-Builder shall also indicate in these records the source of funds used for each such Utility Adjustment under each Utility Agreement. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the Contract Documents.

6.3.5 Incidental Utility Work

Notwithstanding any contrary provision of the Contract Documents, Design-Builder shall be responsible for all Incidental Utility Work without regard to the allocation of work responsibility otherwise established pursuant to this Section 6.3. Design-Builder also shall be responsible for furnishing all designs for Incidental Utility Work which it performs, unless such designs are included in designs supplied by the Utility Owner pursuant to the applicable Utility Agreement(s). Neither the Department nor Design-Builder shall be entitled to any adjustment in the Contract Price or Completion Deadlines on account of costs incurred, cost savings or delays associated with the performance of Incidental Utility Work by Design-Builder or by any Utility Owner; provided, however, that the foregoing limitation shall not apply to Contract Price increases pursuant to Sections 6.4.2 and 6.4.3 or to time extensions pursuant to Section 6.8 for which Design-Builder would otherwise be eligible.

6.3.6 Bonds and Insurance; Security for Utility Adjustment Costs

6.3.6.1 All DB Utility Work shall automatically be covered by the Payment Bonds and Performance Bonds described in Section 8 and by the insurance described in Section 9.

6.3.6.2 Design-Builder shall satisfy all requirements in Utility Agreements to provide security for reimbursement of Utility Adjustment costs to which the Utility Owner is entitled and that are the responsibility of Design-Builder hereunder, in form, type, and amount and on terms provided by the Utility Agreements.

6.4 Accuracy of Department-Supplied Information Concerning Existing Utility Information and Supplemental Utility Investigation by Design-Builder

6.4.1 Utility Information and Supplemental Utility Investigation

The Department has provided certain Utility Information in the Reference Information Documents. Design-Builder shall analyze the Utility Information, contact and make inquiries of Utility Owners, perform surface inspections of the Project ROW and such additional inspections, including potholing, as it deems appropriate to verify,

fully and accurately identify all Utilities, address all field conditions, and supplement the Utility Information. Within one hundred twenty (120) days from the effective date of NTP1, Design-Builder shall submit, to the Department, Design-Builder's Utility Conflict Matrix reflecting the existence of any and all Utilities likely to be impacted by the Project; provided, however, that for any Department-Provided Property for which the Department has not yet provided Design-Builder with access within such one hundred twenty (120) day period, Design-Builder shall have a period of thirty (30) days after Design-Builder obtains access to the property to provide the Department with an updated Design-Builder's Utility Conflict Matrix reflecting any impacted Utilities on that property.

6.4.2 Claims for Inaccuracies in Utility Information Identified in Design-Builder's Utility Conflict Matrix

6.4.2.1 Subject to the provisions of this Section 6.4 and Section 13, if any Utility located within the Planned ROW Limits and requiring actual relocation is not identified in the Utility Information or is misidentified therein but is timely identified by the Design-Builder in the Design-Builder's Utility Conflict Matrix pursuant to this Section 6.4, then Design-Builder shall be entitled to a Change Order increasing the Contract Price to compensate Design-Builder for any material increase in Design-Builder's costs of performing the Work that is directly attributable to such lacking or inaccurate information. The amount of such Change Order shall be determined in accordance with Section 13.6.4.

6.4.2.2 If Design-Builder's Utility Conflict Matrix (including updates to the Utility Conflict Matrix to the extent allowed under Section 6.4.1) indicate the existence of any Utility likely to be impacted that was not previously identified in the Utility Information or was misidentified therein and Design-Builder believes that the existence of such Utility or misidentification will warrant a material increase in the Contract Price or extension of a Completion Deadline, Design-Builder shall provide an RFC Notice in accordance with the timeframes and other provisions set forth in Section 13.3.2.1. Except for Non-USA-Mapped Utilities, if Design-Builder fails to timely provide such RFC Notice as required by this Section 6.4.2 and Section 13 or fails to include an impacted Utility in Design-Builder's Utility Conflict Matrix (including updates to the Utility Conflict Matrix to the extent allowed under Section 6.4.1), Design-Builder shall be deemed to have waived any right to later claim for the alleged inaccuracies in the Utility Information, notwithstanding (a) any contrary provision of the Contract Documents, (b) actual notice of knowledge on the part of the Department and (c) any alleged lack of prejudice to the Department from the late notice or late identification of the alleged inaccuracy.

6.4.2.3 Design-Builder shall not be entitled to any increase in the Contract Price pursuant to Section 6.4.2 for any of the following:

(a) Increased costs of the Work attributable to unidentified or misidentified Utilities, to the extent that the existence of the facility was known to Design-Builder as of the Proposal Date or could have been inferred from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying

markers, visible during a surface inspection of the area conducted prior to the Proposal Date;

(b) Increased costs of the Work attributable to unidentified or misidentified Utilities other than Non-USA-Mapped Utilities, to the extent that the existence of the facility did not appear on Design-Builder's Utility Conflict Matrix (including updates to the Design-Builder's Utility Conflict Matrix to the extent allowed under this Section 6.4);

(c) Increased costs of the Work attributable to unidentified or misidentified Utilities where Design-Builder failed to provide timely notice in accordance with Section 6.4.2.2;

(d) Increased costs of the Work attributable to misidentified or unidentified Utilities that can be protected in place or removed rather than physically relocated;

(e) The costs of Design-Builder's supplemental utility investigation performed in accordance with Section 6.4.1;

(f) Any additional costs incurred by Utility Owners as a result of the unidentified or misidentified Utility; and

(g) Delay and disruption damages.

6.4.3 Non-USA-Mapped Utilities

Notwithstanding the provisions of Section 6.4.2, if during performance of Construction Work Design-Builder encounters any Non-USA-Mapped Utility located within the Planned ROW Limits and which requires actual relocation and such Utility was not identified in either the Utility Information or Design-Builder's Utility Conflict Matrix or is misidentified therein, then, subject to the provisions of Section 13, Design-Builder shall be entitled to a Change Order increasing the Contract Price to compensate Design-Builder for any material increase in Design-Builder's costs of performing the Work, including delay and disruption damages, that is directly attributable to such lacking or inaccurate information. The amount of such Change Order shall be determined in accordance with Section 13.6.4.

6.4.4 Inaccuracies in Other Department-Supplied Information Concerning Existing Utilities

Except as otherwise provided in this Section 6.4, any information with respect to Utilities (including their existence, location, ownership, occupancy rights, type, material, status, usage, and/or any other characteristic) provided in the Utility Information or elsewhere in the Reference Information Documents or Contract Documents is for informational purposes only, is preliminary and has not been verified, and shall not be relied upon by Design-Builder. Design-Builder shall verify all information with respect to Utilities included in the Utility Information or elsewhere in the Reference Information Documents or Contract Documents and shall perform its own investigations as provided in this Section 6.4 of the Contract and Section 18 of the Technical Provisions.

Accordingly, there shall be no changes in the Contract Price (either up or down) and no extensions of any Completion Deadlines on account of any inaccuracies in the Reference Information Documents or Contract Documents with respect to any Utility (including its existence, location, ownership, type, material, status, usage, and/or any other characteristic), unless otherwise expressly allowed pursuant to Sections 6.4.2.1, 6.4.3 and/or Section 6.8.

6.4.5 Acknowledgments and Waivers

6.4.5.1 Except as otherwise provided in Sections 6.4.2.1, 6.4.3 and/or Section 6.8, the Parties specifically intend by Section 6.4.4 to delegate to Design-Builder the obligation to perform all responsibilities with respect to identification of Utilities, including underground public utility facilities, and to allocate to Design-Builder all risk of increased costs and time of the Utility Adjustment Work assigned to Design-Builder as part of the Work hereunder resulting from inaccuracies in the reputed locations of such facilities (and in any other relevant information with respect to such facilities), notwithstanding the obligations typically imposed on public bodies by NRS 338.185. Accordingly, Design-Builder acknowledges and agrees that payment of the Contract Price, as it may be adjusted in accordance with the Contract Documents, satisfies the Department's obligations pursuant to NRS 338.185, and to the extent that NRS 338,185 might be construed to the contrary, Design-Builder hereby waives the benefit of such statute. Design-Builder agrees that in the event any waiver pursuant to this Section 6.4.5 is deemed ineffective (thus resulting in a reduction in the scope of the Work), the Department shall be entitled to a credit against the Contract Price equal to the actual costs incurred by the Department to cause performance of the obligations and satisfaction of the liabilities from which Design-Builder is thereby relieved.

6.4.5.2 Design-Builder acknowledges that prior to the Proposal Date, Design-Builder had ample opportunity to analyze the Utility Information provided by the Department, to contact and inquire of Utility Owners, and to perform such additional investigations as Design-Builder deems appropriate to verify and supplement such information, and that such investigations constituted the basis for establishing its Proposal Price.

6.4.5.3 Design-Builder acknowledges that prior to the submittal or Design-Builder's Utility Conflict Matrix (including updates to the Design-Builder's Utility Conflict Matrix to the extent allowed under Section 6.4), Design-Builder had ample opportunity to analyze the Utility Information provided by the Department, to contact and inquire of Utility Owners, and to perform such additional investigations as Design-Builder deems appropriate to verify and supplement such information.

6.4.5.4 Design-Builder further acknowledges and agrees that the acknowledgements, waivers, and agreements set forth in Section 6.4.4 and this Section 6.4.5 extend to and include any rights which Design-Builder might otherwise claim under the Department's Right of Way Policies and Procedures Manual.

6.5 Changes in Design

6.5.1 For purposes of this Section 6.5, a Project design change impacting Utility Adjustments is a change in Project plans that (a) requires changes to the preliminary design (if any) for a Utility Adjustment included in the Preliminary Utility Work Packages; (b) requires changes to the Proposed Disposition of a Utility included in the Preliminary Utility Work Packages or the Utility Impact Matrix; (c) requires Adjustment of a Utility that was not listed on the Utility Impact Matrix; or (d) necessitates acquisition of a Utility Easement not included in the Department-Provided Property.

6.5.2 Inasmuch as Design-Builder is both furnishing the design of and constructing the Project, Design-Builder may have opportunities to reduce the costs of certain portions of the Work, which may increase the costs of certain other portions of the Work or of Utility Adjustment work to be performed by Utility Owners. In considering such opportunities, Design-Builder shall consider the impact of Project design changes on Utility Adjustments with the overall goal of minimizing the necessity for Utility Adjustments to the extent practical, in compliance with Section 6.3.1.4. Accordingly, except for cost increases or decreases resulting from Necessary Basic Configuration Changes or Department-Directed Changes in Project design affecting Utility Adjustment work, and notwithstanding any other contrary provision of the Contract Documents, the following rules shall apply with respect to Project design changes during the course of the Project which either reduce the nature or extent of or eliminate any Utility Adjustment, or result in unanticipated Utility Adjustments or an increase in the nature, extent, or costs of anticipated Utility Adjustments:

(a) Design-Builder shall not be entitled to extension of any Completion Deadline on account of delays resulting from any such design changes (including delays in acquisition of Utility Easements by the Department or Utility Owners).

(b) Design-Builder shall not be entitled to any increase in the Contract Price for any additional costs which Design-Builder incurs as a result of such design changes (including additional costs of DB Utility Work, the costs of any additional Work on other aspects of the Project undertaken in order to facilitate the avoidance or minimization of Utility Adjustments, and/or increased costs resulting from any Site conditions associated with Utility Easements made necessary by such design changes).

(c) If the Department incurs any additional costs as a result of such design changes (including any increases in amounts owed by the Department to Utility Owners, e.g., for work which is unusable or which must be redone), then Design-Builder shall reimburse the Department for such costs within ten (10) days after receipt of the Department's invoice therefor, or in the Department's discretion, the Department may deduct the amount of reimbursement due from the payment (or payments, if necessary) next due to Design-Builder under the Contract.

(d) The Department shall not be entitled to a credit on account of reductions in the cost of the Work due to any such avoided or minimized Utility Adjustments.

This Section 6.5 shall not apply to any changes in design made to accommodate any change in Adjustment Standards or Change in Law.

6.6 Utility Enhancements

Design-Builder shall be responsible for addressing any requests by Utility Owners that Design-Builder design and/or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancement"). Any Betterment performed as part of a Utility Adjustment, whether by Design-Builder or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the applicable Utility Agreement. Design-Builder shall perform any work on a Utility Owner Project only by separate contract outside of the Work. Under no circumstances shall Design-Builder proceed with any Utility Enhancement that is incompatible with the Project or is not in compliance with applicable Governmental Rules, the Governmental Approvals or the Contract Documents, including the Completion Deadlines. Under no circumstances will Design-Builder be entitled to any additional compensation or time extension hereunder as the result of any Utility Enhancement, whether performed by Design-Builder or by the Utility Owner. Design-Builder may, but is not obligated to, design and construct Utility Enhancements. Design-Builder shall provide the Department with such information, analyses, and certificates as the Department may request in order to determine compliance with this Section 6.6.

6.7 Failure of Utility Owners to Cooperate

6.7.1 Design-Builder shall make diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. Design-Builder shall notify the Department immediately if (a) Design-Builder is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Utility Agreement within a reasonable time, (b) Design-Builder reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project or in accordance with Governmental Rules, the Governmental Approvals or the Contract Documents, (c) Design-Builder becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between Design-Builder and a Utility Owner with respect to the Project, despite Design-Builder's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that the Department assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Design-Builder shall provide the Department with such information as the Department requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to the Department any notice or request for assistance, Design-Builder shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

6.7.2 If Design-Builder requests the Department's assistance pursuant to Section 6.7.1, the following provisions apply:

(a) Design-Builder shall provide evidence reasonably satisfactory to the Department that (i) the subject Utility Adjustment is necessary, (ii) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (iii) Design-Builder has made diligent efforts to obtain the Utility Owner's cooperation, and (iv) the Utility Owner is not cooperating (the foregoing clauses (a)(i) through (iv) are referred to herein as the "Conditions to Assistance").

(b) Following the Department's receipt of satisfactory evidence, the Department shall take such reasonable steps as Design-Builder may request to obtain the cooperation of the Utility Owner or resolve the dispute; provided, however, the Department shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other legal remedy available to it under applicable Governmental Rules or existing contract, unless the Department elects to do so in its sole discretion. The Department may, at its sole discretion, participate in the resolution of any dispute between Design-Builder and a Utility Owner, whether or not requested to do so by Design-Builder.

(c) If the Department holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and the Department elects in its sole discretion not to exercise those rights, then the Department shall assign those rights to Design-Builder upon Design-Builder's request, provided, that if such rights are not assignable the Department's decision not to exercise those rights shall be in its good faith discretion; however such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights.

6.7.3 Any assistance provided by the Department shall not relieve Design-Builder of its sole and primary responsibility for the satisfactory compliance with its obligations under the Contract Documents and its obligations with respect to timely completion of all necessary Utility Adjustments.

6.8 Utility-Related Delays

6.8.1 Definition of Utility Delay

Except as set forth in subparagraph (b) of this Section 6.8.1, the term "Utility Delay" shall mean:

(a) Any unreasonable and unjustified delay by a Utility Owner (i) with whom Design-Builder has been unable to enter into a Utility Agreement in connection with a Utility Adjustment or (ii) with whom Design-Builder has entered into a Utility Agreement in connection with a Utility Adjustment and such delay by a Utility Owner is contrary to or in violation of the terms and provisions of the Utility Agreement, provided that in either case all of the "Conditions to Assistance" described in Section 6.7.2 have been satisfied.

(b) Notwithstanding the foregoing, the term "Utility Delay" does not include (i) Department-Directed Changes relating to Utilities, or (ii) any event described in this Section 6.8.1 which results from or arises out of the actions, omissions, negligence, fraud, recklessness, willful misconduct, or violation of Governmental Rules, breach of

Governmental Approvals or breach of contract by any DB-Related Entity. With the exception of the Cost Liability representation and preliminary designs based on the Reference Design, Design-Builder shall not rely upon any proposed schedules, durations or deadlines included in the Preliminary Utility Work Packages or Reference Information Documents with respect to Utility Adjustments, and Design-Builder may not base any claims for a time extension or additional compensation upon such proposed schedules, durations, and deadlines.

6.8.2 Allocation of Risk of Utility Delays

6.8.2.1 Subject to the limitations and restrictions in this Section 6.8 and Section 13.5.3, any Completion Deadline(s) affected by a Utility Delay shall be extended by one day for each day of Critical Path delay caused by such Utility Delay; provided, however, that if one or more Utility Delays is or are concurrent with another delay to a Critical Path which is Design-Builder's responsibility hereunder but is not a Utility Delay, then such Utility Delay(s) shall not be grounds for a time extension. Furthermore, if two Utility Delays occur that are concurrent with each other but are not concurrent with any other delay, then the period of concurrent delay shall be considered a Utility Delay but shall only be counted once for purposes of any time extension.

6.8.2.2 Design-Builder shall not be entitled to extension of any Completion Deadline pursuant to Section 6.8.2.1 unless all of the following conditions are satisfied (in addition to satisfaction of any conditions specified in Section 6.8.1):

(a) Design-Builder has timely complied with the monitoring and notification requirements of Section 6.8.3 and satisfied the "Conditions to Assistance" requirements described in Section 6.7.2;

(b) If applicable, Design-Builder has provided a reasonable Utility Adjustment plan to the Utility Owner that has been approved by the Department;

(c) Design-Builder has provided evidence satisfactory to the Department that (i) Design-Builder took advantage of Float available early in the Project Schedule for coordination activities with respect to the Utility(ies) to which such Utility Delay relates, (ii) Design-Builder has fulfilled its obligation to coordinate with the Utility Owner to prevent or reduce such delays, and (iii) Design-Builder has otherwise made diligent efforts to obtain timely performance by the Utility Owner but has been unable to obtain such timely performance;

(d) There exist no circumstances which have delayed or are delaying (including concurrent delay) the affected Utility Adjustment(s), other than those that fit within the definition of a Utility Delay; and

(e) The delay is otherwise allowable under Section 13.5.3.

6.8.2.3 Upon Design-Builder's fulfillment of all applicable requirements of this Section 6 and Section 13, if Utility Delays occur for which a time extension is allowed hereunder, then Design-Builder may receive delay and disruption damages calculated in accordance with Section 13.5.2.2, subject to the following limitations in addition to those set forth in Section 13:

(a) Design-Builder shall not be entitled to any delay or disruption damages attributable to the first 60 days of Utility Delays (in the aggregate) for which Design-Builder is entitled to a time extension; and

(b) Design-Builder shall be entitled to 100% of the delay and disruption damages attributable to any days of Utility Delay occurring after the aggregate days of Utility Delay for which Design-Builder is entitled to a time extension exceed 60 days.

6.8.3 Monitoring and Notification

Design-Builder is responsible for verifying the progress of each Utility Owner's work and for notifying the Department when Design-Builder has cause to believe that any Utility Owner will fail to meet a deadline determined pursuant to Section 6.8.1. Design-Builder shall notify the Department within two (2) Business Days after discovery of such potential delay.

6.8.4 Delays Relating to Utility Easements

If, pursuant to the applicable Utility Agreement(s), the Utility Owner (rather than the Design-Builder) is responsible for handling acquisition efforts for a particular Utility Easement, then any failure by the Utility Owner to provide Design-Builder with timely access to such Utility Easement shall not be treated as a Department-Caused Delay. Instead, any such failure to provide Design-Builder with access before the applicable deadline (determined in accordance with Section 6.8.1) shall be treated as a Utility Delay, to the extent that it affects a Critical Path and otherwise satisfies the requirements of this Section 6.8 applicable to Utility Delays.

6.8.5 Other Utility-Related Delays

Design-Builder shall be entitled to an extension of any affected Completion Deadline to the extent that any delay in a Critical Path is directly attributable to a circumstance for which Design-Builder is entitled to a Change Order for increased costs pursuant to Section 6.4.2 or Section 6.4.3.

6.8.6 Delay and Disruption Damages

Design-Builder shall not be entitled to compensation for delay and disruption damages or for any other increased costs attributable to delays described in this Section 6.8, except as otherwise expressly provided in Sections 6.4.2, 6.4.3, 6.8.2.3 or Section 13.5.2.

6.9 Utility-Related Claims; Additional Restrictions on Change Orders Relating to Utility Adjustments

Except as may be otherwise provided in this Section 6, Section 13 shall apply to any change in the Contract Price and/or extension of time claimed by either Party with respect to any Utility Adjustment. In addition to all of the other requirements and limitations contained in this Section 6 and/or in Section 13, Design-Builder's entitlement

to any Change Order relating to Utility Adjustments shall be subject to the restrictions and limitations set forth in this Section 6.9.

6.9.1 Burden of Proof

Design-Builder shall provide documentation satisfactory to the Department showing that the required analysis was performed and an appropriate determination made regarding the need for the Utility Adjustment, and shall also bear the burden of proving that the amount of any additional costs and/or time incurred by Design-Builder are both necessary and reasonable.

6.9.2 Incremental Costs Only

Any Change Order increasing the Contract Price pursuant to this Section 6 shall include only the incremental costs arising from the circumstances giving rise to such Change Order, i.e., the amount payable shall take into account the costs that would have been incurred absent such circumstances and a credit shall be allowed for any avoided costs.

6.9.3 Coordination Costs

Design-Builder shall not be entitled to any increase in the Contract Price for any costs of coordinating with Utility Owners.

6.9.4 Orders Only as Specified

Except as specified in this Section 6 or in Section 13, Design-Builder shall not be entitled to any time extension or Contract Price increase with respect to any Utility Adjustments, in either case, without regard to any act or failure to act of any Utility Owner which may result in a delay to Design-Builder's planned schedule or in Design-Builder's incurring costs not included in its budget or the Contract Price.

6.10 FHWA Utility Requirements

Unless the Department advises Design-Builder otherwise, the Project will be subject to, and Design-Builder shall comply with, 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies. Utility Agreements for Utilities in the Project shall incorporate by reference 23 CFR Part 645 Subparts A and B, and assign the obligations arising pertaining thereto. Design-Builder shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subparts A and B as necessary for any Utility Adjustment costs to be eligible for reimbursement from any other federal financing or funding. Design-Builder acknowledges, however, that without regard to whether such compliance is required, (a) it is not anticipated that Design-Builder will be eligible for FHWA reimbursement of any Utility Adjustment outlays other than from any federal financing or funding, if any, and (b) Design-Builder will not have any share in any reimbursement from FHWA or other federal financing or funding that the Department may receive on account of Utility Adjustments.

6.11 Hazardous Materials Management

6.11.1 Procedures and Compensation for Hazardous Materials Management

6.11.1.1 Subject to Section 6.11.1.3, Design-Builder shall manage, treat, handle, store, remediate, remove, transport (where applicable), document and dispose of all Hazardous Materials and Recognized Environmental Conditions, including Contaminated Groundwater, and perform all other aspects of Hazardous Materials Management as appropriate, in accordance with applicable Governmental Rules, Governmental Approvals, the approved plans required to be provided under Section 7.8 of the Technical Provisions, and all applicable provisions of the Contract Documents. If during the course of the Work, Design-Builder encounters material quantities of Hazardous Materials or Recognized Environmental Conditions in connection with the Project, Site, or Work, Design-Builder shall promptly (a) notify the Department in writing and advise the Department of any obligation to notify any Governmental Entities under applicable Governmental Rules and Governmental Approvals; and (b) develop a plan to undertake Hazardous Materials Management, which plan shall take reasonable steps, including design modifications and/or construction techniques, to avoid excavation, dewatering or other active, intrusive management in areas where Hazardous Materials or Recognized Environmental Conditions are encountered. For purposes of this Section 6.11, the term “material quantities” means quantities that trigger any reporting, investigation, remediation or other response action requirements under any Environmental Law. Where excavation, dewatering or other active, intrusive management is unavoidable, Design-Builder shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by the Department. All Hazardous Material Management shall be conducted in accordance with applicable Governmental Rules, Governmental Approvals, the approved plans required to be provided under Section 7.8 of the Technical Provisions and the approved Safety Plan.

6.11.1.2 Except where Design-Builder is required to take immediate action under the Contract Documents or applicable Governmental Rules, Design-Builder shall afford the Department the opportunity to inspect sites containing Hazardous Materials or Recognized Environmental Conditions and to consult with Design-Builder about the recommended approach before any Hazardous Materials Management or other action is taken which would inhibit the Department's ability to ascertain the nature and extent of the contamination.

6.11.1.3 Subject to the limitations and exceptions set forth in Section 5.3, this Section 6.11.1 and Section 13, Design-Builder shall be entitled to a Change Order as set forth in Section 13 with respect to additional costs and/or delays directly attributable to the discovery of (a) Unknown Hazardous Materials within the Planned ROW Limits and (b) Hazardous Materials other than Design-Builder Releases of Hazardous Materials on any parcels added to the Planned ROW Limits by a Department-Directed Change or required due to a Force Majeure Event or Necessary Basic Configuration Change. The amount of additional compensation or extension of time in any Change Order allowed hereunder shall be determined in accordance with Section 13.9.4. Entitlement to compensation or a time extension shall be limited to

costs of Work performed pursuant to the approved plans required to be provided under Section 7.8 of the Technical Provisions.

6.11.1.4 No compensation or time extension shall be allowed with respect to:

- (a) Known or Suspected Hazardous Materials;
- (b) Release(s) of Hazardous Materials or threatened Release(s) of Hazardous Materials for which Design-Builder is responsible under Section 18.1.1(g);
- (c) Less than "material quantities" as defined of Hazardous Materials;
- (d) Any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques; or
- (e) Any Hazardous Materials on property outside of the Department-Provided Property, except that compensation will be allowed for environmental remediation work on such property to the extent that it is integrally intertwined with Hazardous Materials Management work required within the Department-Provided Property.

6.11.1.5 To the extent that any proceeds of insurance are available to pay the cost of any Hazardous Materials Management, Design-Builder shall rely on insurance to provide compensation, in lieu of requesting a Change Order.

6.11.2 Hazardous Materials Generator Responsibilities

As between Design-Builder and the Department, the Department shall be considered the generator and assume generator responsibility for Hazardous Materials other than Design-Builder Releases of Hazardous Materials. The Department has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials other than Design-Builder Release(s) of Hazardous Materials will be transported. With regard to Hazardous Materials other than Design-Builder release(s) of Hazardous Materials, the Department shall comply with the applicable standards for generators including those found at 40 CFR, Part 262, including the responsibility to sign manifests and other waste tracking records for the transport of Hazardous Wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that the Department or Design-Builder may have against any Governmental Entity or other third parties, including prior owners, lessees, licensees, and occupants of any parcel of land that is or becomes part of the Project ROW. Notwithstanding the foregoing, Design-Builder (and not the Department) shall be considered the generator with respect to any (a) Design-Builder Release(s) of Hazardous Materials and (b) Release(s) of Hazardous Materials for which Design-Builder is responsible under Section 18.1.1(g).

6.11.3 Materials Brought to Site by Design-Builder

Design-Builder shall be solely responsible for: (a) compliance with all Governmental Rules and Governmental Approvals applicable to Hazardous Materials

brought onto the Site by any DB-Related Entity; (b) use, containment, storage, management, transport and disposal of all such Hazardous Materials in accordance with the Contract Documents and all Governmental Rules and Governmental Approvals; and (c) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials.

6.11.4 Environmental Approvals Relating to Hazardous Materials

Design-Builder shall obtain all Governmental Approvals relating to Hazardous Materials Management performed by Design-Builder, including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. Design-Builder shall be solely responsible for compliance with such Governmental Approvals and applicable Governmental Rules, including those governing the preparation of waste profiles, waste manifests and bills of lading.

6.12 Environmental Compliance, Mitigation and Approval Requirements

6.12.1 Environmental Compliance

Design-Builder shall comply with all Environmental Laws in performance of the Work, and with all other conditions and requirements of the Contract Documents and Governmental Approvals issued thereunder, whether obtained by the Department or Design-Builder, including the requirements set forth in the Department-Provided Approvals and Section 7 of the Technical Provisions. The Contract Price includes compensation for Design-Builder's performance of all environmental requirements and conditions, including mitigation measures, except for those items expressly described in Section 6.12.2 as being the responsibility of the Department. Throughout the course of the Work, Design-Builder shall comply with all Environmental Laws and perform or cause to be performed all environmental mitigation measures required under the Contract Documents and the Environmental Approvals and similar Governmental Approvals for the Work, and shall comply with all other conditions and requirements thereof. Design-Builder, at its sole cost and expense, shall also abide by and comply with the commitments contained in subsequent re-evaluations, re-validations, and modifications of Environmental Approvals. Subject to Section 13, if the Department directs Design-Builder to comply with commitments contained in re-evaluations, re-validations, and modifications of Environmental Approvals submitted after the Proposal Date that affect the Work, such directive shall be deemed a Department-Directed Change only to the extent such re-evaluations, re-validations, and modifications are directly due to a Necessary Basic Configuration Change pursuant to Section 13. Design-Builder shall reimburse the Department for the Department's costs of technical studies and documentation, including biological and cultural resource studies, prepared in connection with any such environmental re-evaluations, re-validation, and new or modified Environmental Approvals, other Governmental Approvals and any other approvals, authorizations and consents required for the Work, unless such items are due to a Necessary Basic Configuration Change pursuant to Section 13.

6.12.2 Performance of Mitigation Measures

6.12.2.1 Design-Builder shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Department-Provided Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project. The Contract Price includes compensation for Design-Builder's performance of all such environmental requirements and conditions for all Governmental Approvals, including such mitigation measures and for performance of all mitigation measures arising from New Approvals which Section 6.12.3 provides are Design-Builder's responsibility.

6.12.2.2 Design-Builder shall monitor the progress of performance of environmental mitigation measures and provide periodic reports to the Department as required by the Environmental Compliance and Mitigation Plan, and Section 7.3 of the Technical Provisions. Design-Builder acknowledges and agrees that the plan may be updated from time to time to account for any revisions in mitigation requirements. Whenever a New Approval is obtained which changes the existing environmental mitigation requirements or adds new environmental mitigation requirements, the Environmental Compliance and Mitigation Plan will be revised to include such amendments or new requirements, and Design-Builder shall comply with the revised plan from and after the date it receives the revised plan. No Change Order shall be allowed in connection with any update or revision to the Environmental Compliance and Mitigation Plan except that (a) Change Orders shall be issued for additional Work resulting from those New Approvals which are the Department's responsibility as specified in Section 6.12.4.1, and (b) if Design-Builder believes that any revision represents a Department-Directed Change, it shall have the right to seek a Change Order on that basis in accordance with the requirements of, and subject to the limitations in, Section 13.

6.12.3 Department-Provided Approvals

6.12.3.1 Design-Builder is responsible for complying with all the requirements and conditions of the Department-Provided Approvals.

6.12.3.2 All mitigation requirements and/or conditions contained in the final Department-Provided Approvals shall automatically be deemed included in the scope of Work. Subject to the provisions of Sections 6.12.1 and 13.5, any change in the activities to be performed by Design-Builder as a result of an alteration in mitigation requirements from the original scope of Work that (a) have a material adverse impact on Design-Builder's obligations hereunder, and (b) were not caused by modifications to the Reference Design that were initiated by Design-Builder or result from the design solutions furnished by or construction means, methods, and techniques employed by Design-Builder, shall be treated as a Department-Directed Change; provided, however, that Design-Builder complies with the notification and other requirements set forth in this Section 6.12.3 and Section 13. Any Change Order issued for such Department-Directed Change shall be in accordance with Sections 13.6.4 (for increases in price), 13.6.5 (for credits) or 13.6.6 (for both added and deleted Work). Notwithstanding any contrary provision of the Contract Documents, if Design-Builder fails to timely provide

such notice, Design-Builder shall be deemed to have waived any right to later claim that a Department-Directed Change has occurred, and shall be precluded from any relief on account of the terms for which such notice should have been given, regardless of actual notice or knowledge on the part of the Department and regardless of any alleged lack of prejudice to the Department from late notice.

6.12.4 New Approvals

6.12.4.1 Approvals To Be Obtained at the Department's Expense

The Department shall be responsible for obtaining any New Approvals necessitated by a Department-Directed Change, Force Majeure Event or Necessary Basic Configuration Change. Design-Builder, at its sole cost, shall provide support services to the Department with respect to obtaining any such New Approval. Any Change Order covering a New Approval necessitated by a Department-Directed Change, Force Majeure Event or Necessary Basic Configuration Change shall include compensation to Design-Builder for any material changes in the Work (including performance of material additional mitigation measures but excluding performance of such support services) resulting from such New Approvals, as well as any time extension necessitated by such New Approvals, subject to the conditions and limitations contained in Section 13.

6.12.4.2 New Approvals To Be Obtained at Design-Builder's Expense

If a New Approval becomes necessary for any reason other than those specified in Section 6.12.4.1, Design-Builder shall be fully responsible for the cost and delay of obtaining the New Approval and any other Governmental Approvals, including Environmental Approvals, that may be necessary, and for all requirements and delays resulting therefrom, as well as for any litigation arising in connection therewith. If Design-Builder wishes to adopt any design or construction approach that would require a revision, modification or amendment to a Department-Provided Approval, Design-Builder shall consult with the Department. Design-Builder shall not implement any such approach unless concurrence of the Department has first been obtained and arrangements have been made to reimburse the Department for the costs of the proposed change. If any New Approval is associated with a VECP, the costs of obtaining and complying with the terms of the New Approval shall be considered in determining the Contract Price adjustment under Section 22.6.

6.12.5 Environmental Compliance by Design-Builder for Off-Site Activities

If Design-Builder chooses to add or select any ground or resource disturbing features such as material (gravel, borrow, disposal or re-use) sites, equipment staging sites, office sites, water lines, holding ponds, Hazardous Materials and/or non-Hazardous Materials staging areas, etc., for which a new Governmental Approval is required, Design-Builder shall obtain and provide to the Department such Governmental Approvals before commencing any construction activity within the feature(s). Design-Builder is responsible for all costs of pursuing, obtaining, and complying with all such Governmental Approvals and any others which may be necessary, and is not entitled to

any time extension for delays encountered in obtaining these approvals, except as specified in Section 6.12.4.1.

6.12.6 Major Environmental Approvals

6.12.6.1 Attachment 7-1 to the Technical Provisions identifies those Governmental Approvals that are classified under the Contract Documents as Major Environmental Approvals for which Design-Builder is responsible, even though such approvals must formally be issued in the Department's name. Unless an environmental Governmental Approval is listed as a Major Environmental Approval in Attachment 7-1 to the Technical Provisions, it shall not constitute a Major Environmental Approval for purposes of the Contract Documents, regardless of the subject matter, scope, necessity, or requirements of the Governmental Approvals. Design-Builder shall comply with all requirements of the Contract Documents, including Section 3.8 with respect to Major Environmental Approvals.

6.12.6.2 Subject to the limitations and conditions appearing in Section 13.9.3, a delay in obtaining a Major Environmental Approval by the applicable Major Environmental Approval Deadline shall not be considered a Force Majeure Event, unless: (a) it delays an activity on a Critical Path, (b) the delays are not due to differences in the Reference Design and Design-Builder's final design, (c) the delay was beyond the reasonable control of DB-Related Entities, (d) Design-Builder made diligent efforts to pursue the delayed Major Environmental Approvals, and (e) the delays could not have been mitigated by Design-Builder.

6.13 Cooperation with Local Agencies

6.13.1 Compliance with Local Agency Requirements

Design-Builder shall comply with Local Agency requirements applicable to the Work, including payment of all plan review and construction inspection costs charged by Local Agencies relating to the Work. Such payments are part of the Contract Price and no additional compensation shall be payable relating thereto.

6.13.2 Encroachment Permits

Governmental Approvals to be obtained by Design-Builder hereunder include encroachment permits and other access rights or right of entries for Work to be performed in areas under the jurisdiction of Local Agencies. Design-Builder shall pay all permit fees and shall comply with all permit requirements including obtaining necessary approvals of plans and specifications. Such payments are part of the Contract Price and no additional compensation shall be payable relating thereto.

6.13.3 Bonds and Insurance

Upon request by the Department, Design-Builder shall: (a) provide additional obligee riders to the Payment Bonds and Performance Bonds in favor of Local Agencies, and (b) provide certificates naming Local Agencies as additional insureds to the insurance policies required to be provided under Section 9.

SECTION 7. SUBCONTRACTORS AND LABOR

7.1 Disadvantaged Business Enterprise (DBE) Program

This Contract is subject to the federal Disadvantaged Business Enterprise (DBE) program requirements found at 49 CFR Part 26 (the “DBE Regulations”). The purpose of the federal DBE program is to create a level playing field on which DBEs can compete fairly for contracts and subcontracts on the Project. The DBE Regulations are included by reference as part of the Contract.

7.1.1 Compliance

7.1.1.1 Design-Builder shall comply with all applicable requirements set forth in the DBE Regulations, DBE Special Provisions (Appendix 3), the Department’s DBE Program Plan adopted pursuant to 49 CFR Part 26, and Design-Builder’s Department-approved DBE Performance Plan (Appendix 17). In the event of conflicts or inconsistencies between the DBE Regulations, DBE Special Provisions (Appendix 3), Department’s DBE Program Plan, and Design-Builder’s Department-approved DBE Performance Plan (Appendix 17), the DBE Special Provisions (Appendix 3) shall prevail. Notwithstanding certain provisions in the Department’s DBE Program Plan and the Department’s Standard Specifications for Road and Bridge Construction, Section 102.16, 2014 ed., Design-Builder was not required to list all DBE utilization to meet the DBE goal prior to Design-Builder’s submittal of the Proposal. Instead, Design-Builder shall develop a Department-approved DBE Performance Plan in accordance with Section 7.1.3. Design-Builder may utilize toward the DBE goal DBEs that obtain DBE certification after Design-Builder’s submittal of the Proposal to the Department

7.1.1.2 Design-Builder shall include provisions to effectuate the DBE Special Provisions (Appendix 3) in every applicable Subcontract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all applicable Subcontracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each applicable Subcontractor..

7.1.2 DBE Participation – DBE Goal

The Department has established a DBE goal for the Project of 3.5% of the Contract Price for the Design Work, including professional services, and the Construction Work. For purposes of clarity, assessment as to whether Design-Builder has achieved the DBE goal will be measured against the aggregated design and construction costs, and not separately as to each of the design costs and construction costs. This DBE goal reflects only the anticipated ability of DBE firms to participate on the Project and is to be used as a measurement of success. Design-Builder shall demonstrate that it will make good faith efforts to meet the DBE goal for the Project in accordance with 49 CFR Part 26, Appendix A.

7.1.3 DBE Performance Plan

7.1.3.1 Design-Builder has submitted to the Department as part of its Proposal a substantive outline of its DBE Performance Plan attached to this Contract as Appendix 4. The Department will deliver to Design-Builder the Department's comments on the outline of Design-Builder's DBE Performance Plan within thirty (30) days after the Effective Date. Design-Builder shall submit to the Department, within thirty (30) days after receiving such comments, a proposed-final DBE Performance Plan. The proposed-final DBE Performance Plan is subject to further review and comment by the Department and to the Department's approval prior to and as a condition to issuance of NTP2, in accordance with Section 4.1.3(vi).

7.1.3.2 The DBE Performance Plan shall include the items listed below, in this Section 7.1.3.2, to the extent known at the time of preparation.

(a) Design-Builder shall provide the names of then, currently-certified DBE firms that Design-Builder plans to use to fulfill the DBE goal under this Contract and to which commitments have been made to do so. The procurement of DBE Subcontractors shall be subject to the Subcontract procurement procedures set forth in Section 7.2.3. In addition, for each such DBE firm, Design-Builder shall provide the following information: (1) DBE certification number, as provided by the Nevada Unified Certification Program board; (2) address; (3) phone number; (4) whether the DBE firm qualifies as a "Supplier," as defined in Appendix 1 to this Contract; (5) dollar amount of the DBE firm's Subcontract; (6) description of the work or services to be contracted or supplies to be supplied, as applicable; (7) the dates and manners in which the DBE firm was contacted for its respective interest in the DBE sub-contracting opportunities for the Project, together with written confirmation from each such DBE firm attesting to such contact from Design-Builder; and (8) a description of the DBE firm's respective interest in sub-contracting for the Project.

(b) An explanation of how Design-Builder plans to recruit, solicit, and evaluate potential DBEs to utilize on the Project.

(c) A breakdown of anticipated DBE commitments (i.e., anticipated percentages to go to design, construction, and supplies).

(d) Estimated time frames for achieving DBE participation (i.e., in what years of the Project will DBE participation be realized).

(e) Strategies for monitoring DBE utilization and contract compliance, including proper DBE credit, performance of commercially useful function, and proper payment to DBEs.

(f) The name of Design-Builder's "DBE Compliance Manager" and description of the DBE Compliance Manager's reporting structure and responsibilities.

(g) Commitment to communicate with the Department on DBE participation and compliance efforts throughout the life of the Project.

(h) Design-Builder's proposed schedule for providing to the Department routine updates to the DBE Performance Plan, so as to provide current and accurate information with respect to the items listed above.

7.1.3.3 The Department-approved DBE Performance Plan shall respond to the comments of the Department, comply with all applicable Governmental Rules and Governmental Approvals, including 49 CFR Part 26, be consistent with the requirements in Appendix 3 and Design-Builder's DBE certification set forth in Appendix 12.

7.1.3.4 Design-Builder shall exercise good faith efforts to achieve the DBE Goal for the Project through implementation of Design-Builder's Department-approved DBE Performance Plan.

7.1.4 Design-Builder Reporting Requirements

7.1.4.1 For the purpose of documenting Design-Builder's DBE performance, Design-Builder shall submit to the Department's Civil Rights Office a monthly report meeting the requirements set forth in Appendix 3. The format of the report is to be developed by Design-Builder, in accordance with the reporting requirements prescribed in Appendix 3.

7.1.4.2 Failure to submit these reports by the deadline specified in Section D of Appendix 3 to the Department shall result in the application of appropriate administrative sanctions, including but not limited to withholding of payment to Design-Builder of two percent of the invoice amount due per month, until such time as a completed report is submitted.

7.1.5 Calculation and Crediting of DBE Participation

DBE participation shall be credited and calculated in accordance with 49 CFR Section 26.55.

7.1.6 Changes in the Work

7.1.6.1 If the scope of the Work changes after the Effective Date such that there are additional opportunities for DBE firms to participate, Design-Builder shall amend and update the DBE Performance Plan to show how it will include, or undertake good faith efforts to include, additional DBE participation in order to achieve the DBE Goal.

7.1.6.2 If the scope of the Work changes after the Effective Date based on a Department-Directed Change or Directive Letter, or if Design-Builder encounters unknown conditions on the Project, in either case resulting in reduced DBE participation from that originally proposed and committed to by Design-Builder, then Design-Builder will not be held responsible for the reduced DBE participation; provided, however that Design-Builder has followed the procedures in 49 CFR § 26.53(f), the Department has approved the change in DBE utilization, and the Department has verifiable evidence that these changes or unknown conditions are not a result of actions by any DB-Related Entity.

7.1.7 Cancellation of DBE Subcontracts

Design-Builder shall not cancel or terminate any Subcontract with a DBE firm except with the Department's prior written consent and in accordance with all requirements and provisions of 49 CFR § 26.53(f).

7.1.8 DBE Program Records Management

Design-Builder shall maintain all records substantiating the progress of DBE participation and compliance with the Design-Build Contract Specific DBE Requirements for DBE prompt payment and payment of retainage, and such documentation, including copies of cancelled checks issued, unconditional waivers, and progress payment releases shall be made available for inspection upon request by the Department.

7.1.9 DBE Frauds and Fronts

Design-Builder shall not knowingly and willfully use "pass through Subcontractors or Subcontractors "fronting" as DBEs to attain DBE participation for the Project. Use of such pass throughs and fronts is a criminal violation under federal law. Use of fronts or pass throughs or any other form of fraud, waste, abuse, or mismanagement of federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation, at the toll-free Fraud, Waste and Abuse Hotline, 800-424-9071.

7.2 Subcontracts

7.2.1 Listed Subcontractors

Design-Builder, in its Proposal, identified certain Subcontractors for the Project, as listed in Appendix 6 hereto (the "Listed Subcontractors"). Design-Builder shall obtain the Department's prior written consent to any material addition to the scope of work under a Subcontract with a Listed Subcontractor, and the Department shall have the right to require such work to be the subject of a new procurement by Design-Builder.

7.2.2 Subcontracting

7.2.2.1 Design-Builder shall not enter into any Subcontract, nor allow any Subcontractors to enter into a Subcontract, on any tier, without first obtaining the written consent of the Department, which consent is subject to the Department's good faith discretion. As soon as Design-Builder or a Subcontractor identifies a Subcontractor for a potential Subcontract, excluding Listed Subcontractors and Subcontracts with Affiliates as described in Section 7.2.8, Design-Builder shall provide its request for consent to the Department on Department Form 052-023, along with the name, address, phone number, and authorized representative of such proposed Subcontractor as well as the general scope of work for which the Subcontractor is being considered. The request for consent shall include a certification that the entity that will perform the Work is particularly experienced for such Work. The request shall also include a certification that the Subcontract includes all pertinent provisions and requirements of this Contract, including any provisions required under this Section 7,

and that the minimum wage for labor, as specified in the Contract Documents, shall apply to the Subcontract. The Department shall provide such written consent within ten (10) Business Days of receipt of notice and other required information unless the Department, during said period, delivers a request for additional information or written objection to Design-Builder regarding the proposed Subcontract. The Department's failure to object to a Subcontract shall not be construed to relieve Design-Builder or Surety of any responsibility for fulfilling all of the requirements of this Contract.

7.2.2.2 Within ten (10) days after issuance of a Notice to Proceed, Design-Builder shall complete and provide to the Department a schedule updating the list included in the Proposal and identifying all intended Subcontractors and Suppliers. Design-Builder shall provide an updated schedule each month thereafter so that the Department will have, at all times, a current and accurate list of Subcontractors along with the Work that they will perform and Suppliers along with the material that they will supply. Design-Builder shall allow the Department access to all Subcontracts and records regarding the Subcontracts and shall deliver to the Department, within ten days after execution, certified copies of each Subcontract within ten days of execution thereof.

7.2.3 Procurement of New Subcontracts

7.2.3.1 The following procedures shall apply to procurement of Major Subcontracts hereunder by Design-Builder, excluding Subcontracts with Listed Subcontractors as described in the Proposal. Prior to soliciting any bids or proposals for Major Subcontracts for performance of Work or labor or rendering of services in or about the construction of the Project or for special fabrication and installation of a portion of the Work, Design-Builder shall submit to the Department for its review and approval a reasonable procedure for the conduct of the procurement and approval process applicable to Major Subcontracts. Such procedure shall include times for each step of the process and shall provide for a competitive process to be used. Design-Builder may use the competitive bid procedures used by the Department for its construction contracts.

7.2.3.2 Design-Builder shall not be required to follow the procurement procedures established pursuant to this Section 7.2.3 in negotiating Major Subcontracts with Affiliates.

7.2.3.3 Design-Builder shall promptly notify the Department in writing of the identity of each Subcontractor selected and, upon the Department's request, provide the solicitation and evaluation materials and results.

7.2.4 Substitution of Subcontractors

Design-Builder shall not have the right to make any substitution of any Listed Subcontractor or Major Subcontractor selected pursuant to Section 7.2.3 except in accordance with the provisions of NRS 338.141.

7.2.5 Subcontract Requirements

7.2.5.1 Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to the Department, (a) the Department is a third party beneficiary of the Subcontract and shall have the independent right to enforce all of the terms of the Subcontract for its own benefit, (b) all guarantees and warranties, express or implied, shall inure to the benefit of the Department, and its successors and assigns; (c) the rights of Design-Builder under such instrument are assigned to the Department contingent only upon delivery of written request from the Department following default by Design-Builder or termination or expiration of this Contract, allowing the Department to assume the benefit of Design-Builder's rights with liability only for those remaining obligations of Design-Builder accruing after the date of assumption by the Department; and (d) the Subcontractor shall recognize and attorn to the Department upon receipt of written notice from the Department that it has exercised its rights under this Contract, without necessity for consent or approval from Design-Builder or to determine whether the Department validly exercised its rights, and Design-Builder's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such written notice.

7.2.5.2 Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Builder shall be fully responsible for all of the Work. The retention of Subcontractors by Design-Builder will not relieve Design-Builder of its responsibility hereunder or for the quality of the Work or materials provided by it. Design-Builder shall supervise and be fully responsible to the Department for the acts, omissions, negligence, fraud, recklessness, intentional misconduct, or violation of an applicable Governmental Rule, breach of contract or breach of Governmental Approval by any DB-Related Entity or by any member or employee of Design-Builder or any DB-Related Entity, as though Design-Builder directly employed all such individuals. No Subcontract entered into by Design-Builder will impose any obligation or liability upon the Department to any such Subcontractor or any of its employees. Nothing in this Contract will create any contractual relationship between the Department and any Subcontractor of Design-Builder. The Department shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind it. Each Subcontract shall include the following provision:

Nothing contained herein shall be deemed to create any privity of contract between the Nevada Department of Transportation (the Department), and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of the Department to the Subcontractor except those specified under Nevada law. In the event of any claim or dispute arising under the Subcontract and/or Design-Builder's Contract with the Department, the Subcontractor shall look only to Design-Builder for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against the Department arising out of the Subcontract or otherwise arising in connection with the Subcontractor's Work.

7.2.6 Subcontract Work

Design-Builder shall coordinate the Work performed by Subcontractors. If the Department makes a good faith objection to the use or continued use of a

Subcontractor, the Subcontractor shall be replaced at the request of the Department and shall not again be employed on the Project. No Subcontractor may start any Work until after the Department receives a copy of its Subcontract, a copy of such Subcontractor's valid Nevada Contractor License, Nevada state business license, and any insurance documents required pursuant to Section 9.

7.2.7 Form of Subcontract

Design-Builder shall ensure that each Subcontract (at all tiers) shall include those terms that are specifically required by the Contract Documents to be included therein as well as such additional terms and conditions as are appropriate to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents.

7.2.7.1 Each Subcontract shall:

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to or better than the requirements of the Contract Documents and Good Industry Practice for work of similar scope and scale and shall set forth effective procedures for claims and change orders.

(b) Require the Subcontractor to carry out its scope of Work in accordance with the Contract Documents, the Governmental Approvals and Governmental Rules, including the applicable requirements of the DBE Performance Plan, and to be joined in any dispute resolution proceeding pursuant to Section 19 if such joinder is determined by the Department to be reasonably necessary to resolve the Dispute.

(c) Set forth effective procedures for claims and change orders which are consistent with the Change Order process set forth in the Contract Documents.

(d) Set forth warranties, guaranties and liability provisions of the contracting party in accordance with Good Industry Practice for work of similar scope and scale.

(e) Include the following: (i) requirement to maintain usual and customary books and records for the type and scope of operations of business in which the Subcontractor is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) provision permitting audits to be conducted by Design-Builder, the Department, and FHWA; (iii) requirement to provide progress reports to Design-Builder appropriate for the type of work it is performing sufficient to enable Design-Builder to provide the reports it is required to furnish the Department under this Contract; (iv) requirement for the Subcontractor to maintain all appropriate licenses; (v) provision prohibiting assignment of the Subcontract by the Subcontractor without Design-Builder's prior written consent; and (vi) provisions implementing the requirements of Section 21.2.

(f) For Major Subcontracts: (i) be terminable by the Subcontractor only for cause unless the Department terminates this Contract pursuant to Section 15, in which case Design-Builder may terminate the Subcontractor for convenience in accordance with clause (i) of this Section 7.2.7.1; (ii) include an indemnity from the Subcontractor in favor of Design-Builder and the Indemnified Parties against any and all

Losses arising out of, related to or associated with, the actions, omissions, negligence, fraud, recklessness, willful misconduct, or breach of Governmental Approvals, violation of Governmental Rules or breach of contract by the Subcontractor or any of its officers, employees, agents or representatives; provided, however that such Subcontractor indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Subcontractor for the active negligence of the Department, or to relieve the Department of liability for such active negligence; and (iii) include a covenant, expressly stated to survive termination of the Major Subcontract, to promptly execute and deliver to the Department a new contract between the Subcontractor and the Department on the same terms and conditions as the Major Subcontract, in the event: (A) the Major Subcontract is rejected by Design-Builder in bankruptcy or otherwise wrongfully terminated by Design-Builder or (B) the Department delivers written request for such new contract following termination or expiration of this Contract.

(g) Expressly require the Subcontractor to participate in meetings between Design-Builder and the Department, upon the Department's request, concerning matters pertaining to such Subcontract or its work; provided, however that all direction to such Subcontractor shall be provided by Design-Builder, and provided further that nothing in this clause (g) shall limit the authority of the Department to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property.

(h) Contain certification by the Subcontractor that the Subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted Work.

(i) Include the right of Design-Builder to terminate the Subcontract in whole or in part upon any Termination for Convenience of this Contract without liability of Design-Builder or the Department for the Subcontractor's lost profits or business opportunity, in accordance with Section 15.9.2.

(j) Expressly provide that all Liens, claims and charges of the Subcontractor and its Subcontractors at any time shall not attach to any interest of the Department in the Project or the Project ROW.

(k) Be consistent in all other respects with the terms and conditions of the Contract Documents to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, and include all provisions required by this Contract.

7.2.7.2 The amount of retainage to be withheld under Subcontracts shall not exceed the amount withheld by the Department pursuant to Section 12.3.1; provided, however that if the Subcontract is exclusively for performance of design or construction management services, it shall not include any requirement for retainage to be withheld.

7.2.7.3 The Department shall have the right, but not the obligation, to review the form of subcontract used by Design-Builder for the Project and to require modifications thereto to conform to the requirements set forth herein.

7.2.8 Subcontracts with Affiliates

7.2.8.1 Design-Builder shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

- (a) Design-Builder shall execute a written Subcontract with the Affiliate;
- (b) The Subcontract shall comply with all applicable provisions of this Section 7, be consistent with Good Industry Practice, and be in form and substance substantially similar to Subcontracts then being used by Design-Builder or Affiliates for similar Work or services with unaffiliated Subcontractors;
- (c) The Subcontract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;
- (d) The pricing, scheduling and other terms and conditions of the Subcontract shall be no less favorable to Design-Builder than those that Design-Builder could reasonably obtain in an arms' length, competitively procured transaction with an unaffiliated Subcontractor. Design-Builder shall bear the burden of proving that the same are no less favorable to Design-Builder; and
- (e) No Affiliate shall be engaged to perform any Work or services which any Contract Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice or other Contract Document requirements.

7.2.8.2 Before entering into a written Subcontract with an Affiliate or any supplement or amendment thereto, Design-Builder shall submit a true and complete copy of the proposed Subcontract to the Department for review and comment. The Department shall have twenty (20) days after receipt to deliver its comments to Design-Builder.

7.2.8.3 Design-Builder shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope.

7.2.9 Other Requirements

7.2.9.1 No Subcontractor shall perform Work if that Subcontractor is ineligible to perform work on public works projects pursuant to NRS Section 338.017.

7.2.9.2 Design-Builder shall comply with all other subcontracting requirements set forth in Section 108.01 of the Department's Standard Specifications.

7.3 Workforce Diversity

7.3.1 Equal Employment Opportunity

7.3.1.1 Design-Builder shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the selection of Subcontractors and the performance of the Work under the Contract Documents. Design-Builder shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Design-Builder to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Department deems appropriate (subject to Design-Builder's rights to notice and opportunity to cure set forth in this Contract).

7.3.1.2 Design-Builder shall include Section 7.3.1 in every Subcontract (including purchase orders and in every subcontract of any DB-Related Entity for the Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.3.1.3 Design-Builder confirms that Design-Builder has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Design-Builder maintains no employee facilities segregated on the basis of race, color, religion or national origin. Design-Builder shall comply with all applicable Governmental Rules relating to equal employment opportunity and nondiscrimination, including those set forth in Appendix 13, and shall require its Subcontractors to comply with such provisions.

7.3.2 Workforce Diversity Plan

7.3.2.1 Design-Builder has submitted to the Department as part of its Proposal a substantive outline of its Workforce Diversity Plan, attached to this Contract as Appendix 20. The Department will deliver to Design-Builder the Department's comments on the outline of Design-Builder's Workforce Diversity Plan within thirty (30) days after the Effective Date. Design-Builder shall submit to the Department, within thirty (30) days after receiving such comments, a proposed- final Workforce Diversity Plan. The proposed-final Workforce Diversity Plan is subject to further review and comment by the Department and to the Department's approval prior to and as a condition to issuance of NTP2, in accordance with Section 4.1.3(vii). The Workforce Diversity Plan shall meet the requirements set forth in the Department's Workforce Diversity Program Special Provisions (Appendix 5).

7.3.2.2 Design-Builder's Workforce Diversity Plan shall incorporate and be consistent with Appendix 5 and Attachment 8 to Appendix 13, and shall include a commitment to participate in the Department's Equal Employment Opportunity Trainee Program. The Workforce Diversity Plan shall apply to all the original Construction Work for the Project.

7.3.2.3 The purpose of the Workforce Diversity Plan is to ensure that inexperienced and untrained women and other minority workers have a substantial

opportunity to participate in the performance of the Work through apprenticeships, training, and similar measures to maintain and grow a diverse, skilled work force. Design-Builder shall perform and comply with all requirements set forth in of the Workforce Diversity Plan.

7.3.2.4 Design-Builder shall include provisions to effectuate the Workforce Diversity Plan in every applicable Subcontract to which it is a party (including purchase orders and task orders for Work), and shall require that such provisions be included in all applicable Subcontracts, except for Subcontracts with the Department or Governmental Entities, so that such provisions will be binding upon each Subcontractor performing Work to which the Workforce Diversity Plan applies. The foregoing shall not apply to Subcontracts at any tier with the Department or Governmental Entities (excepting this Contract).

7.3.2.5 Design-Builder shall meet the following requirements or demonstrate to the Department, in its good faith discretion, that Design-Builder made good faith efforts to meet the following requirements:

(a) Ensure construction contractors included as part of Design-Builder's team comply with the requirements of the Department's "Equal Employment Opportunity Trainee Program," including meeting reporting requirements and documenting good faith efforts to meet the training goals assigned to each construction contractor, and

(b) Provide the required hours of training for Department-approved trainees/apprentices in the training program in Design-Builder's Department-approved Workforce Diversity Plan.

7.4 Labor Compliance

7.4.1 Design-Builder and all Subcontractors shall strictly adhere to the provisions of 29 CFR Part 3 and NRS Chapter 338 and implementing regulations. These regulations and statutes require submittal of a tally of weekly payroll and statement of compliance with respect to each employee engaged in work on the Project. This requirement applies to every Subcontractor and vendor required to provide certified payroll reports pursuant to NRS 338.010 to 338.090, inclusive. Design-Builder and its Subcontractors shall submit payrolls electronically via the internet into the Department's contracted payroll tracking system LCP Tracker and shall be responsible for all access and other fees associated with LCP Tracker. Upon issuance of NTP1, the Department will provide the Design-Builder, Subcontractor and/or vendor with the website addresses and a login identification and password to access the payroll system.

7.4.2 Design-Builder shall comply with the applicable provisions of the Governmental Rules and implementing regulations relating to labor nondiscrimination, and with the applicable federal requirements, including those more specifically set forth in Appendices 3, 5 and 13.

7.5 Prevailing Wages

Design-Builder shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Work not less than the highest prescribed prevailing rates of wages, as provided in the statutes and regulations applicable to public construction projects and public work contracts, including NRS 338.020 to 338.090, inclusive, to the extent provided in Appendix 13, Appendix 22, the Davis-Bacon Act and statutory common wage law(s) applicable to the Project. For purposes of clarity, (a) as between the prescriptions under the Davis-Bacon Act (if applicable) and the “Common Wage” prescribed pursuant to NRS 338.020, the “prevailing rate of wages” shall be, in respect of each labor category, the higher value prescribed and (b) notwithstanding any term of this Contract to the contrary, to the extent that FHWA and the U.S. Department of Labor approve project-specific wage rates for the Project, then Design-Builder shall pay, and shall cause all Subcontractors to pay, such project-specific wage rates when performing or when contracting for the performance of any of Design-Builder’s obligations under this Contract. Design-Builder shall comply and cause its Subcontractors to comply with all Governmental Rules pertaining to prevailing wages, including NRS 338.020 to 338.090, inclusive. In the event of any violations of NRS Chapter 338, Design-Builder shall forfeit, as a penalty to the Department, the amounts stipulated in NRS 338.060, together with the Department’s investigative costs and attorneys’ fees.

7.6 Key Personnel; Character of Employees

7.6.1 Design-Builder, in its Proposal, identified certain personnel to fill specified categories of “Key Personnel” for the Project. Appendix 7 hereto identifies certain job categories of “Key Personnel” for the Project and the personnel identified by Design-Builder in its Proposal (or such other personnel as were approved by the Department prior to the Effective Date). The Department may, acting in good faith, at any time elect to add job categories to the “Key Personnel” list. Design-Builder shall not change, or permit any change in, Key Personnel without the prior written consent of the Department.

7.6.2 Design-Builder shall designate an Authorized Representative who shall have onsite field and office authority to represent and act for Design-Builder. An Authorized Representative shall be present at the jobsite at all times while Work is actually in progress. Design-Builder shall provide phone, e-mail addresses and mobile telephone numbers for all Key Personnel. The Department requires the ability to contact the following Key Personnel 24 hours per day, seven days per week: (a) Project Manager; (b) Deputy Project Manager; (c) Construction Manager; (d) Traffic Control Engineer; and (e) Environmental Compliance Manager.

7.6.3 The Department shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Subcontractors) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual or during the prosecution of the Work. Design-Builder shall notify the Department in writing of any proposed changes in any Key Personnel. Design-Builder shall not change any Key Personnel without the prior written consent of the Department.

Individuals proposed to fill Key Personnel positions must meet the minimum qualifications specified in Section 1.5.1 of the Technical Provisions for that position.

7.6.4 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If the Department determines, in its good faith discretion, that any individual employed by Design-Builder or by any Subcontractor is not performing the Work in a proper, safe and skillful manner, then at the written request of the Department, Design-Builder or such Subcontractor shall promptly remove such individual and such individual shall not be re-employed on the Project without the prior written approval of the Department, in its good faith discretion. If Design-Builder or the Subcontractor fails to remove such individual or individuals or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the Department may, in its good faith 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 time extension or other Change Order. Once compliance is achieved, as determined by the Department, the Department will notify Design-Builder and Design-Builder shall be entitled to and shall promptly resume the Work.

7.6.5 Design-Builder acknowledges and agrees that the award of this Contract by the Department to Design-Builder was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Design-Builder's commitment that such individuals would be available to undertake and perform the Work. 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. Unless otherwise agreed to by the Department in writing, individuals filling Key Personnel roles shall be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In the event that any Key Persons will not be 100% dedicated to the Project, Design-Builder shall so advise the Department and shall obtain the Department's approval of the amount of time to be spent by each such individual on the Project, which amount shall in all events be sufficient for satisfactory and full performance of the tasks to be performed by such Key Person. Upon the Department's request, Design-Builder shall document the percentage time commitment for each Key Person to the Department's satisfaction. In addition to the foregoing, the Department reserves the right to require a 100% time commitment per position from any Key Personnel if the Department, in its good faith discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

7.7 Lobbying

The certification and disclosure of lobbying activities described in Appendix 13 shall be included in each Subcontract (including any lower-tier Subcontracts exceeding \$100,000). All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Department's Contract Compliance Office.

7.8 Federal On-the-Job Training Participation Goal

This Contract is subject to Federal on-the-job training (OJT) participation provisions as set forth in the NDOT Public Agency Manual, Title 23 CFR, Part 230, and FHWA Form 1273 (Appendix 13). The Federal OJT participation goal for the Project is set forth in the Training Special Provisions (Attachment 8 to Appendix 13).

SECTION 8. PERFORMANCE AND PAYMENT BONDS

8.1 Provisions of Bonds

Design-Builder shall provide the Department with performance bonds, payment bonds, and security for warranty Work and Plant Establishment Work as provided herein, securing Design-Builder's obligations under the Contract Documents, and shall maintain such bonds in full force and effect as described below (or other assurance satisfactory to the Department in its sole discretion). Each bond required hereunder shall be provided by a Surety authorized to do business in the State with an A.M. Best Co. "Best's Rating" of A or better and Class VIII or better, or as otherwise approved by the Department, in its sole discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Design-Builder shall, within seven (7) days after such event, deliver to the Department a replacement bond in the required form issued by a Surety meeting the foregoing requirements, or other assurance satisfactory to the Department, in its sole discretion.

8.1.1 On or before the issuance by the Department of NTP1, Design-Builder shall deliver to the Department a performance bond in an amount equal to the Contract Price, in the form attached hereto as Appendix 8-A (the "Performance Bond"). The Department will release the Performance Bond upon Final Acceptance provided that all of the following conditions have been met: (a) Design-Builder is not in default under the Contract Documents and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under the Contract Documents and (b) the Department has received the Warranty Bond in accordance with Section 8.1.3. If the Contract Price is increased in connection with a Change Order, the Department may, in its good faith discretion, require a corresponding proportionate increase in the amount of the Performance Bond or a new performance bond covering the Change Order Work.

8.1.2 On or before the issuance by the Department of NTP1, Design-Builder shall deliver to the Department a payment bond in an amount equal to the Contract Price, in the form attached hereto as Appendix 8-B (the "Payment Bond"). Design-Builder shall maintain the Payment Bond in full force and effect until (a) Design-Builder has delivered to the Department (i) evidence satisfactory to the Department that all Persons eligible to file a claim against the Payment Bond have been fully paid and (ii) unconditional releases of Liens and notices from all Subcontractors who filed preliminary notice of a claim against the Payment Bond, or (b) expiration of the statutory period for Subcontractors to file a claim against the Payment Bond. If the Contract Price is increased in connection with a Change Order, the Department may, in its good faith discretion, require a corresponding proportionate increase in the amount of the Payment Bond or a new payment bond covering the Change Order Work.

8.1.3 Upon Final Acceptance, subject to the requirements herein, Design-Builder may obtain a release of the Performance Bond and Payment Bond by providing a warranty bond, or such other security as is approved by the Department in its sole discretion, which shall guarantee performance of Work required to be performed during the period following Final Acceptance, including Warranty Work and Plant Establishment Work and which shall also constitute a payment bond guaranteeing payment to Persons

performing such Work (“Warranty Bond”). The Warranty Bond, if used, shall be in an amount equal to 10% of the Contract Price and shall be in form satisfactory to the Department. The Department will release the Warranty Bond upon the expiration of the Warranty period or Plant Establishment Period, whichever is later; provided, however that all of the following conditions have been met: (a) Design-Builder is not in default under the Contract Documents and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under the Contract Documents, (b) receipt by the Department of (i) evidence satisfactory to the Department that all Persons eligible to file a claim against the Warranty Bond have been fully paid and (ii) unconditional releases of Liens and notices from all Subcontractors who filed preliminary notice of a claim against the Warranty Bond, and (c) the statutory period for Subcontractors to file a claim against the Warranty Bond has expired and no claims have been filed.

8.2 No Relief of Liability

Notwithstanding any other provision set forth in the Contract Documents, performance by a Surety or Guarantor of any of the obligations of Design-Builder shall not relieve Design-Builder of any of its obligations hereunder.

8.3 Guaranty

Kiewit Infrastructure Group Inc. is the Guarantor of Design-Builder’s obligations under the Contract Documents. Such Guaranty, in the form attached as Appendix 14, assures performance of Design-Builder’s obligations hereunder and shall be maintained in full force and effect throughout the duration of this Contract.

SECTION 9. INSURANCE

Design-Builder shall purchase, at its own expense, and continuously maintain in full force and effect the insurance coverages specified in this Section 9. Coverage shall be maintained from and after Contract execution through the expiration of the Warranty period, or such longer or shorter time as may be specifically provided in this Section 9.

9.1 Design-Builder Provided Insurance

Design-Builder shall obtain and maintain a construction insurance program Section 9. Provision of the required insurance shall not be interpreted to relieve Design-Builder of any obligations hereunder. Design-Builder acknowledges and agrees that any actual or alleged failure on the part of the Department to inform Design-Builder of non-compliance with any requirement herein imposes no additional obligations on the Department nor does it waive any rights hereunder. All of the policies, except for the professional liability policies, shall explicitly waive subrogation rights or shall allow the insured to waive its rights of recovery against Indemnified Parties.

All insurance required hereunder shall be procured from insurance companies with an A.M. Best and Company rating level of A-: Class VII or better, or as otherwise approved by the Department and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars.

9.1.1 Primary Commercial General Liability Insurance

During the period beginning with the issuance of NTP1 and continuing until issuance of NTP2, Design-Builder may use its corporate program of insurance to meet the requirements for general liability insurance specified below, provided, however, that policy limits meet the requirements of the Contract Documents. Primary general liability insurance limits for the period prior to issuance of NTP2 shall be no less than \$1,000,000 per occurrence, \$2,000,000 general aggregate limit and \$2,000,000 completed operations aggregate. Each of the Indemnified Parties shall be an insured under such policy.

During the period beginning with the issuance of NTP2 and ending upon Final Acceptance or for such longer period as otherwise specifically provided for in this Section 9, Design-Builder shall obtain and maintain a policy or policies of commercial general liability insurance for bodily injury, property damage, personal injury and advertising injury specifically and exclusively for the Project, Project ROW, and Site. Coverage shall be written on an occurrence form that shall provide coverage at least as broad as the coverage provided by Insurance Services Office (ISO) form CG 00 01 12 07. The policy or policies shall be endorsed to remove exclusions pertaining to railroads. There shall be no exclusions for:

- (a) Hazards commonly referred to as "XCU," including explosion, collapse and underground property damage;
- (b) Fellow employee injury for supervisory employees and above;

- (c) Incidental medical malpractice;
- (d) Work performed within 50 feet of a railroad; and
- (e) Professional services except the latest ISO form CG 22 79 or CG 22 80, or both.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract.

The commercial general liability insurance coverage shall have limits of not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate and \$4,000,000 products/completed operations aggregate. Completed operations coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute. If project-specific completed operations coverage through statutory exposure is not commercially available, completed operations coverage shall extend for at least ten (10) years from Final Acceptance. Design-Builder shall be the named insured and each of the Indemnified Parties shall also be an insured as to any loss or liability arising out of or in any way related to the Project, Project ROW, or Site. Coverage for the completed operations hazard shall be furnished to all insured Indemnified Parties.

9.1.2 Workers' Compensation/Employer's Liability Insurance

During all phases of the Project and at all times when work is being performed by their employees, including the Plant Establishment Period, Design-Builder shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain, a policy or policies of insurance providing workers' compensation statutory benefits and employer's liability in conformance with the laws of the State. Employer's liability limits shall be no less than \$1 million each accident, each employee, and policy limit. The workers' compensation policies shall provide the following:

- (a) A voluntary compensation endorsement;
- (b) An alternative employer endorsement; and
- (c) A provision extending coverage to all states operations on an "if any" basis.

The workers compensation policy shall also include U.S. Longshore and Harbor Workers', Jones Act, and Federal Employer's Liabilities Act coverage where applicable.

9.1.3 Automobile Liability Insurance

Design-Builder shall obtain and maintain and shall require all Subcontractors of all tiers to obtain and maintain a business auto liability policy or policies. Each policy shall cover accidental death, bodily injury, and property damage liability arising from the ownership, maintenance, or use of all owned, non-owned, and hired vehicles connected with performance of the Work, including loading and unloading. Design-Builder auto liability policies shall cover "any auto" ("symbol 1"). Policies shall include as an insured

anyone liable for the conduct of an insured as defined in the policy, or shall add as insureds, the Indemnified Parties. For any contractor of any tier, including Design-Builder, who will be involved in any way with the transportation of Hazardous Materials using its own vehicles, pollution liability coverage at least as broad as that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided and the automobile liability insurance policies shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

Design-Builder's automobile liability policy shall have a combined single limit per policy period of not less than \$10,000,000 per accident or shall be scheduled under the excess or umbrella liability policies. Excess or umbrella policies shall cover "any auto" ("symbol 1"). Subcontractors' policies shall have a combined single limit of no less than \$2,000,000 per accident. Such limit may be achieved through any combination of primary and following form excess insurance. At its discretion, Design-Builder may reduce the required combined single limit to \$1,000,000 for a Subcontractor who is unable to obtain the \$2,000,000 limit.

No automobile liability policy issued to Design-Builder and covering vehicles used in connection with the Project shall contain a self-insured retention exceeding \$250,000 per accident unless approved by the Department. No automobile liability policy issued to a Subcontractor shall contain a self-insured retention exceeding \$50,000 per accident unless approved by the Department. Deductibles, as opposed to self-insured retentions, are not included in this restriction.

Design-Builder and Subcontractors of all tiers shall maintain such insurance through Final Acceptance; provided, however, that such coverage shall be maintained for vehicles used in the performance of Warranty and any Plant Establishment Work until the expiration of the Warranty period and Plant Establishment Period, respectively. Coverage shall be at least as broad as coverage provided by Insurance Services Office form number CA 00 01. The required limits can be satisfied by a combination of a primary policy and an excess policy or policies.

9.1.4 Design-Builder's Pollution Liability Insurance

During the period beginning with the issuance of NTP1 and continuing until issuance of NTP2, Design-Builder may use its own corporate program of insurance to meet the requirements for contractor's pollution liability insurance as specified below, except as to limits, which must meet the requirements of the Contract Documents. Pollution liability insurance limits for the period prior to issuance of NTP2 shall be no less than \$5,000,000 per claim and aggregate. Each of the Indemnified Parties shall be an insured under such a policy.

During the period beginning with the issuance of NTP2 and ending upon Final Acceptance or for such longer period as otherwise specifically provided in this Section 9, Design-Builder shall obtain and maintain contractor's pollution liability (CPL) insurance with a total limit of liability of no less than \$25,000,000 per loss and \$25,000,000 in the aggregate per policy period dedicated to this Project. In the alternative, Design-Builder may use a corporate CPL program, provided that coverage

extends for a minimum ten- (10-) year period as described in the following paragraph of this Section 9.1.4 and further provided that the limits available for this Project are not subject to erosion by losses on other projects not related to this Project. If separate limits are not available, then policy limits must be no less than \$50,000,000 per loss. If Design-Builder uses its corporate CPL policy to meet this requirement, Design-Builder must provide the Department with a certified copy of the policy including an endorsement or provision extending coverage to the Department and the Indemnified Parties as insureds.

The CPL shall be obtained for a policy term inclusive of the entire period of construction and extended reporting period. The CPL shall provide for a minimum ten - (10-) year coverage period, including the construction period and an extended reporting period. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage (including natural resource damage), provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracted operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials. Each of the Indemnified Parties shall also be insureds. The policy shall not contain any provision or exclusion (including any so-called “insured versus insured” exclusion or “cross-liability” exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

9.1.5 Umbrella or Excess Liability Insurance

During the period beginning with the issuance of NTP1 and continuing until issuance of NTP2, Design-Builder may use its own corporate program of insurance to meet the requirements for umbrella or excess liability insurance as specified below, except as to limits, which must meet the requirements of the Contract Documents. Total liability insurance limits, including limits provided by umbrella or excess liability insurance in place prior to issuance of NTP2, shall be no less than \$10,000,000. Each of the Indemnified Parties shall be an insured under such a policy.

During the period beginning with issuance of NTP2 and ending upon Final Acceptance or for such longer period as otherwise specifically provided for in this Section 9, Design-Builder shall maintain umbrella or excess liability insurance with limits of not less than \$200,000,000, which limits are to be applicable solely to the Project, that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer’s liability in excess of the amounts set forth in Sections 9.1.1 and 9.1.2.

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

- (a) drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted or for occurrences covered by an umbrella policy but not covered in the underlying insurance;
- (b) pay on behalf of wording as opposed to reimbursement;
- (c) concurrency of effective dates with primary policies;
- (d) the policies shall “follow form” to the underlying primary policies; and
- (e) there shall be no exclusions as described in Section 9.1.1, subparagraphs (a) through (e), that have not been reviewed and approved by the Indemnified Parties or their authorized representatives.

The Department and the Indemnified Parties shall be insureds on the excess policy.

9.1.6 Professional Liability Insurance

During all phases of the Project, Design-Builder shall obtain and maintain contractor’s professional liability insurance with limits not less than \$20,000,000 per claim and in the aggregate. No self-insured retention for Design-Builder shall exceed \$500,000 without prior written approval from the Department, in its good faith discretion. Coverage shall apply specifically to professional activities performed under the Contract Documents. The policy(ies) shall have a retroactive date consistent with the inception of design and/or project/construction management activities, and no later than the date on which the RFP was issued. Design-Builder agrees to maintain this required coverage for a period of no less than five (5) years after Substantial Completion or to purchase an extended reporting period for no less than five (5) years after Substantial Completion. If Design-Builder purchases a project-specific policy, the policy period must be structured so that the extended reporting portion of the policy period extends to no less than five (5) years after Substantial Completion.

9.1.7 Builder’s Risk

Upon commencement of construction and with approval of the Department, Design-Builder shall obtain and maintain a policy of builder’s risk insurance for the Project as specified below. The policy may be a Design-Builder corporate policy or a stand-alone policy as long as all of the requirements of this Section 9.1.7 are met. The named insureds shall be Design-Builder, all Subcontractors (excluding those solely responsible for design Work) of any tier, Suppliers, the Department, and the Indemnified Parties. Design-Builder shall not be required to maintain property insurance for any portion of the Project following acceptance of liability for that portion by the Department or Local Agency as specified in Section 10.2.2.

9.1.7.1 Minimum Scope

A builder's risk insurance policy on an "all risk" basis with no coinsurance clauses or penalties, including coverage for water damage, flood, and earthquake for those portions of the Project comprising high value assets subject to loss

from a single occurrence. Examples of such assets include materials, temporary buildings, falsework, bridges, connectors, off ramps, and other structures or items.

Design-Builder may elect to cover all property at a lower blended rate if such a strategy would result in lower premium, or result in broader coverage at a lower or equivalent premium. Such coverage may be provided under a master corporate builder's risk program in which each asset is added for its period of construction only, or may be provided under individual policies for each high value asset. Coverage for each asset should be applicable only for the period of construction of the specific asset and should end when the asset is put to its intended use or as otherwise approved and accepted by the Department, which end of coverage must be approved by the Department prior to termination thereof.

Policy must include: (1) by endorsement or incorporation into the policy, language the same as or comparable to the London Engineering Group (LEG) Form 3 endorsement or Design Improvement Exclusion DE5 to cover physical damage arising as a consequence of faulty workmanship or materials; (2) if applicable, coverage for physical damage resulting from machinery accidents and operational testing; (3) coverage for demolition and removal of debris, subject to a sub-limit of no less than 25% of the loss, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the Supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site; and (6) full collapse coverage, including, and to the extent commercially available, collapse resulting from design error. Such insurance shall be on a form reasonably acceptable to the Department to ensure adequacy of terms and sublimits.

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

The State of Nevada, the Department, the City of Las Vegas, Design-Builder and subcontractors of every tier shall be named insureds on the policy. There shall be no provision limiting coverage to "as their interests may appear."

9.1.7.2 Minimum Coverage

Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, including earth movement and flood coverage, with a minimum limit of \$40,000,000.

9.1.8 Railroad Protective Liability

Design-Builder shall provide any coverage as may be required by any railroad as a condition of the railroad's consent for entry into railroad facilities or property. Such

policy shall be effective during the period any Work is being performed within 50 feet of any railroad right-of-way.

9.1.9 Aircraft Liability

Design-Builder shall provide, or cause to be provided, aircraft liability insurance, with a limit of not less than \$5,000,000 per occurrence or higher limits as may be required by the Department, in all cases where any aircraft is used on the Project that is owned, leased or chartered by any DB-Related Entity, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path, and altitude, including landing of any aircraft on the Site or on any property owned by the Department shall be subject to review and written acceptance by the Department prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft.

9.2 General Insurance Requirements

9.2.1 Premiums, Deductibles and Self-Insured Retentions

Design-Builder shall be responsible for payment of premiums for all insurance required under this Section 9. Indemnified Parties have no obligation to pay any premium. Design-Builder further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Design-Builder is responsible hereunder, Design-Builder shall be solely responsible for all deductibles, self-insured retentions and loss amounts in excess of the coverage provided. Any self-insured retentions maintained by Design-Builder over \$250,000 must be declared and approved by the Department; provided, however, that the amount of (a) self-insured retentions for professional liability insurance shall be governed by Section 9.1.6, and (b) self-insured retentions for automobile liability insurance shall be governed by Section 9.1.3. In the event the Department determines, in its good faith discretion, that conditions exist that could result in substantial financial cost or peril to Design-Builder, the Department may, in its good faith discretion, require Design-Builder to post collateral guaranteeing payment of losses and related investigations, claims administration and defense expenses or require Design-Builder to reduce the amount of self-insured retentions under the policies.

9.2.2 Verification of Coverage

9.2.2.1 Design-Builder Policies

Concurrently with Design-Builder's execution hereof or on such later date on which coverage is required to be provided hereunder, Design-Builder shall deliver to the Department a copy of each policy required to be provided by Design-Builder under this Section 9, including any corporate policies used to satisfy the terms of this Section 9. If such policy is not available at the time of Contract execution, Design-Builder may submit a detailed binder for each required coverage, and/or a copy of the insurer's quote for each required coverage. The evidence provided must be adequate to allow the Department to determine if all insurance requirements have been met. Actual policies shall be delivered to the Department no later than ninety (90) days after

Contract execution. This requirement does not apply to professional liability policies, worker's compensation policies, and auto liability policies, for each of which a certificate of insurance is acceptable. The Department shall have no duty to pay or perform under the Contract until such evidence of insurance, in compliance with all requirements of this Section 9, has been provided.

9.2.2.2 Renewal Policies

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

9.2.3 Endorsements and Waivers

All insurance policies required to be provided by Design-Builder hereunder shall contain or be endorsed to comply with the following provisions:

(a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an Indemnified Party, their directors, officers, employees, agents, and consultants shall be excess of such insurance and shall not contribute with it.

(b) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(c) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the Department. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(d) All endorsements adding insureds to required commercial general liability policies shall provide additional insureds with coverage for "completed operations," or a separate endorsement providing such coverage must be added to the policy.

(e) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and pollution liability) and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time except as specified for the pollution liability policies.

9.2.4 Waivers of Subrogation

The Department and Design-Builder waive all rights against each other, against each of their agents and employees and their respective members, directors, officers,

employees, agents and consultants for any claims to the extent covered by insurance obtained pursuant to this Section 9, except such rights as they may have to the proceeds of such insurance. Design-Builder shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include by endorsement or otherwise, a waiver of any right of subrogation against the Indemnified Parties (and their respective members, directors, officers, employees, agents and consultants).

9.2.5 Changes in Insurance Requirements

The Department shall notify Design-Builder in writing of any changes in the requirements applicable to insurance required to be provided by Design-Builder. Except as set forth in Section 9.2.8, any additional cost from such change shall be paid by the Department and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

9.2.6 No Recourse

There shall be no recourse against the Department for payment of premiums or other amounts with respect to the insurance required to be provided by Design-Builder hereunder, except for deductibles payable by the Department as specified herein.

9.2.7 Non Limitation of Insurance Requirements

The insurance coverage provided and limits required hereunder are minimum requirements and are not intended to limit Design-Builder's indemnification obligations under Section 18, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this Section 9 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. With the exception of any insurance required by a railroad, liability coverage will not be limited to the specific location designated as the Site except that if or when Design-Builder arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Project Site will be permitted subject to the Department's approval and use of the broadest available site-specific endorsements. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

9.2.8 Commercial Unavailability of Required Coverages

If, through no fault of Design-Builder, any of the coverages required in this Section 9 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, the Department will consider in good faith alternative insurance packages and programs proposed by Design-Builder, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein. Design-Builder must

demonstrate to the Department's satisfaction that it has used diligent efforts in the global insurance markets to place the required insurance coverages, and shall advise the Department of the specific results of those efforts. Design-Builder shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. The Department shall be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents (or based on other evidence of insurance premiums as of the Proposal Date if the EPD does not provide adequate information).

9.3 Notice and Prosecution of Claims

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

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

9.3.3 The Department agrees to promptly notify Design-Builder of the Department's incidents, potential claims against the Department, and matters of which the Department is actually aware which may give rise to a Department insurance claim or to a right of defense and indemnification under Section 18.1. Delivery of any such notice will constitute a tender of the Department's defense of the claim to Design-Builder and the insurer under any applicable insurance policies, subject to the Department's rights to control its own defense to the extent provided in Section 18.2 or by applicable Governmental Rules. The Department shall cooperate with Design-Builder as necessary for Design-Builder to fulfill its duties hereunder, including providing Design-Builder a copy of all written materials the Department receives asserting a claim against the Department that is subject to defense by an insurer under an insurance policy or by Design-Builder under Section 18.2.

9.3.4 In the event that an insurer providing any of the insurance policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of

an order or directive limiting its business activities given by any Governmental Entity, including the State Department of Insurance, Design-Builder shall exercise best efforts to promptly, and at its sole cost and expense, secure alternative coverage in compliance with the insurance requirements contained in this Section 9 so as to avoid any lapse in insurance coverage.

9.4 Commencement of Work

Design-Builder shall not commence Work under this Contract until it has obtained the insurance required under this Section 9, has furnished original evidence of insurance for the required coverage as required under Section 9.2.2 and such insurance has been approved by the Department, nor shall Design-Builder allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by Design-Builder.

9.5 Design-Builder's Failure to Comply

If Design-Builder or any Subcontractor fails to provide and maintain insurance as required herein, then the Department shall have the right but not the obligation, to purchase such insurance or to suspend Design-Builder's right to proceed until proper evidence of insurance is provided. Any amounts paid by the Department (plus an administrative charge equal to ten percent (10%) of the cost) shall, at the Department's sole option, be deducted from amounts payable to Design-Builder or reimbursed by Design-Builder upon demand, plus interest thereon from the date of payment by the Department to the reimbursement date, at the lesser of (a) ten percent (10%) per annum or (b) the maximum rate allowable under applicable Governmental Rules. Nothing herein shall preclude the Department from exercising its rights and remedies under Section 16 as a result of the failure of Design-Builder or any Subcontractor to satisfy the obligations of this Section 9.

If on account of Design-Builder's failure to comply with the provisions of this Section 9, the Department is adjudged to be responsible for all or any portion of a judgment, loss or settlement (through admission or stipulation by Design-Builder or court decision) that would have been covered by insurance but for non-compliance with this Section 9, then any loss or damage it shall sustain by reason thereof shall be borne by Design-Builder, and Design-Builder shall immediately pay the same to the Department, upon receipt of written demand therefor and evidence of such loss or damage.

9.6 Subcontractor Insurance Requirements

Design-Builder shall cause each Subcontractor to provide insurance that complies with the requirements for Design-Builder-provided insurance set forth in this Section 9 in circumstances where Subcontractor acts or omissions are not covered by Design-Builder-provided insurance, including automobile liability. Except as otherwise specified in this Section 9, Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Design-Builder shall cause each such Subcontractor to include the Department and the Indemnified Parties as insureds under such Subcontractor's general liability and excess liability

insurance policies. If requested by the Department, Design-Builder shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. The Department shall have the right to contact the Subcontractors directly in order to verify the above coverage.

9.7 Coverage to be Provided by Design-Builder During Warranty Period and Plant Establishment Period

During the period following the Final Acceptance Date and prior to expiration of the Warranty period and Plant Establishment Period hereunder, Design-Builder may use its own corporate program of insurance to meet insurance requirements, which shall be the same as required during the period after issuance of NTP1 and prior to issuance of NTP2, as specified in Sections 9.1.1 through 9.1.6.

9.8 Disclaimer

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

The Department makes no representation or warranty that the coverage, limits of liability or other terms specified for the insurance policies to be carried pursuant to this Section 9 are adequate to protect Design-Builder against its undertakings under the Contract Documents or its liability to any third party or preclude the Department from taking any actions as are available to it under the Contract or otherwise at law.

SECTION 10. SITE SECURITY; MAINTENANCE AND REPAIR; TITLE

10.1 Site Security

Design-Builder shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, vandalism, theft or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by Design-Builder, the Department, a Local Agency or any other Person.

10.2 Obligation to Maintain and Repair

10.2.1 Maintenance and Repair Liability; Use of Insurance Proceeds

10.2.1.1 Design-Builder shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, materials, equipment, supplies, and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, that is injured or damaged prior to the date that Design-Builder's maintenance responsibility ends as set forth in Section 10.2.2, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to the Department except to the extent that it constitutes Extra Maintenance Work. Design-Builder, at its cost, shall also have the sole responsibility during such periods for rebuilding, repairing, and restoring all other property within the Project ROW whether owned by Design-Builder, the Department or any other Person.

10.2.1.2 At all times prior to the expiration of the Plant Establishment Period, Design-Builder shall maintain in a growing condition all plantings, seedlings, and soddings furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during said establishment period, in accordance with Section 5.3.2 of the Technical Provisions, as well as maintaining the remote control irrigation system described in Section 5.3.14 of the Technical Provisions (collectively, "Plant Establishment").

10.2.1.3 If insurance proceeds with respect to any loss or damage are paid to the Department under any insurance policies required to be provided hereunder, then the Department shall arrange for such proceeds to be paid to Design-Builder as repair or replacement work is performed by Design-Builder to the extent that the Department has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to Design-Builder shall not be a condition precedent to Design-Builder performing such repair or replacement work or indicate that such repair or replacement work has been approved and accepted by the Department, and Design-Builder shall remain obligated to pay deductibles and self-insured retentions as specified in Section 9.

10.2.1.4 Design-Builder shall protect from damage, existing property, structures, Utilities, curbs, walks, drives, trees, shrubs, lawns, and landscape work of third parties on or adjacent to the Site or affected by its activities and shall provide such

guards, protection, and covering as is necessary. Design-Builder shall immediately notify affected third parties of any damage to their property caused by any DB-Related Entity. Damaged or destroyed items of the Work and Site shall be repaired or replaced to the condition required by the Contract Documents for the initial construction of the Project. Damaged or destroyed items that are the property of other affected parties shall be repaired or replaced to their prior condition; provided, however that they shall be repaired or replaced to any better or different condition to the extent required by applicable Governmental Rules or by any preexisting third party agreement between the property owner and either the Department or Design-Builder. Design-Builder shall either perform such repair or replacement itself, or the affected third party may elect to make its own repairs at Design-Builder's expense. Should Design-Builder not repair or replace such damaged or destroyed items (or not reimburse a property owner electing to do its own repair or replacement), the Department shall have the right to take corrective measures and to deduct the amount of such costs and expenses (including an administrative charge equal to ten percent (10%) of the costs) from any sums owed by the Department to Design-Builder pursuant to this Contract and/or obtain reimbursement from Design-Builder for such costs (plus an administrative charge equal to ten percent (10%) of the costs).

10.2.2 Relief from Maintenance Liability

Effective as of the date on which Substantial Completion occurs; Design-Builder shall be relieved of maintenance liability for those elements of the Project which are then placed in full operations and service, which decision shall be solely within the discretion of the Department. All remaining elements of the Project, except for landscaping, shall be considered accepted for maintenance purposes, and relief from maintenance responsibility for Design-Builder shall occur, as of the Final Acceptance Date. Upon expiration of the Plant Establishment Period, Design-Builder shall be relieved of responsibility for Plant Establishment Work. Notwithstanding the foregoing, all elements of the Work which will be owned by Persons other than the Department or Local Agencies and Utility Owners will be considered accepted for maintenance purposes only as of the date of acceptance of maintenance responsibilities by such Persons.

10.2.3 Extension of Maintenance and Repair Obligation

The Department may require Design-Builder to continue to have responsibility for maintaining, rebuilding, repairing, restoring and replacing Work accepted by the Department and shall do so pursuant to a Change Order under Section 13.2; provided, however, that any Department-Directed Change extending Design-Builder's obligations to maintain and repair Work shall include a requirement to provide performance security separate from the Performance Bond and Payment Bond described in Section 8.1. Notwithstanding the Department-Directed Change, Design-Builder shall be entitled to release of the Performance Bond and Payment Bond in accordance with the terms of those instruments and Section 8.1.3 provided that (a) Design-Builder has otherwise satisfied all conditions to the release of the Payment Bond and Performance Bonds but for the addition of the extended maintenance and repair obligations directed by the Department and (b) Design-Builder has provided separate performance security for the

extended maintenance and repair obligations and such security will remain in effect after the release of the Payment Bond and Performance Bond.

10.3 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 the Department for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools, and supplies which shall have been delivered to the Site shall pass to the Department, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by the Department to Design-Builder of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Design-Builder shall retain sole care, custody, and control of such materials, equipment, tools, and supplies and shall exercise due care with respect thereto until Final Acceptance or until Design-Builder is removed from the Project.

SECTION 11. WARRANTIES

11.1 Warranties

11.1.1 Warranty

The general warranty contained in this Section 11 is in addition to any express warranties provided for elsewhere in the Contract Documents. Design-Builder warrants that (a) all design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State; (b) the Project shall be free of defects, including design Errors, except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents; (c) materials and equipment furnished by or on behalf of any DB-Related Entity under the Contract Documents shall be of good quality and when installed, shall be new; (d) equipment furnished by or on behalf of any DB-Related Entity shall be of modern design and in good working condition; (e) the Work shall meet all of the requirements of the Contract Documents; and (f) the Project shall be fit for use for the intended function.

11.1.2 Warranty Period

The Warranty period for each element of the Project (excluding those elements of the Project that will be owned by Persons other than the Department and Local Agencies) shall commence upon Final Acceptance. Subject to extension under Section 11.2, the Warranties regarding all elements of the Project that will be owned by the Department and/or Local Agencies shall remain in effect until two (2) years after the Final Acceptance Date. The Warranty period for the Construction ATM System described in Section 19.5.2.1 of the Technical Provisions shall commence upon Final Acceptance and shall remain in effect for two (2) years from the commencement thereof. The Warranty period for elements of the Project that will be owned by Persons other than the Department, Local Agencies or FAST (such as Utility Owners) shall commence upon acceptance thereof by the appropriate Person that will own such element and shall remain in effect for two (2) years from the commencement thereof, or, in the case of Utility Adjustments, for such longer term as is required by the applicable Utility Agreement(s). If the Department determines that any of the Work has not met the standards set forth in this Section 11.1 at any time within the Warranty period, then Design-Builder shall correct such Work as specified below, even if the performance of such corrective Work extends beyond the stated Warranty period. The Department and Design-Builder shall conduct a walkthrough of the Site prior to expiration of the Warranty period and shall produce a punch list of those items requiring Warranty Work.

11.1.3 Remedy

Within seven (7) days of receipt by Design-Builder of notice from the Department and/or Local Agencies specifying a failure of any of the Work to satisfy Design-Builder's Warranties, or of any Subcontractor representation, warranty, guarantee or obligation which Design-Builder is responsible to enforce, Design-Builder, Local Agencies, and the Department shall mutually agree when and how Design-Builder shall remedy such violation; provided, however, that in case of an emergency requiring immediate curative

action, Design-Builder shall implement such action as it deems necessary and shall notify the Department in writing of the urgency of a decision. Design-Builder and the Department shall promptly meet in order to agree on a remedy. If Design-Builder does not effectuate such remedy within the agreed time, or should Design-Builder, Local Agencies and the Department fail to reach such an agreement within such seven- (7-) day period (or immediately in the case of emergency conditions) or should Local Agencies or the Department disapprove of the actions being taken, the Department or Local Agencies, after notice to Design-Builder, shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof and further warranty obligations with respect to such work performed by the Department or Local Agencies shall be borne by Design-Builder. Reimbursement therefor (plus an administrative charge equal to ten percent (10%) of the costs) shall be payable to the Department within ten (10) days after Design-Builder's receipt of an invoice therefor. Alternatively, the Department may deduct the amount of such costs and expenses (including the administrative charge equal to ten percent (10%) of the costs) from any sums owed by the Department to Design-Builder pursuant to this Contract.

11.1.4 Permits and Costs

Design-Builder shall be responsible for obtaining any required encroachment permits from Local Agencies and required encroachment permits, access rights, rights of entries, and consents from any other Persons in connection with Warranty Work. Design-Builder shall bear all costs of Warranty Work, and additional testing and inspections, and shall reimburse the Department or pay the Department's expenses made necessary thereby within ten (10) days after Design-Builder's receipt of invoices therefor. Alternatively, the Department may deduct the amount of such costs and expenses from any sums owed by the Department to Design-Builder pursuant to this Contract.

11.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of the Contract. The Warranties as to each re-done, repaired, corrected, or replaced element of the Work shall extend beyond the original Warranty period if necessary to provide at least a two- (2-) year Warranty period regarding all elements of the Project (but not to exceed three (3) years from the Final Acceptance Date), following acceptance by the Department and, as applicable, Local Agencies of the re-done, repaired, corrected or replaced Work.

11.3 Subcontractor Warranties

11.3.1 Warranty Requirements

11.3.1.1 Without in any way derogating the Warranties and Design-Builder's own representations and warranties and other obligations with respect to all of the Work, Design-Builder shall obtain from all Subcontractors for periods at least coterminous with the Warranties and cause to be extended to the Department and Local Agencies, appropriate representations, warranties, guarantees, and obligations with

respect to design, materials, workmanship, equipment, tools, and supplies furnished by such Subcontractors to effectuate the provisions of this Section 11.

11.3.1.2 Design-Builder shall cause Subcontractor warranties to be extended to the Department and Local Agencies and any other parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Subcontractor; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to the Department using commercially reasonable efforts. The Department agrees to forebear from exercising remedies under any such warranty so long as Design-Builder is diligently pursuing remedies thereunder.

11.3.1.3 All representations, warranties, guarantees, and obligations of Subcontractors (a) shall be written so as to survive all the Department and as applicable, Local Agency inspections, tests and approvals hereunder, and (b) shall run directly to and be enforceable by Design-Builder, Local Agencies, and/or the Department and their respective successors and assigns. Design-Builder hereby assigns to the Department and Local Agencies all of Design-Builder's rights and interest in all extended warranties for periods exceeding the applicable warranty period which are received by Design-Builder from any of its Subcontractors. To the extent that any Subcontractor warranty would be voided by reason of Design-Builder's negligence or failure to comply with the Contract Documents in incorporating material or equipment into the Work, Design-Builder shall be responsible for correcting such defect.

11.3.2 Enforcement

Upon receipt from the Department or Local Agencies of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Design-Builder shall enforce or perform any such representation, warranty, guaranty or obligation, in addition to Design-Builder's other obligations hereunder. The Department's and Local Agencies' rights under this Section 11.3.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of Design-Builder's relevant warranty (including extensions thereof under Section 11.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Design-Builder if such cost is covered by such a warranty, guarantee or obligation, and Design-Builder shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

11.4 No Limitation of Liability

The foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable law or in equity, and shall not limit Design-Builder's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

11.5 Damages for Breach of Warranty

Subject to Section 17.6 and in addition to the Department's other rights and remedies hereunder, at law or in equity, Design-Builder shall be liable for actual damages resulting from any breach of an express or implied warranty, Subcontractor warranty, or any defect in the Work, including the cost of performance of such obligations by others.

11.6 Third Party Rights

Local Agencies shall have the direct right to enforce the Warranties and Subcontractor warranties provided to the Department under this Section 11 (including Warranties for re-done, repaired, corrected or replaced Work) to the extent the Work in question is on property or facilities owned or controlled by the Local Agencies. Furthermore, subject to the limitation in Section 17.6, Local Agencies shall have the direct right to pursue any remedies available at law or in equity against Design-Builder and the DB-Related Entities for defects in the Project, including design defects and latent construction defects. In addition to benefiting the Department, Local Agencies, and their respective successors and assigns, the Warranties and Subcontractor warranties provided under this Section 11 shall inure to the benefit of, and shall be directly enforceable by, Utility Owners, with respect to those portions of the Work owned or controlled by each such Person, respectively.

11.7 Warranty Disputes

Any Dispute relating to this Section 11 shall be subject to dispute resolution in accordance with Section 19.

SECTION 12. PAYMENT FOR SERVICES

12.1 Contract Price

12.1.1 Contract Amount

Subject to Section 12.1.4, as full compensation for the Work and all other obligations to be performed by Design-Builder under the Contract Documents, the Department shall pay to Design-Builder a lump sum Contract Price. The term "Contract Price" as used herein shall be subject to adjustment from time to time only to account for Change Orders. The Contract Price shall be increased or decreased only in accordance with Section 13 or by a Contract amendment. The Contract Price shall be paid in accordance with Section 12.2. The initial Contract Price shall be the lump sum amount of \$559,370,303.00, including a maximum of \$50,674,977.00 for Professional Services.

12.1.2 Payment for Extra Maintenance Work

Payment for Extra Maintenance Work shall be made in accordance with the Change Order directing such Work to be performed and shall be treated as a Department-Directed Change.

12.1.3 Items Included in Contract Price

Design-Builder acknowledges and agrees that, subject only to Design-Builder's rights under Section 13, the Contract Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services, including Professional Services as provided for in Section 12.1.1, relating to Design-Builder's performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in Section 2.2.4); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Governmental Rules, except to the extent compliance with or maintenance of Governmental Approvals is the responsibility of Utility Owners pursuant to Section 18 of the Technical Provisions; (e) payment of any taxes, duties, permit, and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; (f) all cooperation and coordination with Local Agencies, Utility Owners, railroads, FAST, Kimley-Horn & Associates, and all other Persons and parties; and (g) compensation for all risks and contingencies assigned to Design-Builder under the Contract Documents.

12.1.4 NTP1 Work

Design-Builder acknowledges and agrees that the amount of funds available to pay for Work authorized by NTP1 prior to issuance of NTP2 is limited to \$14,000,000.00 plus premiums for bond and insurance as set forth in Section 12.3.4.2. The Department

has no obligation to make any payments to Design-Builder in excess of \$14,000,000.00 (plus bond and insurance premiums) until such time (if any) as NTP2 is issued.

12.1.5 Incentive Payments

Design-Builder may be entitled to receive an Incentive Payment and Interim Milestone Completion Incentive Payments. Design-Builder's entitlement to and any resulting payment for incentive payments shall be in accordance with, and subject to the provisions of Appendix 23.

12.1.6 Bridge Rehabilitation Work

The Contract Price includes an allowance for Bridge Rehabilitation Work. The allowance is based on the unit prices and quantities set forth in Appendix 24. The Department will pay Design-Builder for Bridge Rehabilitation Work performed pursuant to Section 14.4.12 of the Technical Provisions based on Design-Builder's progress in undertaking such Bridge Rehabilitation Work; provided, however, that if the Department directs Design-Builder to perform Bridge Rehabilitation Work in excess of the quantities set forth in Appendix 24, the Department shall issue a Change Order pursuant to Section 13.6.7 increasing the allowance and payment to Design-Builder. Additional work performed pursuant to the Change Order will be made on the basis of the unit prices shown in Appendix 24 and the actual quantities of each item of unit priced Work completed in accordance with the Contract Documents in excess of the assumed quantities set forth in Appendix 24. Design-Builder shall keep detailed records of the quantities for unit priced Work, and shall submit supporting documentation of such quantities with its invoices.

12.2 Invoicing and Payment

The following process shall apply to invoicing and payment:

12.2.1 NTP1 Work

The Department will pay Design-Builder for work authorized by NTP1 on the basis of the deliverables, NTP1 Mobilization, and corresponding payment schedule set forth in Appendix 18. Payments will be made no more often than monthly and shall be based on Design-Builder's progress toward submission and the Department approval of the deliverable for which Design-Builder is requesting payment. Invoices for work authorized by NTP1 shall comply with the provisions of this Section 12.2. Invoices for premiums for bonds and insurance shall comply with the provisions of Section 12.3.4.2.

12.2.2 Draft Invoice and Progress Meeting

On or about the 25th day of each month following the issuance of NTP1 and continuing through Final Acceptance, Design-Builder shall deliver a draft invoice and draft Invoice Certificate for that month to the Department. Design-Builder's draft invoice package shall include all materials, reports, schedules, certifications, and other submittals identified in Section 1.6.5.2 of the Technical Provisions. At each Progress Meeting, Design-Builder's and the Department's Authorized Representatives shall ascertain the progress of the Work and verify the quantities for any unit-priced Work.

Each Progress Meeting shall be attended by Design-Builder and the Department and/or its consultants. Design-Builder's and the Department's Authorized Representatives shall review the draft invoice and draft Invoice Certificate reflecting the value of Work completed as of the date of the Progress Meeting (based on completed and approved deliverables for NTP1 Work, based on quantities and unit prices for unit-priced Work, based on time and materials for Time and Materials Work and, for all other Work, based on the percentage completion of Project Schedule activities and the values distributed to such activities). Design-Builder's and the Department's Authorized Representatives shall sign the draft invoice, indicating the portions of it that have been approved and setting forth the proposed total payment amount, which shall be the approved value of the Work then completed, calculated in accordance with the Project Schedule, plus the value of unit-priced and Time and Materials Work, less Retainage and progress payments previously made. The amounts set forth in the draft invoice shall be used by Design-Builder in preparation of its monthly payment request described in Section 12.2.3. Invoices which cover Utility Work shall include documentation as required by Section 18 of the Technical Provisions, and shall separately identify the total amount due for (a) Utility Betterments and (b) any other Work for which the Utility Owner has Cost Liability.

12.2.3 Delivery of Invoice

Within seven (7) days after each Progress Meeting, Design-Builder shall submit to the Department five (5) copies of an invoice in the forms attached hereto as Appendix 9 for the Work performed under the Contract Documents during the immediately preceding month. The form of invoice shall be modified as appropriate to account for unit-priced and Time and Materials Work. Each invoice shall be based upon the approved draft invoice and may not include any amounts not approved by the Department in the Progress Meeting reviewing the draft invoice. No invoice shall be considered complete unless it (a) describes the status of completion as it relates to the Project Schedule; (b) sets forth the related payments which are then due in accordance with the Project Schedule, as of the date of the most recent Progress Meeting; (c) includes the submittals identified in Appendix 9; (d) includes the reports required under Appendix 3; (e) includes all materials, reports, certifications, and other submittals identified in Section 1.6.5.2 of the Technical Provisions; (f) includes Design-Builder's monthly Project Status Schedule as accepted by the Department in accordance with Section 1.6.1 of the Technical Provisions; (g) includes any other documents or submittals that the Contract Documents require to be included with invoice packages; and (h) satisfies the requirements set forth in Section 12.2.4. Design-Builder acknowledges that the Department will obtain funding for portions of the Work from various sources, and agrees to segregate billings for all such Work in a format reasonably requested by the Department and with detail and information as reasonably requested by the Department. Within ten (10) Business Days after the Department's receipt of the invoice, the Department will review the invoice and all attachments thereto for consistency with the draft invoice prepared at the most recent Progress Meeting and conformity with all requirements of the Contract Documents, and shall notify Design-Builder of the amount approved for payment and specify the reason for disapproval of any remaining invoiced amounts. Design-Builder may include such disapproved amounts in the next month's invoice after correction of the deficiencies noted by the

Department (all such disapproved amounts shall be deemed in dispute unless otherwise agreed).

12.2.4 Form of Invoice

12.2.4.1 Each invoice submitted by Design-Builder shall include the invoice and Invoice Certificate in the form included in Appendix 9 hereto or other form approved by the Department, with no additions or deletions other than those approved by the Department. Each invoice and Invoice Certificate shall be executed by Design-Builder's Authorized Representative.

12.2.4.2 In addition, no invoice shall be considered complete unless it: (a) describes in detail the status of completion as it relates to the Project Schedule; (b) sets forth separately and in detail the related payments which are then due in accordance with the Project Schedule, as of the end of the prior month; (c) in the case of amounts to be paid on a unit-price basis, includes invoices, receipts or other evidence establishing the number of units delivered; (d) in the case of amounts invoiced for Time and Materials Work, includes all supporting documentation described in Section 13.7; (e) sets forth in detail the amounts paid to Subcontractors (including Suppliers and Subcontractors at lower tiers) from the payments made by the Department to Design-Builder with respect to the prior month's invoice; (f) includes affidavits of payment and unconditional waivers of Liens and claims executed by Design-Builder and each Subcontractor with respect to all amounts paid in the prior month's invoice; and (g) includes all materials, reports, certifications, and other submittals identified in Section 12.2.3.

12.2.5 Payment by the Department

Within thirty (30) days after receipt by the Department of each complete invoice (including all required materials and reports) and the related Invoice Certificate, the Department shall pay Design-Builder the amount of the invoice approved for payment less any applicable Retainage and less any amounts which the Department is otherwise entitled to withhold or deduct.

12.2.5.1 For Work authorized by NTP1, the Department shall not have any obligation to pay Design-Builder any amount which would result in aggregate payments for Work authorized by NTP1 that exceed the maximum limit specified in Section 12.1.4.

12.2.5.2 For Work authorized by NTP2, in no event shall the Department have any obligation to pay Design-Builder any amount (a) which would result in payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit-priced Work); (b) which was not approved during the Progress Meeting reviewing the draft invoice for such month; or (c) which would result in aggregate payments hereunder in excess of the overall completion percentage for the Project multiplied by the Contract Price (for non-unit-priced Work) for the month to which the invoice applies, plus amounts allowed by Change Orders.

12.3 Deductions, Exclusions and Limitations on Payment

12.3.1 Retainage

12.3.1.1 The Department shall withhold funds (the “Retainage”) from each payment to be made to Design-Builder as described in Section 12.2.5 until such time as the Contract is completed satisfactorily and accepted by the Director in accordance with NRS 408.383. The Retainage shall be an amount equal to 5% of the payment amount, but the total retention withheld by the Department shall not exceed \$50,000.

12.3.1.2 No portion of the Retainage shall be released unless and until all of the following conditions have been met: (a) the Contract is completed satisfactorily and accepted by the Director in accordance with NRS 408.383; (b) liquidated damages shall not then be payable to the Department pursuant to Section 17; (c) Design-Builder shall have established to the Department’s satisfaction that liquidated damages are not anticipated to be payable to the Department; (d) Design-Builder has paid to the Department all payments required under this Contract; (e) Design-Builder shall have applied in writing for such release; (f) no Event of Default has occurred and no event has occurred that, with the passage of time or the giving of notice, would constitute an Event of Default; and (g) such release shall have been approved in writing by each Surety.

12.3.1.3 After the Contract is completed satisfactorily and accepted by the Director in accordance with NRS 408.383, the Department shall release to Design-Builder all remaining Retainage other than 150% of estimated amounts to pay (a) amounts applied to the payment of Liquidated Damages; (b) amounts the Department is required to retain under NRS 408.383 and NRS 338.070; (c) amounts the Department is required to retain under applicable federal law; (d) amounts applied to the payment of Losses incurred by the Department for which Design-Builder is responsible; (e) amounts that the Department deems advisable, in its good faith discretion, to retain to cover any existing or threatened claims and Liens from Subcontractors, Suppliers, laborers, Utility Owners, railroads or other third parties relating to the Project; (f) the estimated cost, as determined by the Department in its good faith discretion, of repairing any Nonconforming Work or otherwise remedying any breach of contract or Event of Default by Design-Builder; and (g) any outstanding liquidated damages or charges for which Design-Builder is liable pursuant to Sections 17.2, 17.3 and 17.4. Final payment of Retainage not applied to the matters identified above shall be made upon Design-Builder’s showing, to the Department’s satisfaction, that all such matters have been resolved, including delivery to the Department of a certification representing that there are no outstanding claims of Design-Builder or any claims, or Liens of any Subcontractor, Supplier, laborer, Utility Owner or other third party with respect to the Work.

12.3.1.4 Design-Builder shall have the right to substitute securities for the Retainage pursuant to the procedures contained in NRS 408.383. No such substitution shall be accepted until such securities or letter of credit have been approved by the Department as qualifying for substitution, the value of such securities has been established to the Department’s satisfaction, the Parties have entered into an

escrow agreement (if the securities are to be held in escrow) in form substantially similar to that contained in NRS 408.383, and all documentation necessary for assignment of the securities to the Department or to the escrow agent, as appropriate, has been delivered in form and substance satisfactory to the Department.

12.3.2 Deductions

In addition to the deductions provided for under Section 12.3.1, the Department may deduct from each progress payment and the Final Payment the following:

(a) Any Losses of the Department or Third Party Claims for which Design-Builder is responsible hereunder or any Liquidated Damages which have accrued as of the date of the application for payment or which are anticipated to accrue based on the dates shown in the current Project Schedule for (i) Substantial Completion and (ii) Final Acceptance;

(b) Any liquidated damages or charges for which Design-Builder is liable pursuant to Section 17 which have accrued as of the date of the application for payment;

(c) Any amounts the Department is required to retain under applicable federal law;

(d) Any sums expended by or owing to the Department as a result of Design-Builder's failure to maintain the Record Drawings;

(e) Any sums expended by the Department in performing any of Design-Builder's obligations under the Contract Documents which Design-Builder has failed to perform or which the Department may elect to undertake itself plus an administrative charge equal to ten percent (10%) of such costs; and

(f) Any other sums which the Department is entitled to recover from Design-Builder under the terms of the Contract Documents.

The failure by the Department to deduct any of these sums from a progress payment shall not constitute a waiver of the Department's rights (i) to such sums or (ii) with respect to any breach or default related thereto. All amounts owing by Design-Builder to the Department under the Contract shall earn interest from the date on which such amount is owing at the lesser of (A) ten percent (10%) per annum or (B) the maximum rate allowable under applicable Governmental Rules.

12.3.3 Unincorporated Materials

The Department will not pay for materials not yet incorporated in the Work unless all of the following conditions are met:

12.3.3.1 Material shall be delivered to the Site, or delivered to Design-Builder and promptly stored by Design-Builder in bonded storage at a location approved by the Department Director, in his or her reasonable discretion. Design-Builder shall submit certified bills for such materials with the invoice, as a condition to payment for

such materials. The Department shall allow and pay only such portion of the amount represented by these bills as in its opinion is consistent with the reasonable cost of such materials.

12.3.3.2 All such materials that meet the requirements of the Contract Documents and are accepted by the Department shall be and become the property of the Department. Design-Builder at its own cost shall promptly execute, acknowledge, and deliver to the Department proper bills of sale or other instruments in writing in a form acceptable to the Department conveying and assuring to the Department title to such material included in any invoice, free and clear of all Liens. Design-Builder at its own cost shall conspicuously mark such material as the property of the Department, shall not permit such materials to become commingled with non-Department-owned property and shall take such other steps, if any, as the Department may require or regard as necessary to vest title to such material in the Department free and clear of Liens. Nothing contained herein shall modify or diminish the responsibilities, liabilities and obligations of Design-Builder in the event of damage or loss of such materials.

12.3.3.3 Material included in an invoice but which is subsequently lost, damaged or unsatisfactory shall be deducted from succeeding invoices.

12.3.3.4 Payment for material furnished and delivered as indicated in this Section 12.3.3 will not exceed the amount paid by Design-Builder as evidenced by a bill of sale supported by the paid invoice. The Department shall withhold Retainage from such payment as specified in Section 12.3.1.

12.3.4 Mobilization Payments; Bond and Insurance Premiums; Record Drawings

12.3.4.1 Design-Builder shall be entitled to payment for mobilization in installments, in an amount equal to the bid item price for mobilization set forth in the Proposal, not to exceed \$25,000,000.00. Design-Builder shall be paid for NTP1 Mobilization in accordance with Section 12.2.1. After issuance of NTP2, the first payment for mobilization shall be in an amount not to exceed 100% of the bid item price for mobilization less any amount previously paid for NTP1 Mobilization, payable as part of the first invoice following NTP2.

12.3.4.2 The portion of the Contract Price allocable to bond and insurance premiums, as set forth in the Proposal, shall be payable to reimburse Design-Builder for bond and insurance premiums actually paid, without markup, not to exceed the line item for such premiums in the Proposal, with such pass-through amounts invoiced as part of the first invoice following issuance of NTP1. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following Substantial Completion.

12.3.4.3 The amount payable for Record Drawings acceptable to the Department, in its good faith discretion, shall equal one half of one percent (0.5%) of the Contract Price. Design-Builder shall not be entitled to payment for the last one half of one percent (0.5%) of the Contract Price until acceptable Record Drawings have been delivered to the Department.

12.3.5 Equipment

The Department shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 12.3.5, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 13.7.3.

12.3.6 Plant Establishment

The Contract Price includes \$200,000.00 for Plant Establishment. Invoicing for the portion of the Contract Price allocable to Plant Establishment shall commence with the first invoice submitted after Final Acceptance. Payments for Plant Establishment shall be made on a monthly basis throughout the Plant Establishment period, in twenty-four (24) equal amounts.

12.4 Final Payment

Final Payment for all Work other than Retainage and Plant Establishment will be made as follows:

12.4.1 On or about the date of delivery of its Affidavit of Final Acceptance, Design-Builder shall prepare and submit a proposed Application for Final Payment to the Department showing the proposed total amount due Design-Builder, excluding Retainage. The Application for Final Payment shall list all outstanding or pending RFC Notices and all existing or threatened claims, and Liens by Subcontractors, Utility Owners, railroads or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Acceptance, stating the amount at issue associated with each such notice. The Application for Final Payment shall be accompanied by: (a) complete and legally effective releases or waivers of Liens satisfactory to the Department, from all Persons legally eligible to file Liens in connection with the Work; (b) consent of any Guarantors and Surety(ies) to final payment; (c) an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to the Department; and (d) such other documentation as the Department may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. RFC Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Section 13.

12.4.2 As a condition to its obligation to make payment to Design-Builder based on the Application for Final Payment, the Department shall have received an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to the Department. The payment amount will be reduced by any amounts deductible under Section 12.3.2, and by any amounts that the Department is entitled to withhold under Section 12.3.1.3.

12.4.3 If the Application for Final Payment lists any existing or threatened claims, Liens of Subcontractors, Suppliers, laborers, Utility Owners, railroads or other third parties against Design-Builder, the Department or the Project, or if any is thereafter filed, the Department may withhold from payment such amount as the Department

deems advisable to cover any amounts owing or which may become owing to the Department by Design-Builder, including costs to complete or remediate uncompleted Work or Nonconforming Work, and 125% of the amount of any existing or threatened claims, Liens and stop payment notices of Subcontractors, Suppliers, laborers, Utility Owners, railroads and other third parties against Design-Builder, the Department or the Project.

12.4.4 The executed release from Design-Builder shall be from any and all claims arising from the Work, shall include an express and unconditional waiver and release sufficient to waive any rights and benefits Design-Builder may have pursuant to NRS 408.383 and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any RFC Notices listed as outstanding in the Application for Final Payment. The release shall be accompanied by an affidavit from Design-Builder certifying that:

(a) all Work has been performed in strict accordance with the requirements of the Contract Documents;

(b) it has resolved any claims made by Subcontractors, Utility Owners, railroads and others against Design-Builder or the Project;

(c) it has no reason to believe that any Person has a valid claim against Design-Builder or the Project which has not been communicated in writing by Design-Builder to the Department as of the date of the certificate; and

(d) all guarantees and warranties are in full force and effect.

The release and the affidavit shall survive Final Payment.

12.4.5 All prior partial estimates and payments shall be subject to correction in the final estimate of payments.

12.4.6 The Department will review Design-Builder's proposed Application for Final Payment, and any changes or corrections, including deductions described in Section 12.3.2, will be forwarded to Design-Builder for correction within twenty (20) Business Days. Any changes or corrections made pursuant to this Section 12.4.6 will be reflected in an updated monthly payment schedule showing the net amount owed to Design-Builder by month.

12.4.7 The Department shall fulfill its payment obligations under this Contract by paying the amounts identified in Section 12.4.6, in accordance with the schedule described in Section 12.4.6.

12.4.8 Notwithstanding the provisions of this Section 12.4, Retainage shall be released in accordance with Section 12.3.1.3 and payment for Plant Establishment Work shall be made in accordance with Section 12.3.6.

12.5 Payment to Subcontractors

12.5.1 Design-Builder shall pay each Subcontractor for satisfactory performance of the Subcontract no later than fifteen (15) days after Design-Builder's receipt of payment from the Department, and each Subcontractor shall in turn make payment to its Subcontractors within fifteen (15) days of receipt of payment. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Department. Retainage on Subcontracts shall comply with Section 12.3.1 and applicable Governmental Rules. Any violation of the prompt payment requirements in this Section 12.5.1 shall subject Design-Builder to the penalties, sanctions and other remedies specified in NRS 408.383. These requirements shall not be construed to limit or impair any contractual, administrative, judicial or equitable remedies otherwise available to the Subcontractor in the event of a dispute involving late payment or nonpayment by Design-Builder. Each Subcontract shall include the prompt payment requirements set forth in this Section 12.5.1.

12.5.2 The Department shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by applicable Governmental Rules.

12.6 Disputes

Failure by the Department to pay any amount in dispute shall not alleviate, diminish or modify in any respect Design-Builder's obligation to perform under the Contract Documents, including Design-Builder's obligation to achieve the Completion Deadlines and perform all Work in accordance with the Contract Documents, and Design-Builder shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any Dispute regarding such payment shall be resolved pursuant to Section 19. Design-Builder shall proceed as directed by the Department pending resolution of the Dispute. Upon resolution of any such Dispute, each Party shall promptly pay to the other any amount owing.

12.7 Appropriation of Funds

The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Nevada State Legislature or federal sources. The Department may terminate this Contract, and the Design-Builder waives any and all claim(s) for Losses, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the Department's funding from State and/or federal sources is not appropriated or is withdrawn, limited or impaired.

SECTION 13. CHANGES IN THE WORK

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

13.1 Circumstances Under Which Change Orders May Be Issued

13.1.1 Definition of and Requirements Relating to Change Orders

13.1.1.1 Definition of Change Order

The term "Change Order" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. The Department may issue unilateral Change Orders as specified in Section 13.2.2. Change Orders may be requested by Design-Builder only pursuant to Section 13.3. A Change Order shall not be effective for any purpose unless executed by the Department. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of the Work;
- (b) to revise a Completion Deadline;
- (c) to revise the Contract Price;
- (d) to approve a Necessary Basic Configuration Change, subject to Section 3.3.10; and
- (e) to revise other terms and conditions of the Contract Documents.

Upon the Department's approval of the matters and terms and conditions set forth in the Change Order form (whether it is initiated by the Department or requested by Design-Builder) and after receipt of any required approvals from FHWA, the Department shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of the Department, direct Design-Builder to proceed with the Work with the amount of any adjustment of any Completion Deadline or Contract Price to be determined in the future.

13.1.1.2 Issuance of Directive Letter

The Department may, at any time and for any reason, issue a Directive Letter to Design-Builder in the event of any desired change in the Work or in the event of any dispute regarding the scope of Work. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Design-Builder shall proceed immediately as directed in the letter, pending the execution of a formal Change Order (or, if the Directive Letter states that the Work is within Design-Builder's original scope of Work, Design-Builder shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that the Department issue a Change Order with respect thereto).

13.1.1.3 Directive Letter as Condition Precedent to Claim that Department-Directed Change Has Occurred

13.1.1.3.1 Receipt of a Directive Letter from the Department shall be a condition precedent to Design-Builder's right to claim that a Department-Directed Change has occurred, in addition to provision of notice and subsequent Request for Change Order pursuant to Section 13.3.2; provided that no Directive Letter shall be required for any Department-Directed Changes directly attributable to delays caused by bad faith actions, active and intentional interference, gross negligence or comparable tortious conduct by the Department. Except when a Directive Letter is not required pursuant to this Section 13.1.1.3, Design-Builder shall be deemed to have waived any right to payment for work performed prior to receipt of a Directive Letter from the Department stating that it is issued pursuant to Section 13.1.1.2, or a Change Order for such Work signed by the Department, notwithstanding that Design-Builder believes such work is outside of its original scope.

13.1.1.3.2 The fact that a Directive Letter was issued by the Department shall not be considered evidence that, in fact, a Department-Directed Change occurred. The determination whether a Department-Directed Change in fact occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Directive Letter, in fact, constituted a change in those requirements. The requirements of Section 13.1.1.3.1 shall not imply that a Directive Letter would be required in order for Design-Builder to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

13.1.2 Right of the Department to Issue Change Orders

The Department may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the Work within the general scope of the Contract Documents pursuant to a Change Order. For the purpose of this Section 13.1.2, any direction to perform work shall be considered within the general scope of the Contract Documents if it is related to the Project; any direction to delete or modify Work shall be considered within the general scope unless as a result the Contract Documents would no longer be considered a design-build contract for the Project of the nature described in the RFP. Design-Builder shall have no obligation to

perform any work outside the general scope of the Contract Documents, except on terms mutually acceptable to the Department and Design-Builder.

13.2 Department-Initiated Change Orders

This Section 13.2 concerns (a) Change Orders issued by the Department following a Change Notice and (b) Change Orders unilaterally issued by the Department.

13.2.1 Change Notice

13.2.1.1 If the Department desires to issue a Department-Directed Change or to evaluate whether to initiate such a change, then the Department may, at its sole discretion, issue a Change Notice. A Directive Letter may also constitute a Change Notice.

13.2.1.2 Within seven (7) days after Design-Builder's receipt of a Change Notice, or such longer period as may be mutually agreed to by the Department and Design-Builder, the Department and Design-Builder shall consult to define the proposed scope of the change. Within five (5) days after the initial consultation, or such longer period as may be mutually agreed to by the Department and Design-Builder, the Department and Design-Builder shall consult concerning the estimated cost and time impacts, if any. Design-Builder shall provide data regarding such matters as requested by the Department.

13.2.1.3 Within five (5) Business Days after the second consultation and provision of any data described in Section 13.2.1.2, the Department shall notify Design-Builder whether the Department (a) wishes to issue a Change Order, (b) wishes to request Design-Builder to provide a Cost and Schedule Proposal as discussed at the meeting, (c) wishes to request Design-Builder to prepare a modified work plan for the change and a Cost and Schedule Proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. The Department may at any time, in its good faith discretion, require Design-Builder to provide two (2) alternative Cost and Schedule Proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

13.2.1.4 If so requested, Design-Builder shall, within ten (10) Business Days after receipt of the notification described in Section 13.2.1.3, or such longer period as may be mutually agreed to by the Department and Design-Builder, prepare and submit to the Department for review and approval by the Department a Cost and Schedule Proposal (in the format provided by the Department) for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by the Department. Design-Builder shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by the Department, except that actual and reasonable costs of design and engineering work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by the Department, may be included in the Change Order as reimbursable items. If the Change Order is approved, such actual

and reasonable design and engineering costs will be included within the Change Order; otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 If Design-Builder and the Department agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Deadline, the Department may, in its sole discretion, order Design-Builder to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at the Department's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 13.7 or (b) a Directive Letter under Section 13.1.1.2.

13.2.1.6 If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Design-Builder to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 13.4, Design-Builder shall provide an incomplete proposal which includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to the Department stating why such requirements cannot be met, (b) provide such information regarding projected impact on a Critical Path and Completion Deadlines as is requested by the Department, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Contract Price increase associated therewith, to the extent such amount is then ascertainable. Design-Builder shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Requests for Change Order under Section 13.3.2.3.2.

13.2.2 Unilateral Change Orders

The Department may issue a Change Order at any time, regardless of whether it has issued a Change Notice. At the Department's option, Design-Builder shall be entitled to compensation for additional Work which is required to be performed as the result of any unilateral Change Order in accordance with either (a) Section 13.6.7 for additional Work for which Design-Builder has provided unit prices, or (b) Section 13.7, and shall have the right to submit the issue of entitlement to an extension of the Completion Deadlines to dispute resolution in accordance with Section 19. For deductive unilateral Change Orders, the Change Order may contain a Contract Price deduction deemed appropriate by the Department, and Design-Builder shall have the right to submit the amount of such price deduction to dispute resolution in accordance with Section 19. The Department may at any time issue a unilateral Change Order for Extra Maintenance Work.

13.2.3 Department-Directed Changes Under \$5,000

Design-Builder shall not be entitled to an increase in the Contract Price for any Department-Directed Changes involving less than \$5,000 in additional direct costs incurred by Design-Builder.

13.2.4 Changes in Law

The Department shall be entitled to a decrease in the Contract Price for any Change in Law that reduces the cost of the Work, if and to the extent that the Change in Law (i) allows a material modification in the design of the Project resulting in a net cost savings, (ii) reduces the mitigation requirements for the Project associated with archaeological, paleontological, biological or cultural resources, or (iii) decreases the sales tax rate or changes the taxing authority's definition of the taxable costs. The decrease in Contract Price shall be calculated in accordance with Section 13.6.5.

13.3 Design-Builder-Initiated Change Orders

13.3.1 Eligible Changes

13.3.1.1 Design-Builder may request a Change Order to extend a Completion Deadline only for delays directly attributable to one or more of the following events or circumstances which change the duration of a Critical Path:

- (a) Force Majeure Events;
- (b) Department-Caused Delays;
- (c) Delays relating to Utilities, to the extent permitted by Sections 6.8 and 13.9.2;
- (d) Delays relating to Differing Site Conditions, discovery of Hazardous Materials, and/or Changes in Law, to the extent permitted by Section 13.9;
- (e) Delays relating to Necessary Basic Configuration Changes, to the extent permitted by Section 13.8; and
- (f) Material, unreasonable interference with Design-Builder's performance of the Work by other Department contractors, provided (i) the project on which the other Department contractor is working is not identified in Section 1.2.6 of the Technical Provisions and (ii) the delay is not caused by Design-Builder's failure to cooperate and coordinate as required under Section 23 or other act, omissions, negligence, fault, recklessness, willful misconduct, failure to perform or breach by any DB-Related Entity of any of the obligations under the Contract Documents.

13.3.1.2 Design-Builder may request a Change Order to increase the Contract Price only for increased costs of performance of the Work as follows:

- (a) Subject to Section 13.2.3, additional costs directly attributable to additional Work resulting from Department-Directed Changes and Department-Caused Delays for which the Department has not submitted a Change Order or a Change Notice;
- (b) Additional costs directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 13.8;

(c) Additional costs relating to Differing Site Conditions, Hazardous Materials, Changes in Law and maintenance and repair of the Project, to the extent provided in Section 13.9;

(d) Certain additional costs relating to Utilities, as described in Sections 6.4.2, 6.4.3, 6.8, 6.9, and Section 13.9.2, to the extent provided therein;

(e) Additional costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.5.3;

(f) Certain additional costs relating to Force Majeure Events, to the extent provided in Section 13.9.3; or

(g) Additional costs, including delay and disruption damages, directly attributable to material, unreasonable interference with Design-Builder's performance of the Work by other Department contractors, provided (i) the project on which the other Department contractor is working is not identified in Section 1.2.6 of the Technical Provisions and (ii) the delay is not caused by Design-Builder's failure to cooperate and coordinate as required under Section 23 or other act, omissions, negligence, fault, recklessness, willful misconduct, failure to perform or breach by any DB-Related Entity of any of the obligations under the Contract Documents.

13.3.1.3 Design-Builder's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13 and furthermore is subject to Design-Builder's compliance with all notification and other requirements identified herein. Design-Builder shall initiate the Change Order process by delivery of an RFC Notice as described in Section 13.3.2, followed by submittal of a Request for Change Order and supporting documentation to the Department.

13.3.2 Procedures

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Design-Builder's entitlement to request and receive a Change Order, except those involving a Change Notice. Design-Builder understands that it shall be forever barred from recovering against the Department under this Section 13 or otherwise if it fails to give notice of any act, or failure to act, by the Department or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper RFC Notice, or fails to comply with the remaining requirements of this Section 13.3 or any other provisions of the Contract Documents relating to Change Orders.

13.3.2.1 Request for Change (RFC) Notice

Design-Builder shall deliver to the Department a written notice ("RFC Notice") stating that an event or situation has occurred within the scope of Section 13.3.1 which Design-Builder believes justifies a change in the Contract Price and/or a Completion Deadline and shall state which subsection(s) thereof is applicable. The first notice shall be labeled "RFC No. 1" and subsequent notices shall be numbered sequentially. Any notice regarding a situation involving a Necessary Basic Configuration Change shall specifically state that it involves such a change. .

13.3.2.1.1 Each RFC Notice shall be delivered as promptly as possible after the occurrence of such event or situation. Except as provided in Section 6.1.2.4 with respect to the notice Design-Builder is required to provide for Department-Caused Delays in providing access to Department-Provided Property, if any RFC Notice is delivered later than ten (10) days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the RFC Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in a Critical Path which accrued prior to the date of delivery of the RFC Notice. Furthermore, if an RFC Notice concerns any condition or material described in Section 5.3.1, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the Department is not afforded the opportunity to inspect such material or condition before it is disturbed. Design-Builder's failure to provide an RFC Notice within thirty (30) days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Design-Builder from any relief, unless Design-Builder can show, based on clear and convincing evidence, that (a) the Department was not materially prejudiced by the lack of notice, or (b) the Department's Authorized Representative specified in accordance with Section 24.5.1 had actual knowledge, prior to the expiration of the thirty – (30-) day period, of the event or situation and that Design-Builder believed it was entitled to a Change Order with respect thereto. In the event that Design-Builder makes such showing after the expiration of such thirty – (30-) day period, Design-Builder shall still be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the RFC Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in a Critical Path which accrued prior to the date of delivery of the RFC Notice.

13.3.2.1.2 The RFC Notice shall: (a) state in detail the facts underlying the anticipated Request for Change Order, the reasons why Design-Builder believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each Department representative knowledgeable of the facts underlying the anticipated Request for Change Order, (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Request for Change Order, (d) state in detail the basis for necessary accelerated schedule performance, if applicable, (e) state in detail the basis that the work is not required by the Contract Documents, if applicable, (f) identify particular elements of Contract Document performance for which additional compensation may be sought under this Section 13.3.2, (g) identify any potential Critical Path and Completion Deadline impacts, and (h) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

13.3.2.1.3 If the Request for Change Order relates to a decision which the Contract Documents leave to the discretion of a Person or as to which the Contract Documents provide that such Person's decision is final, the RFC Notice shall set out in detail all facts supporting Design-Builder's objection to the

decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

13.3.2.1.4 The written notification described in Section 5.3.1.1 may also serve as an RFC Notice provided it meets all of the requirements for RFC Notices.

13.3.2.1.5 Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from Design-Builder's failure to timely provide requested additional information under this Section 13.3.2.1.

13.3.2.2 Delivery of Request for Change Order

Design-Builder shall deliver all Requests for Change Order under this Section 13.3 to the Department within twenty (20) days after delivery of the RFC Notice, or such longer period of time as may be allowed in writing by the Department. The Department may require design and construction costs to be covered by separate Requests for Change Order. If Design-Builder requests a time extension, then the Department, in its good faith discretion, may require Design-Builder to provide two (2) alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the original Completion Deadline or if Design-Builder believes that the costs associated with such a recovery are prohibitive, then Design-Builder shall recommend a date to be shown in the alternative Request for Change Order. If Design-Builder fails to deliver a complete Request for Change Order meeting all of the requirements of Section 13.3.2.3 within the appropriate time period, Design-Builder shall be required to provide a new RFC Notice before it may submit a Request for Change Order.

13.3.2.3 Incomplete Requests for Change Order

13.3.2.3.1 Each Request for Change Order provided under Section 13.3.2.2 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature and/or timing of the occurrence, Design-Builder shall provide an incomplete Request for Change Order which provides all information capable of being ascertained. Said incomplete Request for Change Order shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to the Department stating why such requirements cannot be met, (b) provide such information regarding projected impact on a Critical Path and Completion Deadlines as is requested by the Department, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any Contract Price increase associated therewith, to the extent such amount is then ascertainable.

13.3.2.3.2 Design-Builder shall furnish, when requested by the Department or its designee, such further information and details as may be required to determine the facts or contentions involved. Design-Builder agrees that it shall give the Department and its designees access to any and all of Design-Builder's

books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the Department and its designees can investigate the basis for such proposed Change Order. Design-Builder shall provide the Department with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the Department, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. The Department may reject the Request for Change Order at any point in the process. Once a complete Request for Change Order is provided, the Department's failure to respond thereto within twenty-one (21) days of delivery of the request shall be deemed a rejection of such Request for Change Order.

13.3.2.4 Importance of Timely Response

Design-Builder acknowledges and agrees that, due to limitations on funding for the Project, timely delivery of notification of such events and situations and Requests for Change Order and updates thereto are of vital importance to the Department. The Department is relying on Design-Builder to evaluate promptly upon the occurrence of any event or situation whether the event or situation will affect the Project Schedule or Contract Price and, if so, whether Design-Builder believes a time extension and/or Contract Price increase is required hereunder. If an event or situation occurs which may affect the Contract Price, a Critical Path or a Completion Deadline, the Department will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within the Department's funding and time restraints. The following matters (among others) shall be considered in determining whether the Department has been prejudiced by Design-Builder's failure to provide timely notice: (a) the effect of the delay on alternatives available to the Department (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten (10) days (or thirty (30) days, as applicable pursuant to Section 13.3.2.1.1) after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence); and (b) the impact of the delay on the Department's ability to obtain and review objective information contemporaneously with the event.

13.3.2.5 Compliance With Section 5.3.1 Requirements

Design-Builder shall comply with all applicable requirements contained in Sections 5.3.1, 13.9.1, and 13.9.4, unless precluded from doing so by emergency circumstances.

13.3.2.6 Review of Subcontractor Claims

Prior to submission by Design-Builder of any Request for Change Order which is based in whole or in part on a request by a Subcontractor to Design-Builder for a price increase or time extension under its Subcontract, Design-Builder shall have reviewed and analyzed all claims by the Subcontractor which constitute the basis for the Request for Change Order and determined in good faith that each such claim has sufficient merit to warrant Design-Builder requesting an increase in the Contract Price

and change in Completion Deadlines in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work, shall include a summary of Design-Builder's analysis of all Subcontractor claims components and shall include a certification signed by Design-Builder's Project Manager stating that Design-Builder has (a) investigated the basis for the Subcontractor's claims and believes that there is sufficient merit as to entitlement and the amount of money and/or time requested, (b) reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 21.2, and (c) no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Request for Change Order involving Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete.

13.3.3 Performance of Disputed Work

If the Department refuses to issue a Change Order based on Design-Builder's request, Design-Builder shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to dispute resolution pursuant to Section 19. Design-Builder shall maintain and deliver to the Department, upon request, contemporaneous records, meeting the requirements of Section 13.10, for all work performed which Design-Builder believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Form of Change Order

Each Cost and Schedule Proposal and Request for Change Order shall be prepared in substantially the form appearing in Appendix 16 or such other form acceptable to the Department, and shall meet all applicable requirements of this Section 13. Each Request for Change Order shall specify whether it is the result of a Department-Directed Change.

13.4.2 Scope of Work, Cost Estimate, Delay Analysis and Other Supporting Documentation

Design-Builder shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 13.4.2 for each Cost and Schedule Proposal and Request for Change Order.

13.4.2.1 Scope of Work

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

13.4.2.2 Cost Estimate

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

13.4.2.3 Delay Analysis

If Design-Builder claims that such event, situation or change affects a Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to the Department, which compares the proposed new schedule to the current approved Project Schedule.

13.4.2.4 Other Supporting Documentation

Design-Builder shall provide such other supporting documentation as may be required by the Department.

13.4.3 Justification

All Requests for Change Order shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Section 13 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 13.10) which establish the necessity and amount of such proposed change.

13.4.4 Design-Builder Representation

Each Request for Change Order shall contain a certification under penalty of perjury according to the laws of the State, in a form acceptable to the Department, executed by Design-Builder and stating that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect, and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the Change Order is complete, accurate, and current. Each Change Order involving Work by a Subcontractor for which pricing data is required to be

provided under Section 21.2 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification required to be provided by the Subcontractor under Section 21.2.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude: (a) costs caused by the acts, omissions, negligence, fraud, recklessness, intentional misconduct or violation of Governmental Rules, breach of contract or breach of Governmental Approval by any DB-Related Entity; (b) costs to the extent that they are unnecessary or could reasonably be mitigated or avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (while including in the equation any additional costs reasonably incurred in connection with such reallocation or redeployment); and (c) costs for remediation of any Nonconforming Work.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by the Department as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.2. Otherwise, delay and disruption damages shall be compensable hereunder only in the case of (a) delays which qualify as Department-Caused Delays entitling Design-Builder to an extension of a Completion Deadline; (b) Necessary Basic Configuration Changes, to the extent allowed under Section 13.8; (c) Changes in Law, to the extent allowed under Section 13.9.5; (d) Utility Delays, to the extent allowed under Section 6.8.2.3; and (e) discovery of a Non-USA Mapped Utility, to the extent allowed under Section 6.4.3. Without limiting the generality of the foregoing, the costs of rearranging, resequencing or reallocating Design-Builder's work plan to accommodate Department-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to (i) direct costs solely and directly attributable to the delays described in Section 13.5.2.1 and markups thereon in accordance with Section 13.7, and (ii) any additional field office and jobsite overhead costs incurred by Design-Builder solely and directly attributable to such delays and subject to Section 629 of the Department's Standard Specifications. In addition, before Design-Builder may obtain any increase in the Contract Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to delay, Design-Builder shall have demonstrated to the Department's satisfaction that:

(a) its schedule which defines the affected Critical Path and Completion Deadline in fact sets forth a reasonable method for completion of the Work; and

(b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity (i.e., consumed all available Float and extended the time required to achieve Substantial Completion or Final Acceptance beyond the applicable Completion Deadline); and

(c) the delay or damage was not due to any (i) breach of contract, (ii) breach of Governmental Approval, (iii) violation of Governmental Rule, or (iv) fault or negligence, fraud, recklessness, willful misconduct or act or failure to act of any DB-Related Entity, and could not reasonably have been avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment); and

(d) the delay for which compensation is sought is not concurrent with any delay for which any DB-Related Entity is responsible hereunder; and

(e) Design-Builder has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the Department.

13.5.3 Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not impact a Critical Path; (b) was due to the (i) breach of contract, (ii) breach of Governmental Approval, (iii) violation of Governmental Rule, or (iv) fault, negligence, fraud, recklessness, willful misconduct or act or failure to act of any DB-Related Entity; (c) is concurrent with any other unrelated delay to a Critical Path that is Design-Builder's responsibility hereunder; or (d) could reasonably have been avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work. Design-Builder shall be required to demonstrate to the Department's satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity (i.e., consumed all available Float and extended (x) the time required to achieve Substantial Completion or Final Acceptance beyond the applicable Completion Deadline or (y) the time required to achieve an Interim Milestone Completion beyond the applicable Interim Milestone Completion Duration).

13.5.4 Work Performed Without Direction

To the extent that Design-Builder undertakes any efforts outside of the scope of Work, unless Design-Builder has received a Directive Letter or Change Order signed by the Department to undertake such efforts, Design-Builder shall be deemed to have undertaken the extra work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Department may require Design-Builder to remove or otherwise undo any such work, at Design-Builder's sole cost and without any time extension.

13.6 Change Order Pricing

The price of a Change Order under this Section 13.6 shall be a negotiated lump sum price or unit prices as provided below. Lump sum price or unit prices shall be based on the original allocations of the Contract Price to comparable activities, whenever possible. If reference to price allocations is inappropriate (as determined by the Department) and if requested by the Department, negotiation for lump sum or unit price Change Orders shall be on an Open Book Basis and may be based on the pricing contained in Escrowed Proposal Documents as well as competitive Subcontractors' bid prices.

13.6.1 Detailed Cost Proposal

Design-Builder may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 13.7: (a) showing all impacts on the Contract from Work additions, deletions, and modifications shown in the Change Order being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made.

13.6.2 Identification of Conditions

Design-Builder shall identify all conditions with respect to prices or other aspects of the proposal, such as pricing contingent on firm orders being made by a certain date or the occurrence or nonoccurrence of an event.

13.6.3 Contents

A negotiated Change Order shall specify costs, scheduling requirements, time extensions, and all costs of any nature arising out of the Work covered by the Change Order. Notwithstanding the foregoing, the Parties may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated construction cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction cost.

13.6.4 Added Work

When the Change Order adds Work to Design-Builder's scope, the increase in the Contract Price shall be negotiated based on (a) estimated costs of labor, material and equipment, (b) unit prices in accordance with Section 13.6.7, or (c) actual costs in accordance with Section 13.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Sections 13.5.2 and 13.7.3. Risk associated with the Work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such Work.

13.6.5 Deleted Work

When the Change Order deletes Work from Design-Builder's scope (including deletion of any Work contained in the Contract Documents that is found to be unnecessary), the amount of the reduction in the Contract Price shall be based upon a

current estimate including a bill of material, a breakdown of labor, material, and equipment costs and overhead and profit associated with the deleted work. The current estimated amount of risk associated with such Work shall be a factor in determining the markup for the deduction. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

13.6.6 Change Order Both Adding and Deleting Work

When the Change Order includes both added and deleted Work, Design-Builder shall prepare a statement of the cost of labor, material, and equipment for both added and deleted work. If the cost of labor, material, and equipment for the work added and deleted results in a:

(a) Net increase in cost, the change shall be treated as work added and the provisions of Section 13.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Contract Price.

(b) Net decrease in cost, the change shall be treated as work deleted and the provisions of Section 13.6.5 shall be used on the net decrease in cost in order to establish the amount deducted from the Contract Price.

(c) Net change of zero, there will be no change in the Contract Price.

13.6.7 Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 109.01 of the Department's Standard Specifications. Unit prices, including those set forth in Appendix 24 with respect to Bridge Rehabilitation Work, shall be deemed to include all costs for labor, material, overhead, and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, the Department will issue a modified Change Order setting forth the final adjustment to the Contract Price. Design-Builder shall keep detailed records of the quantities for unit-priced Work, and shall submit supporting documentation of such quantities with its invoices.

13.7 Time and Materials Change Orders

13.7.1 Issuance

The Department may, at its sole discretion, issue a Time and Materials Change Order whenever the Department determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Design-Builder to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, the Department shall issue a modified Change Order setting forth the final adjustment to the Contract Price.

13.7.2 Pricing and Payment

13.7.2.1 Time and Materials Change Orders shall be issued in accordance with Section 109.03 of the Department's Standard Specifications. Design-Builder shall comply with all recordkeeping and other obligations set forth in Section 109.03 of the Department's Standard Specifications.

13.7.2.2 Payments for Time and Materials Work shall be invoiced with the regular monthly invoice, based on the extra work reports furnished by Design-Builder for each period. Costs evidenced by daily extra work reports furnished less than five (5) Business Days prior to preparation of the invoice shall be included in the subsequent month's invoice.

13.7.3 Overhead Items

The following items are considered overhead costs and are included in the Change Order markups set forth in Section 109.03 of the Department's Standard Specifications:

- (a) Salary and expenses of executive officers, supervising officers or supervising employees;
- (b) Design-Builder's superintendent (general foreman);
- (c) Clerical or stenographic employees;
- (d) Charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, etc., consumables, and other miscellaneous supplies and services;
- (e) Any and all field and home office overhead and operating expenses whatsoever;
- (f) Subsistence and travel expenses for personnel (craft personnel excluded);
and
- (g) All bond and insurance premiums.

With respect to non-construction related labor costs, overhead is covered by the labor surcharge, and includes accessories such as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

13.7.4 Change Order Data

Design-Builder shall contemporaneously collect, record in writing, segregate, and preserve: (a) all data necessary to determine the costs described in this Section 13.7 with respect to all Work which is the subject of a Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with design work as well as Design-Builder's

costs for Utility Adjustment Work, and (b) all data necessary to show the actual impact (if any) on the Critical Path, the Project Schedule, and Completion Deadlines with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to the Department and any Authorized Representative of the Department reviewing any Claim or Dispute regarding compensation or time extension for such Work. Design-Builder hereby waives the right to obtain compensation or time extensions for any Work for which cost or schedule data is required to be maintained and provided hereunder, if Design-Builder fails to maintain and timely provide to the Department cost or schedule data meeting the requirements of the Contract Documents.

13.7.4.1 Design-Builder shall maintain its records in such a manner as to provide a clear distinction between: (a) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and (b) the costs of other operations. Design-Builder shall furnish daily, on forms approved by the Department, reports of all costs described in the foregoing clause (a). The reports shall itemize all costs for labor, materials, and equipment rental and give a total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names, and classifications. For equipment, the reports shall include size, type, identification number, rental rate, and actual working hours of operation. All such records and reports shall be made immediately available to the Department upon its request. The cost of furnishing such reports are deemed to be included in Design-Builder's overhead and fee percentages.

13.7.4.2 All reports shall be signed by Design-Builder and certified as true, accurate, and complete. The Department will compare its records with Design-Builder's reports, make the necessary adjustments and compile the costs of Work completed under a Time and Materials Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

13.8 Necessary Basic Configuration Changes

The Department acknowledges and agrees that Design-Builder's Proposal was based on certain assumptions regarding the feasibility of developing the Project without any material deviation from the Basic Configuration contained in the Reference Design.

13.8.1 Notwithstanding the fact that the Contract generally obligates Design-Builder to undertake all Work necessary to complete the Project without an increase in the Contract Price, this Section 13.8 provides for an increase in the Contract Price to be made in conjunction with Necessary Basic Configuration Changes. Design-Builder shall not be entitled to an increase in the Contract Price for any Necessary Basic Configuration Changes involving less than \$5,000 in additional direct costs incurred by Design-Builder. Furthermore, if Design-Builder commenced any Construction Work affected by the Necessary Basic Configuration Change prior to delivery of an appropriate RFC Notice, the Change Order shall allow the Department a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed.

13.8.2 Design-Builder shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path or Completion Deadline resulting from changes in requirements and obligations of Design-Builder relating to the Project due to Errors in the Reference Design other than those which require a Necessary Basic Configuration Change.

13.9 Change Orders for Differing Site Conditions, Utilities, Force Majeure Events, Hazardous Materials, Changes in Law; Bridge Rehabilitation Work

13.9.1 Differing Site Conditions

13.9.1.1 Upon Design-Builder's fulfillment of all applicable requirements of Section 5.3.1 and Section 13, and subject to the limitations contained therein, the Department shall be responsible for, and agrees to issue Change Orders, (a) to compensate Design-Builder for additional costs (excluding delay and disruption damages) directly attributable to changes in the scope of the Work arising from Differing Site Conditions, and (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any such conditions.

13.9.1.2 Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by an authorized Design-Builder representative with direct knowledge of the claimed Differing Site Condition setting forth all relevant assumptions made by Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any Work stoppage in affected areas during the initial five (5) Business Day investigation period described in Section 5.3.1.

13.9.1.3 Prior to filing any request for a Change Order relating to a Differing Site Condition, Design-Builder shall inquire if insurance proceeds may be available to cover costs in connection with such item. If Design-Builder finds that reasonable grounds for filing an insurance claim exist, then Design-Builder shall so notify the Department. The Department shall not be in default for failure to pay any amounts which Design-Builder or the Department finds may be covered by insurance, unless and until the claim is denied by the insurance company, at which time Design-Builder may invoice the Department for the amount of such claim, to the extent permitted by this Contract. Design-Builder shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending the insurance company's determination regarding the claim. Upon denial of any such claim by the insurance company and receipt of a Change Order request, the Department will consider and process the Request for Change Order as set forth in this Section 13. The Department shall have the right to contest the denial of any insurance claim, and Design-Builder shall cooperate with the Department in that regard. Notwithstanding anything to the contrary contained in Section 13.3.2, Design-Builder shall not be obligated to include amounts which may be covered by insurance in any Change Order

request until twenty (20) days after the insurance company has denied the claim. However, the notice requirements of Section 13.3.2 shall remain effective with respect to the event in question.

13.9.2 Utilities

Design-Builder shall be entitled to a Change Order with respect to certain additional costs and/or delays relating to Utility Adjustments, as specified in Section 6 and subject to the restrictions and limitations set forth in Section 6 and in this Section 13. In all other respects, Design-Builder is fully responsible for, and thus shall not receive a Change Order with respect to, any additional or unanticipated costs and delays due to changes in Design-Builder's obligations relating to the Work resulting from the existence of any Utilities on the Site.

13.9.3 Force Majeure Events

Subject to the limitations contained in, and upon Design-Builder's fulfillment of all applicable requirements of this Section 13, the Department shall be responsible for, and agrees to issue Change Orders (a) to compensate Design-Builder for additional costs (excluding (i) delay and disruption damages and insurance deductibles or self-insured retentions paid or incurred in accordance with Section 9 and (ii) any costs covered by insurance proceeds received by (or on behalf of) Design-Builder) directly attributable to a Force Majeure Event, and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by a Force Majeure Event. Costs of Extra Maintenance Work shall be subject to reimbursement in accordance with Section 12.1.2.

13.9.4 Hazardous Materials Management

If Design-Builder is entitled to a Change Order pursuant to Section 6.11 with respect to performance of Hazardous Materials Management, such Change Order shall be subject to the applicable limitations and requirements set forth in Sections 5.3, 6.11, this Section 13.9.4 and elsewhere in this Section 13. The amount of the Change Order for Hazardous Materials Management shall either be a negotiated amount acceptable to the Parties, or an amount determined in accordance with Section 13.7 and this Section 13.9.4 for the work in question. Design-Builder shall not be entitled to a Change Order for additional compensation or extension of time with respect to the Hazardous Materials Management responsibilities set forth in Section 6.11.1.4.

13.9.4.1 Determination of Reimbursable Amount

13.9.4.1.1 Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of a Completion Deadline if the Department is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity pursuant to Section 5.3 to inspect sites containing Hazardous Materials before any action is taken which would inhibit the ability of the Department to ascertain, based on a Site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, Design-Builder may take such limited actions as are required by Governmental Rules without advance

notice to the Department, but shall provide such notice immediately thereafter (which in no event shall be more than two (2) hours after the incident by phone and twenty-four (24) hours after the incident by written notice).

13.9.4.1.2 In cases involving reimbursement for Hazardous Materials Management under this Section 13.9.4, allowable costs shall be limited to the incremental direct costs but excluding delay and disruption damages and markup for overhead and profit incurred after completion of the testing process to determine whether Hazardous Materials are present, associated with the Hazardous Materials at issue (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Investigating and characterizing Hazardous Materials are included in the Contract Price and Design-Builder shall not be entitled to additional compensation therefor. Design-Builder shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that Design-Builder demonstrates to the Department's satisfaction that (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) Design-Builder's plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. Design-Builder shall provide the Department with such information, analyses, and certificates as may be requested by the Department in order to enable a determination regarding eligibility for payment.

13.9.4.2 Time Extensions

If Design-Builder encounters Hazardous Materials for which Design-Builder is entitled to compensation under Section 6.11 and this Section 13.9.4 which, due to no act, omission, negligence, fraud, recklessness, willful misconduct, or violation of Governmental Rules, breach of Governmental Approvals or breach of contract by any DB-Related Entity, results in delays to a Critical Path, then the Department shall bear the risk of such delay (excluding those conditions for which Design-Builder has agreed to be responsible as described in Section 18.1.1(g)), and subject to the limitations set forth in this Section 13.9.4.

13.9.4.3 Limitations on Change Orders

Notwithstanding any contrary provision of the Contract Documents, Design-Builder shall have no right to receive (a) any compensation for delay and disruption damages or markup for overhead and profit related to Hazardous Materials Management, (b) any compensation for any Hazardous Materials Management resulting from a situation described in Section 18.1.1(g), or (c) any compensation or time extension in connection with any work stoppage in affected areas during the investigation period described in Section 5.3.1. Design-Builder shall also not be entitled to receive any compensation or time extension for (1) immaterial quantities of Unknown Hazardous Materials, (2) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques, (3) any costs that could have been avoided, (4) Hazardous Materials on any Additional Properties, temporary real property interests or other property of Design-Builder, or (5) any Hazardous Materials that do not fall within the definition for Unknown Hazardous Materials. Such

limitations shall apply to all Change Orders related to Hazardous Materials Management.

13.9.4.4 Insurance Proceeds

If the cost of any Hazardous Materials Management is covered by the insurance described in Section 9, Design-Builder shall be entitled to reimbursement of its costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, less any deductibles which shall be Design-Builder's responsibility. To the extent that such proceeds are available, Design-Builder shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management.

13.9.5 Change in Law; New Approvals

13.9.5.1 Upon Design-Builder's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, the Department shall be responsible for, and agrees to issue Change Orders (a) to compensate Design-Builder for additional costs directly attributable to a Change in Law, to the extent that the Change in Law (i) requires a material modification in the design of the Project, (ii) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources, or (iii) increases the sales tax rate or changes the taxing authority's definition of the taxable costs; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any Change in Law described in clause (a)(i) or (ii) above.

13.9.5.2 Upon Design-Builder's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, the Department shall be responsible for, and agrees to issue Change Orders: (a) to compensate Design-Builder for additional costs directly attributable to a New Approval required as the result of a Force Majeure Event, to the extent that the New Approval (i) requires a material modification in the design of the Project or (ii) results in imposition of material additional mitigation requirements on the Project due to impacts on archaeological, paleontological, biological or cultural resources; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any New Approval described in clause (a)(i) or (ii) above.

13.9.6 Bridge Rehabilitation Work

If the Department directs Design-Builder to perform Bridge Rehabilitation Work in excess of the quantities set forth in Appendix 24, the Department shall issue a Change Order pursuant to Section 13.6.7 and payment to Design-Builder for work performed pursuant to the Change Order will be made on the basis of the unit prices shown in Appendix 24 and the actual quantities of each item of unit priced Work completed in accordance with the Contract Documents.

13.10 Change Order Records

Design-Builder shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it

believes it is entitled) to an increase in the Contract Price and the costs of other operations. Design-Builder shall contemporaneously collect, record in writing, segregate, and preserve (a) separate daily occurrence logs as required under Section 4.7 of the Technical Provisions, (b) all other data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Adjustments, and (c) all data necessary to show the actual impact (if any) of the change on each Critical Path and Completion Deadline with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to the Disputes Review Team (if a Change Order or requested Change Order is under dispute), the Department and its Authorized Representatives as directed by the Department, on forms approved by the Department. The cost of furnishing such reports is included in Design-Builder's predetermined overhead and profit markups and shall not be the subject of any additional claims for compensation.

13.10.1 Daily Work Reports and Data Collection

Design-Builder shall furnish the Department completed daily work reports for each day's Work which is to be paid for on a time and material basis. The daily time and material Work reports shall be detailed as follows:

- (a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested.
- (b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Quantities of materials, prices, and extensions.
- (d) Transportation of materials.
- (e) The total costs to date for the Time and Materials Change Order Work.

13.10.2 Supplier's Invoices

Materials charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time and material Work reports, or if not available, they shall be submitted with subsequent daily time and material Work reports. Should said Supplier's invoices not be submitted within sixty (60) days after the date of delivery of the materials, the Department shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available, in the quantities concerned, delivered to the location of Work, less any discounts available.

13.10.3 Execution of Reports

All Time and Materials Change Order reports shall be signed by Design-Builder's Project Manager.

13.10.4 Adjustment

The Department will compare its records with the completed daily time and material Work reports furnished by Design-Builder and make any necessary adjustments. When these daily time and material Work reports are agreed upon and signed by both Parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. Design-Builder's cost records pertaining to Work paid for on a time and material basis shall be open, during all regular business hours, to inspection or audit by representatives of the Department during the life of the Contract and for a period of not less than five (5) years after the Final Acceptance Date, and Design-Builder shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Design-Builder, Design-Builder shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of the Department on the same terms and conditions as the cost records of Design-Builder. Payment for such costs may be deleted if the records of such third parties are not made available to the Department's representatives. If an audit is to be commenced more than 120 days after the Final Acceptance Date, Design-Builder will be given reasonable notice of the time when such audit is to begin.

13.11 Matters Not Eligible for Change Orders and Waiver

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

(a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Reference Design or other Reference Information Documents), subject only to the right to a Change Order to the extent permitted by Section 13.8 or 13.9;

(b) any design changes requested by the Department as part of the process of approving the Design Documents that are necessary for consistency and compliance with the requirements of the Contract Documents, the Governmental Approvals, and/or applicable Governmental Rules and other matters set forth in Section 3.3.8;

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes which otherwise give rise to a right to a Change Order);

(d) action or inaction of any DB-Related Entity;

(e) action or inaction of adjoining property owners or other agents, representatives, and contractors of railroads, including failure to organize and integrate their work with Design-Builder's Work;

(f) impacts on Design-Builder's Work caused by the action or inaction of (i) contractors of the Department except as otherwise expressly provided in Sections 13.3.1.1(f) and 13.3.1.2(g) or (ii) the contractors of the City of Las Vegas;

(g) groundwater levels or subsurface moisture content;

(h) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents to be furnished by or on behalf of any DB-Related Entity, except to the extent resulting directly from a Force Majeure Event;

(i) any costs covered by insurance proceeds received by (or on behalf of) Design-Builder;

(j) assessment, remediation, and correction of Nonconforming Work and review and acceptance thereof by the Department (including rejected Submittals and other submittals);

(k) negligence, fraud, recklessness, willful misconduct, fault or failure by any DB-Related Entity to comply with the requirements of the Contract Documents, Governmental Approval or Governmental Rules (including any failure to provide the notifications to property owners, Utility Owners, Local Agencies, Railroads and others required by the Contract Documents);

(l) delays not on a Critical Path;

(m) obtaining all Governmental Approvals except as specified in Sections 2.2.4 and 6.12.6, and compliance with the terms and conditions of all Governmental Approvals;

(n) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Design-Builder except as specified in Section 6.12.6, or any failure to obtain such Governmental Approval;

(o) any increased costs or delays related to any Utility Adjustments or failure to timely obtain any approval, work or other action from a Utility Owner, except as specified in Sections 6.3 through 6.9 and in Section 13.9.2;

(p) any situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract Documents or arise out of the nature of the Work; and

(q) all other events beyond the control of the Department for which the Department has not expressly agreed to assume liability hereunder.

Design-Builder hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by Design-Builder of responsibility for such risks, and the consequences and costs and delays resulting therefrom, is reasonable under the

circumstances of the Contract Documents and that contingencies included in the Proposal Price and in developing the Project Schedule, in Design-Builder's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

DESIGN-BUILDER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH DESIGN-BUILDER FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES OR TIME EXTENSION WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT DESIGN-BUILDER IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION, DAMAGES OR TIME EXTENSION.

13.12 Disputes

If the Department and Design-Builder agree that a request to increase the Contract Price and/or extend any Completion Deadline by Design-Builder has merit, but are unable to agree as to the amount of such Contract Price increase and/or time extension, the Department agrees to mark up the Request for Change Order or Cost and Schedule Proposal, as applicable, provided by Design-Builder to reduce the amount of the Contract Price increase or time extension as deemed appropriate by the Department. In such event, the Department will execute and deliver the marked-up Change Order to Design-Builder within a reasonable period after receipt of a request by Design-Builder to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of the Department and Design-Builder to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the Contract Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both Parties shall be deemed accord and satisfaction of all claims by Design-Builder of any nature arising from or relating to the Work covered by the Change Order and Design-Builder shall be deemed to have expressly released, waived, and disclaimed any further compensation and time extension related thereto. Design-Builder's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by Design-Builder with respect to the disputed matter (crediting the Department for any corresponding reduction in Design-Builder's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.13 Changes Not Requiring Change Order

Subject to Section 13.8, Deviations from design standards specified in the Contract Documents which have a neutral net cost effect and do not affect a Critical Path or Completion Deadline shall not require a Change Order provided such Deviations are

approved by the Department pursuant to Section 3.13 of the Technical Provisions. Any other change in the requirements of the Contract Documents shall require either a Directive Letter or a Change Order.

13.14 No Release or Waiver

13.14.1 No extension of time granted hereunder shall release Design-Builder's Surety or any Guarantor from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract Documents and the Contract Documents shall be and shall remain in full force and effect during the continuance unless formally suspended or terminated by the Department in accordance with the terms hereof. Permitting Design-Builder to finish the Work or any part thereof after a Completion Deadline, or the making of payments to Design-Builder after such date, shall not constitute a waiver on the part of the Department of any rights or remedies under the Contract Documents, at law or in equity.

13.14.2 Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by the Contract after a Completion Deadline, shall be deemed to be a waiver by the Department of any of its rights and remedies under the Contract Documents, at law or in equity, including its right to terminate the Contract for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

13.14.3 No course of conduct or dealings between the Parties nor express or implied acceptance of alterations or additions to the Work, and no claim that the Department has been unjustly enriched shall be the basis for any Claim, request for additional compensation or extension of a Completion Deadline. Further, 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. Design-Builder shall be deemed to have performed such work as a volunteer and at its sole risk and cost. In addition, the Department may require Design-Builder to remove or otherwise undo any such work, at Design-Builder's sole risk and cost.

SECTION 14. SUSPENSION

14.1 Suspensions for Convenience

The Department may, at any time and for any reason, by written notice, order Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that the Department deems appropriate for the convenience of the Department. Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from the Department directing Design-Builder to resume Work. Any such suspension for convenience shall be considered a Department-Directed Change and such suspensions shall be considered a Department-Caused Delay, if a Critical Path is delayed; provided, however, that the Department shall have the right to direct suspensions for convenience not exceeding an aggregate total of 48 hours of Work otherwise scheduled by Design-Builder pursuant to the most recent summary of planned Construction Work activities provided in accordance with Section 4.6 of the Technical Provisions, which shall not be considered a Department-Directed Change, Department-Caused Delay or entitle Design-Builder to any compensation, time extension or other relief. Adjustments of the Contract Price and the Completion Deadlines shall be available for any Department-Directed Change, subject to Design-Builder's compliance with the terms and conditions set forth in Section 13.

14.2 Suspensions for Cause

The Department has the authority to suspend the Work by written order, wholly or in part, for Design-Builder's failure to:

- (a) Correct conditions unsafe for the Project personnel or the general public; or
- (b) Comply with any Governmental Approval, Governmental Rule or otherwise carry out the requirements of the Contract Documents; or
- (c) Carry out orders of the Department or Directive Letters;
- (d) Comply with requirements for developing and implementing the Quality Management System;
- (e) Certain failures to remove and replace personnel as set forth in Section 7.6.4;
- (f) Provide proof of required insurance coverage as set forth in Section 9;
- (g) Reopen lanes closed to public traffic as part of a Construction Closure by the time specified in the approved closure request as set forth in Section 12.4.5 of the Technical Provisions; or
- (h) Comply with environmental requirements.

Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from the

Department directing Design-Builder to resume the Work. The Department shall have no liability to Design-Builder in connection with any such suspension, and Design-Builder shall have no right to any adjustment in the Contract Price or Completion Deadline(s) in connection with any suspension of Work founded on any of the grounds set forth in this Section 14.2. If the Department orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, it shall be treated as a suspension for the Department's convenience under Section 14.1.

14.3 Responsibilities of Design-Builder During Suspension Periods

During periods that Work is suspended, Design-Builder shall continue to be responsible for the Work and shall prevent damage, loss or injury to the Project, provide for drainage and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. During any suspension period, Design-Builder shall maintain in a growing condition all newly established plantings, seedlings, and soddings furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during the suspension period. Additionally, Design-Builder shall continue other Work that has been or can be performed on-Site or off-Site during the period that Work is suspended.

SECTION 15. TERMINATION FOR CONVENIENCE

15.1 Termination

15.1.1 The Department may, at any time, terminate the Contract and the performance of the Work by Design-Builder in whole or in part, if the Department determines, in its sole discretion, that a termination is in the Department's best interest. The Department shall terminate by delivering to Design-Builder a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of the Contract shall not relieve any Surety or Guarantor of its obligation for any claims arising out of the Work performed.

15.1.2 Within three (3) days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Design-Builder shall meet and confer with the Department for the purpose of developing an interim transition plan for the orderly transition of the terminated Work, demobilization, and transfer of the Project to the Department. The Parties shall use diligent efforts to complete preparation of the interim transition plan within fifteen (15) days after the date Design-Builder receives such notice of termination. The Parties shall use diligent efforts to complete a final transition plan within thirty (30) days after such date. The transition plan shall be in form and substance acceptable to the Department in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in Section 15.2, all of which provisions and procedures Design-Builder shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

15.1.3 Design-Builder acknowledges and agrees that the Department has no obligation to issue a Notice to Proceed hereunder, and further agrees that unless and until NTP2 is issued, the Department shall have no liability to Design-Builder for a Termination for Convenience hereunder.

15.2 Design-Builder's Responsibilities After Receipt of Notice of Termination

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by the Department, Design-Builder shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 15:

15.2.1 Stop Work as specified in the notice.

15.2.2 Notify all affected Subcontractors that the Contract is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by the Department.

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

15.2.4 Unless instructed otherwise by the Department, terminate all Subcontracts to the extent they relate to the Work terminated.

15.2.5 To the extent directed by the Department, execute and deliver to the Department written assignments, in form and substance acceptable to the Department, acting reasonably, of all of Design-Builder's right, title, and interest in and to (a) Subcontracts and Utility Agreements that relate to the terminated Work provided the Department assumes in writing all of Design-Builder's obligations thereunder that arise after the effective date of the termination and (b) all assignable warranties, claims, and causes of action held by Design-Builder against Subcontractors and other third parties in connection with the terminated Work, to the extent such Work is adversely affected by any Subcontractor or other third party breach of warranty, contract or other legal obligation.

15.2.6 Subject to the prior written approval of the Department, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts.

15.2.7 No later than thirty (30) days from the effective date of termination, unless extended in writing by the Department upon written request of Design-Builder within this thirty- (30-) day period, provide the Department with an inventory list of all materials and equipment previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to the Department, and such other information as the Department may request; and transfer title and deliver to the Department through bills of sale or other documents of title, as directed by the Department, (a) the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated, and (b) the Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to the Department if the Work had been completed.

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

15.2.9 Take all action that may be necessary, or that the Department may direct, for the safety, protection, and preservation of (a) the public, including public and private vehicular movement, (b) the Work; (c) the property and facilities of Local Agencies; and (d) equipment, machinery, materials and property related to the Project that is in the possession of Design-Builder and in which the Department has or may acquire an interest.

15.2.10 As authorized by the Department in writing, use its best efforts to sell at reasonable prices any property of the types referred to in Section 15.2.7; provided, however, that Design-Builder (a) is not required to extend credit to any purchaser, and (b) may acquire the property under the conditions prescribed and at prices approved by the Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Department under the Contract Documents or paid in any other manner directed by the Department.

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

15.2.12 Take other actions as directed by the Department.

15.3 Acceptance

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

(a) Design-Builder's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when the Department's Authorized Representative certifies that those materials have been stored in the manner and at the locations directed by the Department.

(b) Design-Builder's responsibility for damage to materials purchased by the Department subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of those materials has been taken by the Department.

15.3.2 When the Department's Project Manager determines that Design-Builder has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, the Department's Project Manager will recommend that the Department formally accept such Work, and immediately upon and after the acceptance by the Department, Design-Builder will not be required to perform any further work thereon (except for such work that otherwise would have been required with respect to the terminated Work after Final Acceptance) and shall be relieved of maintenance responsibility for such terminated Work after the formal acceptance of such Work by the Department.

15.4 Settlement Proposal

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Design-Builder shall submit a final termination settlement proposal to the Department in the form and with the certification prescribed by the Department. Design-Builder shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination unless Design-Builder has requested a time extension in writing within such ninety- (90-) day period and the Department has agreed in writing to allow such an extension. Design-Builder's termination settlement proposal shall then be reviewed by the Department and acted upon, returned with comments, or rejected. If Design-Builder fails to submit the proposal within the time allowed, the Department may determine, on the basis of information available, the amount, if any, due Design-Builder because of the termination and shall pay Design-Builder the amount so determined. If the Department returns the termination settlement proposal with comments, Design-Builder shall address such comments and resubmit the termination settlement proposal within 30 days after receiving the Department's comments.

15.5 Amount of Negotiated Termination Settlement

Design-Builder and the Department may agree, as provided in Section 15.4, upon the whole or any part of the amount or amounts to be paid to Design-Builder by reason of the total or partial termination of Work for convenience pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently inspected and accepted by the Department. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and the Contract Price of Work not terminated. Upon determination of the settlement amount, the Contract will be amended accordingly, and Design-Builder will, subject to Section 15.7, be paid the agreed amount as described in this Section 15.5. Nothing in Section 15.6, prescribing the amount to be paid to Design-Builder in the event that Design-Builder and the Department fail to agree upon the whole amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Design-Builder pursuant to this Section 15.5. The Department's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve Design-Builder from its obligations with respect thereto, including Warranties, or affect Design-Builder's obligations under the Performance Bond, Payment Bond, Warranty Bond and/or Guaranty as to such completed or non-terminated Work.

15.6 No Agreement as to Amount of Termination Settlement

If Design-Builder and the Department fail to agree upon the whole amount to be paid Design-Builder by reason of the termination of Work for convenience pursuant to this Section 15, the amount payable (exclusive of interest charges and any amounts deducted pursuant to Section 15.7) shall be determined by the Department in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Sections 15.4 and 15.5:

15.6.1 Subject to Section 15.7, the Department will pay Design-Builder the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

(a) Design-Builder's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted by Section 13.7.3, for all Work performed, including mobilization, demobilization, and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to the Department's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by Design-Builder, amounts realized by the sale of materials, and for other appropriate credits against the cost of the Work. Deductions will also be made, when the Contract is terminated as the result of a Force Majeure Event, for the cost of materials damaged by the "occurrence." When, in the opinion of the Department's Project Manager, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work or

Nonconforming 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 shall be disallowed.

(b) As profit on clause (a) above, a sum determined by the Department to be fair and reasonable; provided, however, that if it appears that Design-Builder would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Section 15.6.1 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 15.2.6, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience under the 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 15.2.9 and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract Documents, including the reasonable cost to Design-Builder of handling material returned to the vendor, delivered to the Department or otherwise disposed of as directed by the Department, and including a reasonable allowance for Design-Builder's administrative costs in determining the amount payable due to termination of the Contract.

15.6.2 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 15.6.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the Contract. The total amount to be paid to Design-Builder, exclusive of costs described in Sections 15.6.1(c) and (d), may not exceed the total Contract Price less the amount of payments previously made and the Contract Price of Work not terminated. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to the Department by Design-Builder, such refund shall be paid directly to the Department or otherwise credited to the Department. Except for normal spoilage, and except to the extent that the Department will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Design-Builder under Section 15.6.1, the fair value, as determined by the Department, of equipment, machinery, materials, and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Department, or sold pursuant to Section 15.2.10. Information contained in the Escrowed Proposal Documents may be a factor in determining the value of the Work terminated. Upon determination of the amount of the termination payment, the Contract shall be amended to reflect the agreed termination payment, Design-Builder shall be paid the agreed amount, and the Contract Price shall be reduced to reflect the reduced scope of Work.

15.6.3 If a termination hereunder is partial, Design-Builder may file a proposal with the Department for an equitable adjustment of the Contract Price for the continued portion of the Contract. Any proposal by Design-Builder for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Department. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to the Contract.

15.7 Conditions to Payment; Reduction in Amount of Claim

15.7.1 As a condition to its obligation to make payment to Design-Builder of amounts due under this Section 15, the Department shall have received the following:

(a) A list of all outstanding or pending RFC Notices and all existing or threatened claims, and Liens by Subcontractors, Utility Owners, railroads or other third parties relating to the Project;

(b) Complete and legally effective releases or waivers of Liens satisfactory to the Department, from all Persons legally eligible to file Liens and stop payment notices in connection with the Work;

(c) Consent of any Guarantors and Surety(ies);

(d) Executed release(s) meeting the requirements of Sections 12.4.4 and 15.11.2 and otherwise satisfactory in form and content to the Department;

(e) An affidavit from Design-Builder meeting the requirements of Section 12.4.4; and

(f) Such other documentation as the Department may reasonably require.

15.7.2 The amount otherwise due Design-Builder under this Section 15 shall be reduced by (a) any Losses of the Department or Third Party Claims for which Design-Builder is responsible hereunder; (b) the amount of any claim which the Department may have against any DB-Related Entity in connection with the Contract Documents; (c) any unpaid liquidated or stipulated damages or other payments for which Design-Builder is liable pursuant to Section 17; (d) the agreed price for, or the proceeds of sale, of property, materials, supplies or other things acquired by Design-Builder or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to the Department; (e) all unliquidated advances or other payments made to or on behalf of Design-Builder applicable to the terminated portion of the Work or Contract; (f) amounts that the Department deems advisable, in its good faith discretion, to retain to cover any existing or threatened claims, and Liens relating to the Project, including claims by Utility Owners; (g) the cost of repairing any Nonconforming Work plus an administrative charge equal to 10% of such costs; (h) any amounts the Department is required to retain under applicable federal law; and (i) any amounts due or payable by Design-Builder to the Department or which the Department is otherwise entitled to recover from Design-Builder under the terms of the Contract Documents.

15.8 Payment

The Department may from time to time, under such terms and conditions as it may prescribe and in its good faith discretion, make partial payments on account against costs incurred by Design-Builder in connection with the terminated portion of the Contract, whenever in the opinion of the Department the aggregate of such payments shall be within the amount to which Design-Builder will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by Design-Builder to the Department upon demand together with interest at the rate of the lesser of (a) ten percent (10%) per annum or (b) the maximum rate allowable under applicable Governmental Rules.

15.9 Subcontracts

15.9.1 Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such terminations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 15.

15.9.2 Each Subcontract shall provide that, in the event of a Termination for Convenience by the Department, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

15.10 No Consequential Damages

Under no circumstances shall Design-Builder be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to Design-Builder determined in accordance with this Section 15 constitutes Design-Builder's exclusive remedy for a termination hereunder.

15.11 No Waiver; Release

15.11.1 Anything contained in the Contract Documents to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages which the Department may have and the Department may pursue any cause of action which it may have by law, in equity or under the Contract Documents.

15.11.2 The Department's payment to Design-Builder of the amounts required under this Section 15 shall constitute full and final satisfaction of, and upon payment the Department shall be forever released and discharged from, any and all Claims, causes of action, suits, demands, and Losses, known or unknown, suspected or unsuspected, that Design-Builder may have against the Department arising out of or relating to the terminated Work. Concurrently with such payment, Design-Builder shall execute and deliver to the Department all such releases and discharges as the Department may reasonably require to confirm the foregoing (which release shall include an express and

unconditional waiver and release sufficient, in the Department's good faith discretion, to waive any rights and benefits Design-Builder may have), but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

15.12 Dispute Resolution

The failure of the Parties to agree on amounts due under this Section 15 shall be a Dispute to be resolved in accordance with Section 19.

15.13 Allowability of Costs

All costs claimed by Design-Builder under this Section 15 shall be allowable, allocable, and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

SECTION 16. DEFAULT

16.1 Default of Design-Builder

16.1.1 Design-Builder shall be in default under the Contract upon the occurrence of any one or more of the following events or conditions (each a “Design-Builder Default”):

(a) Design-Builder fails (i) promptly to begin the Work under the Contract Documents following issuance of a Notice to Proceed, or (ii) to resume performance of Work which has been suspended or stopped within a reasonable time after receipt of notice from the Department to do so or (if applicable) after cessation of the event preventing performance; or

(b) Design-Builder fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in design and construction of the Project, or refuses to remove, replace, and correct rejected materials or Nonconforming Work or unacceptable Work; or

(c) Design-Builder suspends, ceases, stops or abandons the Work (exclusive of Work stoppage (i) due to termination by the Department, (ii) due to and during the continuance of a Force Majeure Event or suspension by the Department, or (iii) in accordance with Section 16.3); or

(d) Design-Builder fails to continuously and diligently prosecute the Work (exclusive of Work stoppage (i) due to termination by the Department, (ii) due to and during the continuance of a Force Majeure Event or suspension by the Department, or (iii) in accordance with Section 16.3); or

(e) Design-Builder fails to obtain, provide, and maintain in full force and effect any insurance, bonds, guarantees, or other performance security as and when required hereunder for the benefit of relevant parties, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same; or

(f) Design-Builder makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of the Contract Documents or any right or interest herein, except as expressly permitted under Section 24.4; or

(g) Design-Builder shall have failed, absent a valid dispute, to make payment when due for labor at the then-current prevailing wage, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or shall have failed to comply with any Governmental Rule or failed reasonably to comply with the instructions of the Department consistent with the Contract Documents; or

(h) Design-Builder shall have failed to make payment when due to the Department of any amounts owing to the Department under the Contract Documents, including liquidated or stipulated damages assessed pursuant to Section 17; or

(i) Design-Builder fails to timely observe or perform or cause to be observed or performed any other agreement or covenant to be performed by Design-Builder contained in the Contract Documents; or

(j) Any Guarantor revokes or attempts to revoke its obligations under its Guaranty or otherwise takes the position that such instrument is no longer in full force and effect; or

(k) Any representation or warranty made by Design-Builder or any Guarantor in the Contract Documents (including the Responsible Proposer Questionnaire included in the Proposal and the questionnaire included in the Statement of Qualifications) or any certificate, schedule, instrument or other document delivered by Design-Builder pursuant to the Contract Documents shall have been false or materially misleading when made; or

(l) Design-Builder commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any Surety or Guarantor; or

(m) An involuntary case is commenced against Design-Builder seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Design-Builder or Design-Builder's debts under any bankruptcy, insolvency or other similar Governmental Rules now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Design-Builder or any substantial part of Design-Builder's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Design-Builder in good faith or shall remain undismissed and unstayed for a period of sixty (60) days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any Surety or Guarantor.

16.1.2 Except with respect to the Design-Builder Defaults described in Sections 16.1.1(c), (e), (f), (h), and (j) through (m), Design-Builder and Surety shall be entitled to fifteen (15) days written notice and opportunity to cure any Design-Builder Default before an Event of Default is declared; provided, however, that no such notice and opportunity to cure is required for any Design-Builder Default which by its nature cannot be cured. Failure to provide notice to Surety or any Guarantor shall not preclude the Department from exercising its remedies against Design-Builder. If a Design-Builder Default (other than the Design-Builder Defaults described in Sections 16.1.1(c), (e), (f), (h) and (j) through (m), is capable of cure but, by its nature, cannot be cured within fifteen (15) days, as determined by the Department, such additional period of time shall be allowed as may be reasonably necessary to cure the Design-Builder Default so long as Design-Builder commences such cure within such fifteen- (15-) day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no

event shall such cure period exceed sixty (60) days in total. In the event of a Design-Builder Default under Section 16.1.1(e) or (h), Design-Builder shall be entitled to seven (7) days' written notice and opportunity to cure. Design-Builder hereby acknowledges and agrees that the Design-Builder Defaults described in Sections 16.1.1(c), (f) and (j) through (m) are not curable and no notice or cure period shall apply; provided, however, that in the event of a Design-Builder Default under Section 16.1.1(l) or (m) that arises solely due to the specified acts or events as they pertain to Guarantor, Design-Builder shall have an opportunity to cure such Design-Builder Default by providing the Department with alternative security, which security must be in a form satisfactory to the Department, in its sole discretion. Notwithstanding the foregoing, the Department may, without notice and without awaiting lapse of the period to cure any Design-Builder Default, in the event of existence of a condition on or affecting the Project which the Department believes poses an immediate and imminent danger to revenues or public health or safety, rectify the dangerous condition at Design-Builder's cost, and so long as the Department undertakes such action in good faith, even if under a mistaken belief in the occurrence of such Design-Builder Default, such action shall not expose the Department to any liability to Design-Builder and shall not entitle Design-Builder to any other remedy, it being acknowledged that the Department has a paramount public interest in providing and maintaining safe public use of and access to the Project. The Department's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

16.2 Remedies

16.2.1 If any Design-Builder Default described in Section 16.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 16.1.2, the Department may declare that an "Event of Default" has occurred. The declaration of an Event of Default shall be in writing and given to Design-Builder. In addition to all other rights and remedies provided by law or in equity and such rights and remedies as are otherwise available under the Contract Documents, the Performance Bond, the Warranty Bond and/or the Guaranty, if an Event of Default shall occur, then the Department shall have the following rights without further notice and without waiving or releasing Design-Builder from any obligations, and Design-Builder shall have the following obligations (as applicable):

(a) The Department may terminate the Contract or a portion thereof, including Design-Builder's rights of entry upon the Site and possession, control, and operation of the Project, in which case, the provisions of Sections 15.2 and 15.3 shall apply;

(b) If and as directed by the Department, Design-Builder shall discontinue the Work, withdraw from the Site, and shall remove materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, any DB-Related Entity in the performance of the Work;

(c) Design-Builder shall deliver to the Department possession of any or all Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files

and other documents and facilities related to the Project that the Department deems necessary for completion of the Work;

(d) Design-Builder shall confirm the assignment to the Department of the Subcontracts requested by the Department, and Design-Builder shall terminate, at its sole cost, all other Subcontracts;

(e) The Department may deduct from any amounts payable by the Department to Design-Builder such amounts payable by Design-Builder to the Department, including the aggregate of reimbursements owing; Liquidated Damages owing pursuant to Section 17.1; any other liquidated or stipulated damages assessed pursuant to Section 17; 125% of the amounts the Department deems advisable to cover any existing or threatened claims, and Liens of Subcontractors, laborers or other Persons; amounts of any Losses or Third Party Claims that have accrued; the cost to complete or remediate uncompleted Work or Nonconforming Work plus an administrative charge equal to ten percent (10%) of such costs; and other damages or amounts that the Department has determined are or may be payable to the Department under the Contract Documents;

(f) The Department shall have the right, but not the obligation, to pay such amounts and/or perform such act as may then be required from Design-Builder under the Contract Documents or Subcontracts;

(g) The Department may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and may direct the Surety to complete the Work and the Project or may enter into an agreement for the completion of the Work and the Project according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Work and the Project, including completion of the Work by the Department; and/or

(h) If the Department exercises any right to perform any obligations of Design-Builder, in the exercise of such right the Department may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as the Department deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors and obtain materials and equipment as may be required for the purpose of completing such work; (iii) execute all applications, certificates, and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may, in its sole discretion, consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2 If an Event of Default shall have occurred, Design-Builder, any Guarantor and Surety shall be jointly and severally liable to the Department for all Losses incurred by the Department or any party acting on the Department'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 occurrence of an Event of Default and so long as it continues, the Department shall be entitled to withhold all or any portion of further payments to Design-Builder until the Final Acceptance Date or the date on which the

Department otherwise accepts the Project as complete or determines that it will not proceed with completion, at which time the Department will determine whether Design-Builder is entitled to further payments. Promptly following the Final Acceptance Date or the date on which the Department otherwise accepts the Project as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and the Department shall notify Design-Builder, Surety, and each Guarantor in writing of the amount, if any, that Design-Builder, each Guarantor and the Surety shall pay the Department or the Department shall pay Design-Builder or its Surety with respect thereto. The Department will deduct, from any moneys due or which will become due Design-Builder or its Surety, all costs and charges incurred by the Department, including attorneys', accountants' and expert witness fees and costs; together with (a) the cost of completing the Work (which shall include all Plant Establishment Work) under the Contract Documents together with an administrative charge of ten percent (10%) of such costs; (b) any reimbursements owing to the Department; (c) Liquidated Damages, any liquidated or stipulated damages or other payments for which Design-Builder is liable to the Department pursuant to Section 17 (d) 125% of the amounts the Department deems advisable to cover any existing or threatened claims, and Liens of Subcontractors, laborers or other Persons; (e) the amounts of any Losses or Third Party Claims that have accrued; and (f) other damages or amounts that the Department has determined are or may be payable to the Department under the Contract Documents. If such expense exceeds the sum which would have been payable under the Contract, then Design-Builder, each Guarantor and its Surety(ies) shall be liable and shall pay to the Department the amount of such excess. If any Guarantor or the Surety fails to pay such amount immediately upon the Department's demand, then the Department shall be entitled to collect interest from the Surety and/or such Guarantor(s) on the amounts Design-Builder is required to pay in excess of the remaining balance of the Contract Price. The interest rate which the Surety and/or such Guarantor(s) shall pay shall be the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate allowable under applicable Governmental Rules. The interest rate shall accrue on all amounts the Department has had to pay in excess of the remaining balance of the Contract Price from the date of the Department payment.

16.2.3 Design-Builder acknowledges that if a Design-Builder Default under Section 16.1.1(l) or (m) occurs, such event could impair or frustrate Design-Builder's performance of the Work. Accordingly, Design-Builder agrees that upon the occurrence of any such Design-Builder Default, the Department shall be entitled to request of 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 ten (10) days of delivery of the request shall entitle the Department to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Department shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which (plus an administrative charge of ten percent (10%) of such cost) will be credited against and deducted from the Department's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract Documents, the Performance Bond, and the Guaranty.

16.2.4 In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work, the Department may pay Design-Builder for the Work already done according to the provisions of the Contract Documents (including the Department's right to deduct certain amounts therefrom) and may treat the Work remaining undone as if they had never been included or contemplated by this Contract. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Design-Builder.

16.2.5 In the event that the Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

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

16.2.7 In the event the Department suffers Losses as a result of Design-Builder's acts, omissions, negligence, fraud, recklessness, breach or failure to perform an obligation under the Contract Documents, then, subject to the limitation on liability contained in Section 17.6, the Department shall be entitled to recovery of such Losses from Design-Builder regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

16.2.8 Design-Builder, each Guarantor, and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a Design-Builder Default by Design-Builder hereunder or by the Department's declaration of an Event of Default, or by actions taken by the Department under this Section 16.2.

16.2.9 The Department's remedies associated with any false statement contained in the Responsible Proposer Questionnaire included in the Proposal or the questionnaire included in the Statement of Qualifications shall include the right to rescind the Contract.

16.3 Failure by the Department to Make Undisputed Payment

In the event the Department fails to make an undisputed payment due hereunder Design-Builder's shall be entitled to seek relief under NRS 338.630. Unless and until a writ of mandamus is issued, Design-Builder shall not have the right to stop work or terminate the Contract for default as the result of any failure by the Department to make an undisputed payment due hereunder.

16.4 Event of Default Due Solely to Design-Builder's Failure to Achieve Certain Completion Deadlines

16.4.1 If an Event of Default consists solely of Design-Builder's failure to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, the Department's sole remedy for such Event of Default shall be the right to assess Liquidated Damages; provided, however that: (a) such Event of Default does not delay Substantial Completion or Final Acceptance beyond 180-days of the

applicable Completion Deadline; and (b) Design-Builder continues to diligently perform the Work despite such Event of Default. Nothing in this Section 16.4 shall prejudice any other rights or remedies that the Department may have due to any other Event of Default during such 180-day period.

16.4.2 If Substantial Completion or Final Acceptance has not occurred within 180-days of the applicable Completion Deadline, the Department shall have the right to: (a) terminate this Contract; (b) continue to assess Liquidated Damages subject only to the limitations set forth in Section 17.1; and/or (c) exercise any other right or remedy under the Contract Documents, at law or in equity.

SECTION 17. LIQUIDATED DAMAGES; FAILURE TO OPEN LANES; INTERIM MILESTONE COMPLETION LATE CHARGES; ITS CHARGES; AND LIMITATION OF LIABILITY

Design-Builder understands and agrees that if Design-Builder fails to complete the Work in accordance with the Contract Documents, the Department will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, Design-Builder and the Department have agreed to stipulate the amount payable by Design-Builder in the event of its failure to meet a Completion Deadline, failure to timely open lanes after a Construction Closure or meet other requirements as described in this Section 17 and Appendices 19 and 23.

17.1 Liquidated Damages

17.1.1 Design-Builder shall be liable for and pay to the Department liquidated damages with respect to any failure to achieve Substantial Completion and/or Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this Contract. Such liability shall apply even though: (a) a cure period remains available to Design-Builder or (b) cure occurs. The amounts of such liquidated damages are as follows (“Liquidated Damages”):

(a) \$100,000.00 for each day after the Substantial Completion Deadline through the date of Substantial Completion, not to exceed 365 days; and

(b) \$13,000.00 for each day after the Final Acceptance Deadline and through the Final Acceptance Date, not to exceed 365 days.

17.1.2 Liquidated Damages shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this Contract, and shall continue to accrue until the date of Substantial Completion or Final Acceptance, as applicable, or until termination of this Contract.

17.1.3 In no event shall more than 365 total days of Liquidated Damages be assessed under each of Sections 17.1.1(a) and (b).

17.1.4 Design-Builder acknowledges that Liquidated Damages are reasonable in order to compensate the Department for damages it will incur as a result of late Substantial Completion or late Final Acceptance, as applicable. Such damages include costs of financing, loss of use, enjoyment, and benefit of the Project and connecting Department transportation facilities by the general public, injury to the credibility and reputation of the Department’s transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the Substantial Completion Deadline, which injury to credibility and reputation may directly result in loss of ridership on the Project, and additional costs of administering these Contract Documents (including engineering, legal, accounting, overhead and other administrative costs). Design-Builder further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.1.5 As of the Proposal Date, the amounts of Liquidated Damages represent good faith estimates and evaluations by the Parties as to the actual potential damages that the Department would incur as a result of the late Substantial Completion or Final Acceptance, and do not constitute a penalty.

17.1.6 The Parties have agreed to Liquidated Damages in order to fix and limit Design-Builder's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Design-Builder.

17.1.7 Such sums are reasonable in light of the anticipated or actual harm caused by delayed Substantial Completion or delayed Final Acceptance, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

17.1.8 Liquidated Damages are not intended to, and do not, liquidate Design-Builder's liability under the indemnification provisions of Section 18.1, even though Third Party Claims against Indemnified Parties may arise out of the same event, breach, or failure that gives rise to the Liquidated Damages.

17.2 Liquidated Damages for Failure to Open Lanes

17.2.1 Lane closures at times and locations not consistent with the requirements of the Contract result in traffic obstructions, inconvenience to the public and delay of vital commerce, and increased risk to highway users. All of these consequences result in direct and indirect financial impacts to the Department, road users, businesses, communities, and taxpayers. These impacts are not readily calculable and therefore, the Parties agree that in addition to any other liquidated damages that may be payable by the Design-Builder under this Section 17, the liquidated amounts set forth in Appendix 19 ("Liquidated Damages for Failure to Open Lanes") shall apply for failure to timely open lanes and Design-Builder hereby authorizes the Department to deduct these liquidated damages from any money due or coming due to Design-Builder.

17.2.2 If any action or failure to act by a DB-Related Entity results in a failure to provide the minimum number of open lanes as set forth in Sections 12.4.3.2 ("Permitted Construction Closures"), 12.4.3.3 ("Permitted Construction Closures Off-Peak Period Only"), 12.4.3.4 ("Construction Closures Special Events"), 12.4.3.5 ("Seasonal Construction Closures"), and 12.4.4 ("Construction Closure Sequencing") of the Technical Provisions (collectively, "Failure to Open Lanes"), Design-Builder shall be liable for and pay to the Department liquidated damages in the amounts and as set forth in Appendix 19. Design-Builder shall pay any such liquidated damages or stipulated damages owing as and when provided in Section 17.5.1.

17.2.3 Design-Builder acknowledges that such liquidated damages are reasonable in order to compensate the Department for damages it will incur by reason of the matters that result in liquidated damages for Failure to Open Lanes. Such damages include loss of use, enjoyment, and benefit of the Project and connecting the Department transportation facilities by the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss

of ridership on the Project and connecting Department transportation facilities and additional costs administering this Contract (including engineering, legal, accounting, overhead and other administrative costs). Design-Builder further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.2.4 In the event that Design-Builder fails to timely make any payment of liquidated damages for Failure to Open Lanes, then (a) the Department may prohibit Design-Builder from pursuing or implementing any further Construction Closures until such past due payments are made; (b) the Department shall have the right to deduct any amount owed by Design-Builder to the Department hereunder from any amounts owed by the Department to Design-Builder, including any Retainage which may be payable by the Department to Design-Builder pursuant to Section 12.3.1; and (c) Design-Builder shall not be entitled to any Change Order, compensation, or time extension arising out of any inability to pursue or implement such Construction Closures.

17.2.5 Permitting or requiring Design-Builder to proceed with a Construction Closure and continue and finish the Work or any part thereof after Design-Builder has failed to make timely payment as provided herein shall not act as a waiver of the Department's right to receive damages hereunder or any rights or remedies otherwise available to the Department.

17.3 Interim Milestone Completion Late Charges

17.3.1 Design-Builder shall be liable for and pay to the Department liquidated damages in the form of Interim Milestone Completion Late Charges with respect to any failure to achieve an Interim Milestone by the applicable Interim Milestone Completion Duration set forth in Appendix 23, as the same may be extended pursuant to the Contract. Such liability shall apply even though: (a) a cure period remains available to Design-Builder or (b) cure occurs. The amounts of such Interim Milestone Completion Late Charges are set forth in Appendix 23.

17.3.2 Interim Milestone Completion Late Charges shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this Contract, and shall continue to accrue until the date of Interim Milestone Completion or until termination of this Contract.

17.3.3 Design-Builder acknowledges that Interim Milestone Completion Late Charges are reasonable in order to compensate the Department for damages it will incur as a result of late completion of Interim Milestones. Such damages include costs of financing, loss of use, enjoyment, and benefit of the Project and connecting Department transportation facilities by the general public, injury to the credibility and reputation of the Department's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the Substantial Completion Deadline, which injury to credibility and reputation may directly result in loss of ridership on the Project, and additional costs of administering these Contract Documents (including engineering, legal, accounting, overhead and other administrative costs). Design-Builder further acknowledges that these damages are

incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.3.4 As of the Proposal Date, the amounts of Interim Milestone Completion Late Charges associated with the Interim Milestones represent good faith estimates and evaluations by the Parties as to the actual potential damages that the Department would incur as a result of the late completion of the Interim Milestones, and do not constitute a penalty.

17.3.5 The Parties have agreed to Interim Milestone Completion Late Charges in order to fix and limit Design-Builder's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Design-Builder.

17.3.6 Such sums are reasonable in light of the anticipated or actual harm caused by delayed completion of the Interim Milestones, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy.

17.3.7 Interim Milestone Completion Late Charges damages are not intended to, and do not, liquidate Design-Builder's liability under the indemnification provisions of Section 18.1, even though Third Party Claims against Indemnified Parties may arise out of the same event, breach, or failure that gives rise to the liquidated damages.

17.4 Charges Associated with ITS

If Design-Builder fails, prior to Final Acceptance, to perform any Work to repair FAST fiber optic cable within twenty four (24) hours or to repair any branch FAST cables within forty-eight (48) hours as specified in Section 19.3 of the Technical Provisions, liquidated damages of \$10,000.00 per day will be assessed.

17.5 Payment; Offset; Reduction; Waiver; Non-Exclusive Remedy

17.5.1 Design-Builder shall pay any liquidated damages owing under this Section 17 within ten (10) days after Design-Builder's receipt of the Department's invoice or demand therefor.

17.5.2 The Department shall have the right to deduct and offset any unpaid liquidated damages from any amounts owed by the Department to Design-Builder, including any Retainage which may be payable by the Department to Design-Builder pursuant to Section 12.3.1. The Department also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Design-Builder pursuant to the Contract Documents to satisfy liquidated damages not paid when due.

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

17.5.4 Subject to Section 16.4, the Department's right to, and imposition of, liquidated damages are in addition, and without prejudice, to any other rights and remedies available to the Department under the Contract Documents, at law or in equity

respecting the breach, failure to perform or Design-Builder Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate.

17.6 Limitation of Design-Builder's Liability

Design-Builder's liability to the Department for damages resulting from any breach of the Contract shall not exceed the sum of (a) all those costs reasonably incurred by the Department or any party acting on the Department's behalf in completing or correcting the Work or having the Work completed or corrected by another Person, including costs as described in Section 19, plus (b) an amount equal to \$100,000,000 (which amount shall specifically include any (i) Liquidated Damages paid pursuant to Section 17.1, and (ii) liquidated or stipulated damages or charges paid pursuant to Sections 17.2 through 17.4 or other payments relating thereto), plus (c) payments made by Design-Builder pursuant to Section 18, plus (d) any amounts paid by or on behalf of Design-Builder which are covered by insurance proceeds; and plus (e) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, recklessness, criminal conduct, gross negligence or intentional misconduct on the part of any DB-Related Entity.

17.7 Consequential Damages

17.7.1 Except as otherwise specified in the Contract Documents, including this Section 17 but excluding Section 16.4.2, to the extent permitted by applicable Governmental Rules, neither Party shall be liable to the other for punitive damages or indirect, incidental or consequential damages, whether arising out of breach of this Contract, tort (including negligence) or any other theory of liability, and each Party hereby releases the other Party from any such liability.

17.7.2 The foregoing limitations on Design-Builder's liability for punitive, indirect, incidental or consequential damages shall not apply to or limit any right of recovery the Department may have respecting the following:

(a) Losses (including defense costs) to the extent (i) the Loss is covered by the proceeds of insurance required to be carried hereunder or for which Design-Builder was required to provide insurance coverage is not in force, or (ii) the loss is covered by the proceeds of insurance actually carried by or insuring Design-Builder under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to the Contract Documents, or (iii) Design-Builder is deemed to have self-insured the loss pursuant to the Contract Documents.

(b) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith, or gross negligence on the part of any DB-Related Entity;

(c) Design-Builder's indemnities set forth in Section 18.1 or elsewhere in the Contract Documents (only to the extent any such indemnities relate to claims, causes of action or Losses asserted by or awarded to third parties);

(d) Design-Builder's obligation to pay (i) Liquidated Damages in accordance with Section 17.1 or any other provision of the Contract Documents, and (ii) liquidated

damages or stipulated damages in accordance with Sections 17.2 through 17.4 or other payments relating thereto; and

(e) Losses arising out of Releases of Hazardous Materials by any DB-Related Entity (i) which was brought onto the Site by a DB-Related Entity, or (ii) which was negligently removed or handled by a DB-Related Entity.

SECTION 18. INDEMNIFICATION

18.1 Indemnifications by Design-Builder

18.1.1 Subject to Section 18.1.3, Design-Builder shall release, defend, indemnify and hold harmless the Department, the members of the Department's Transportation Board, the City of Las Vegas, Clark County Regional Flood Control District, and their respective successors and assigns and their respective board members, council members, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all Third Party Claims and other Losses (including those incurred in connection with the enforcement of this indemnity) arising out of, relating to or resulting from the following (each an "Indemnified Claim"):

(a) The breach or alleged breach of any of the Contract Documents by any DB-Related Entity; and/or

(b) The failure or alleged failure by any DB-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Governmental Rules (including Governmental Rules regarding Hazardous Materials Management) or any other responsibility prescribed in Sections 6.11 and 6.12; and/or

(c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to the Department or another Indemnified Party pursuant to the Contract Documents; provided that this indemnity shall not apply to any infringement resulting from the Department's failure to comply with specific written instructions regarding use provided to the Department by Design-Builder; and/or

(d) The alleged culpable act, Error, omission, negligence, fraud, recklessness, willful misconduct, breach or misconduct of any DB-Related Entity in or associated with performance of the Work; and/or

(e) Any and all claims by any Governmental Entity or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any DB-Related Entity or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any DB-Related Entity; and/or

(f) Any and all Liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any Lien and any other liability to Subcontractors for failure to pay sums due for their work or services; provided, however that the Department is not in default in undisputed payments owing to Design-Builder with respect to such Work; and/or

(g) Any Release of Hazardous Materials or threatened Release of Hazardous Materials (i) which was brought onto the Site by any DB-Related Entity, or (ii)

attributable to the negligence, fraud, recklessness, willful misconduct, or breach of contract, breach of Governmental Approval or violation of Governmental Rule by any DB-Related Entity regardless of the source, origin, or method of deposit of such Hazardous Materials; and/or

(h) To the extent of the negligence of any DB-Related Entity or failure to comply with the Design-Builder's obligations under Section 23; the claim or assertion by any other contractor (excluding contractors in privity of contract with the Department) that any DB-Related Entity (i) interfered with or hindered the progress or completion of work being performed by such other contractor, so as to cause inconvenience, disruption, delay, or loss, except where the DB-Related Entity was not in any manner engaged in performance of the Work, or (ii) failure of any DB-Related Entity to cooperate reasonably with other contractors in accordance therewith; and/or

(i) Any dispute between Design-Builder and (a) a Utility Owner or (b) Railroad, or any DB-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement or agreement with Railroad; and/or

(j) Any DB-Related Entity's breach of or failure to perform an obligation that the Department owes to a third Person, including Governmental Entities, Local Agencies, Utility Owners, and railroads, under law or under any agreement between the Department and a third Person, where (i) the Department has delegated performance of the obligation to Design-Builder under the Contract Documents or (ii) the acts or omissions of any DB-Related Entity which render the Department unable to perform or abide by an obligation that the Department owes to a third Person, including Governmental Entities, Utility Owners, and railroads, under any agreement between the Department and a third Person, where the agreement was expressly disclosed to Design-Builder; and/or

(k) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any DB-Related Entity to comply with Good Industry Practices, requirements of the Contract Documents, Project Management Plan or Governmental Approvals, (ii) the intentional misconduct, recklessness or negligence of any DB-Related Entity, or (iii) the actual physical entry onto or encroachment upon another's property by any DB-Related Entity; and/or

(l) The failure of Design-Builder to fully comply with any insurance requirements described in Section 9; and/or

(m) Any failure to protect and/or maintain valuable papers and records that the Contract Documents require Design-Builder to maintain; and/or

(n) Any act, claim or amount arising or recovered under workers' compensations law.

18.1.2 Subject to Section 18.1.3, Design-Builder shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, and Losses, arising out of, relating to or resulting from Errors in the Design Documents furnished by Design-Builder (including those pertaining to Utility

Adjustments), regardless of whether such Errors were also included in the Basic Configuration, Reference Design, or Reference Information Documents. Design-Builder agrees that, because the concepts in the Basic Configuration, Reference Design, and Reference Information Documents are subject to review and modification by Design-Builder, (a) 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 Basic Configuration, Reference Design or Reference Information Documents and (b) such documents shall not be deemed “design furnished” by the Department or any of the other Indemnified Parties.

18.1.3 The following restrictions shall apply to the indemnities set forth in Sections 18.1.1 and 18.1.2:

18.1.3.1 With respect to any Loss, damage or cost of the type covered by the insurance to be provided hereunder, Design-Builder’s indemnity obligations shall not extend to any loss, damage or expense arising from the sole negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such indemnified Party.

18.1.3.2 With respect to any Loss, damage or cost which is not of the type covered by insurance to be provided hereunder, Design-Builder’s indemnity obligation shall not extend to any Loss, damage or cost to the extent that such Loss, damage or cost was caused by the gross negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

18.1.3.3 The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(a) is intended to provide protection to the Department with respect to third-party claims associated with such breach. It is not intended to provide the Department with an alternative cause of action for damages incurred by the Department with respect to such breach.

18.1.3.4 In claims by an employee of Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Builder or a Subcontractor under workers’ compensation, disability benefit or other employee benefits laws.

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

18.1.5 Design-Builder is advised that the Preliminary Utility Work Packages and the Construction and Maintenance Agreements may include certain agreements by the Department to indemnify, defend, and hold harmless the Utility Owners and Railroad with respect to certain matters. Design-Builder's obligations under this Section 18.1 shall automatically apply to require Design-Builder, subject to Section 18.1.3, to release, indemnify, defend, and hold harmless the Utility Owners, Railroad and their employees and agents, in addition to the Indemnified Parties, with respect to all such matters. If any Preliminary Utility Work Packages or the Construction and Maintenance Agreements contain provisions requiring the Department's contractor(s) to indemnify, save and hold harmless the Utility Owner and railroad with respect to any matters, then, subject to Section 18.1.3, Design-Builder agrees to and shall perform and comply with such provisions of the Utility Agreements for the benefit of the Utility Owners and railroad, their employees, and agents.

18.2 Defense and Indemnification Procedures

18.2.1 If any of the Indemnified Parties receives notice of a claim, action, suit or other item covered under Section 18.1 or otherwise has actual knowledge of an Indemnified Claim that it believes is within the scope of the indemnities under Section 18.1, the Department shall by writing as soon as practicable after receipt of the Indemnified Claim: (a) inform Design-Builder of the Indemnified Claim, (b) send to Design-Builder a copy of all written materials the Department has received asserting such Indemnified Claim, and (c) notify Design-Builder that should no insurer accept defense of the Indemnified Claim, the Indemnified Party will conduct its own defense unless Design-Builder accepts the tender of the Indemnified Claim in accordance with Section 18.2.3. As soon as practicable after Design-Builder receives notice of an Indemnified Claim or otherwise has actual knowledge of an Indemnified Claim, it shall tender the Indemnified Claim in writing to the insurers under all potentially applicable insurance policies. The Department and other Indemnified Parties also shall have the right to tender such Indemnified Claims to such insurers.

18.2.2 If the insurer under any applicable insurance policy accepts the tender of defense, the Department and Design-Builder shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 18.2.3 shall apply.

18.2.3 If the defense is tendered to Design-Builder, then within thirty (30) days after receipt of the tender, it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that Design-Builder:

(a) Accepts the tender of defense and confirms that the Indemnified Claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

(b) Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

(c) Rejects the tender of defense based on a determination that it is not required to indemnify against the Indemnified Claim under the terms of this Contract.

18.2.4 If Design-Builder accepts the tender of defense under Section 18.2.3(a), Design-Builder shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Design-Builder shall otherwise control the defense of such Indemnified Claim, including settlement, and bear the fees and costs of defending and settling such Indemnified Claim; provided, however, that the Department shall have the right of prior approval of any settlement that relates to or may impact the Work or the design, construction, operations, maintenance, financing or revenues of the Project. During such defense:

(a) Design-Builder shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

(b) The Indemnified Party shall cooperate in said defense, provide to Design-Builder all materials and access to personnel it requests as necessary for defense, preparation, and trial and which or who are under the control of or reasonably available to the Indemnified Party, and use reasonable efforts to maintain the confidentiality of all communications between it and Design-Builder concerning such defense.

18.2.5 If Design-Builder responds to the tender of defense as specified in Section 18.2.3(b) or 18.2.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such Indemnified Claim, including settlement.

18.2.6 The Indemnified Party may assume its own defense by delivering to Design-Builder written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the Indemnified Claim or at any time thereafter, reasonably determines that:

(a) A conflict exists between it and Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or

(b) Design-Builder is otherwise not providing an effective defense in connection with the Indemnified Claim; or

(c) Design-Builder lacks the financial capacity to satisfy potential liability or to provide an effective defense.

18.2.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of an Indemnified Claim for which it is entitled to indemnification, Design-Builder shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a) In the case of a defense conducted under Section 18.2.3(a), it shall have the right to settle or compromise the Indemnified Claim with Design-Builder's prior written consent, which shall not be unreasonably withheld or delayed;

(b) In the case of a defense conducted under Section 18.2.3(b), it shall have the right to settle or compromise the Indemnified Claim with Design-Builder's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to Design-Builder and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Design-Builder; and

(c) In the case of a defense conducted under Section 18.2.3(c), it shall have the right to settle or compromise the Indemnified Claim without Design-Builder's prior written consent and without prejudice to its rights to be indemnified by Design-Builder.

18.2.8 The Parties acknowledge that while Section 18.1 contemplates that Design-Builder will have responsibility for certain Indemnified Claims and liabilities arising out of its obligations to indemnify, defend, and hold harmless, circumstances may arise in which there may be shared liability of the Parties with respect to such Indemnified Claims and liabilities. In such case, where either Party believes an Indemnified Claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the Indemnified Claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within thirty (30) days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of this Section 18.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the Indemnified Claim.

18.2.9 In determining responsibilities and obligations for defending Indemnified Claims pursuant to this Section 18.2, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the Indemnified Claim.

18.3 Responsibility of the Department for Certain Hazardous Materials

It is recognized that the Department may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Materials which may currently be present on the Site. It is further recognized that certain State and federal statutes provide that Persons may be held liable for damages and claims related to Hazardous 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) proper Hazardous Materials Management activities in connection with pre-existing Site contamination, whether known or unknown, and/or (b) the activities of any Persons other than DB-Related Entities.

18.4 No Effect on Other Rights

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

18.5 CERCLA Agreement

The indemnities set forth in Section 18.1.1(g) are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the Indemnified Parties.

SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 Partnering

19.1.1 General Provisions

19.1.1.1 For the benefit of the Parties, the Department and Design-Builder shall establish a partnering relationship using the partnering workshop platform to effectively complete the Project. The purpose of the partnering relationship and partnering workshops is to establish and maintain effective communication between the Parties to cooperatively identify and resolve critical Project-related issues at the lowest responsible level of management before the issues become Disputes. Neither the partnering relationship itself nor discussions between the Parties addressed at the partnering workshops shall modify the terms and conditions of this Contract.

19.1.1.2 In implementing and managing the partnering relationship required under this Section 19.1, the Department and Design-Builder shall:

- (a) use early and regular communication with parties involved;
- (b) establish and maintain a relationship of shared trust, equity, and commitment;
- (c) identify, quantify, and support attainment of mutual goals;
- (d) develop strategies for using risk-management tools and concepts;
- (e) implement timely communication and decision making;
- (f) resolve potential problems at the lowest level of responsible management to avoid negative impacts and Disputes;
- (g) develop a plan for periodic joint evaluation based on mutually agreed goals;
- (h) hold partnering workshops, as set forth in Section 19.1.2, to preserve the partnering relationship and its benefits for the duration of the Project;
- (i) establish periodic joint evaluations of the partnering process and attainment of mutual goals; and
- (j) establish the issue resolution ladder.

19.1.2 Partnering Workshops

19.1.2.1 Concurrently with the Department's issuance of NTP1, the Department will send Design-Builder a written invitation to enter into the partnering relationship described in this Section 19.1. No later than fifteen (15) days after receiving the written invitation, Design-Builder shall send a written response to the Department accepting the invitation and requesting a specific date for the Project's

initial partnering workshop. No later than thirty (30) days after the Department receives Design-Builder's response, the Department and Design-Builder, jointly, shall: (i) select a professional partnering consultant or facilitator whose services include the administration and analysis of the partnering evaluation surveys described in Section 19.1.3.3(c); (ii) select a date, site, and duration of the initial partnering workshop; and (iii) finalize other partnering workshop administrative details.

19.1.2.2 Prior to the initial partnering workshop, the Department and Design-Builder shall schedule and conduct a one- (1-) day training session to provide partnering skills development training for the individuals on the Partnering Team described in Section 19.1.3. The Department and Design-Builder will jointly select: (a) the date and time for the one- (1-) day training session; (b) the professional trainer; and (c) a site within the Las Vegas area for the training session. The one- (1-) day training session shall be a separate session from the initial partnering workshop.

19.1.2.3 The partnering workshops for the Project shall consist of an initial partnering workshop and subsequent partnering workshops every quarter during the Project through Final Acceptance. The Department's and Design-Builder's participation in all partnering workshops shall be mandatory.

19.1.3 Partnering Team; Partnering Charter

19.1.3.1 The Department and the Design-Builder shall establish a Partnering Team for the Project, which shall consist of significant Project-level contributors and decision-makers from the Department, Design-Builder, and, if applicable, stakeholder organizations. The Parties' respective members of the Partnering Team shall be identified in time for, and shall attend, the initial partnering workshop.

19.1.3.2 Prior to issuance of NTP2, the Partnering Team shall create a Partnering Charter that includes: (a) mutual goals (e.g., core goals that may also include Project-specific goals and individual goals that are jointly supported by both Parties); (b) a partnering team commitment statement signed by every member of the Partnering Team; and (c) a plan for both Parties to jointly maintain the partnering relationship through Final Acceptance.

19.1.3.3 The members of the Partnering Team shall: (a) identify the appropriate persons in each Party's organization who shall fill the roles of reviewers for the Issues Resolution Ladder described in Section 19.2.3; (b) identify the scope of documentation required for review of a Dispute at each level of the Issue Resolution Ladder described in Section 19.2.3; (c) participate in a partnering evaluation survey, monthly during the Project until Final Acceptance, to measure the progress of mutual goals and key short-term issues as they arise in connection with the Project; (d) jointly review the results of the partnering evaluation survey, on a quarterly basis during through Final Acceptance; (e) conduct a construction close-out partnering workshop; and (f) document lessons learned regarding the Project after the Substantial Completion Date.

19.1.3.4 While the provisions of this Section 19.1 are not part of the Dispute Resolution Procedures contemplated under this Contract, the Parties shall exhaust the use of the partnering relationship when addressing potential Disputes and prior to proceeding to the Issues Resolution Ladder and Disputes Review Team (“DRT”) described in Sections 19.2.3 and 19.2.4, respectively.

19.1.4 Partnering Cost Responsibility

The Department shall provide and pay the costs of the site and meeting locations for the partnering workshops required under this Section 19.1. Design-Builder shall initially pay the full costs of the facilitator services for all partnering workshops, and the Department shall reimburse Design-Builder one hundred percent (100%) of these costs. Design-Builder shall submit to the Department the invoices for these costs, which invoices shall include the invoices from the corresponding facilitator, no later than thirty (30) days after each partnering workshop. All costs associated with any partnering workshop, other than the costs for the facilitators and site, shall be borne separately by the Party that incurs the cost.

19.2 Dispute Resolution Procedures

19.2.1 General Provisions

19.2.1.1 Disputes Governed by These Procedures

(a) Any Dispute arising out of, relating to, or in connection with this Agreement that is not resolved by partnering per Section 19.1 shall be resolved pursuant to this Section 19.2.

(b) Resolutions of Disputes pursuant to this Section 19.2 shall be final, binding, conclusive, and enforceable as set forth in this Section 19.2.

(c) The Parties adopt these expedited methods for resolving Disputes between or among the Department and Design-Builder both of whom are proper parties to these Dispute Resolution Procedures.

19.2.1.2 Burden of Proof

The Party bringing a Claim or Dispute shall bear the burden of proving the same by a preponderance of the evidence.

19.2.2 Issue Resolution Ladder Condition Precedent

As a condition precedent to the right to have any Dispute resolved by the Disputes Review Team (“DRT”), pursuant to Section 19.2.4, or by the Nevada Eighth Judicial District in Clark County, Nevada, pursuant to Section 19.2.5, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the Issue Resolution Ladder described in Section 19.2.3. Any time limitations set forth in Section 19.2.3 for the Issue Resolution Ladder may be changed by mutual written agreement of the Parties and shall pertain to the particular Dispute only and shall not

affect the time limitations in the Issue Resolution Ladder applicable to any other or subsequent Disputes.

19.2.3 Issue Resolution Ladder

19.2.3.1 General Provisions

The Issue Resolution Ladder is the process for elevating Disputes from the Project's field level to various levels of review, up to the Parties' executive management if necessary, with defined time limits for each level of review. The goal of the Issue Resolution Ladder is to resolve each Dispute as close to the field level as possible while recognizing the requirement to elevate the Dispute to the next level of review before the Dispute impacts cost or schedule.

19.2.3.2 Levels of Review and Time Limits

The Issue Resolution Ladder shall consist of four (4) levels of review and corresponding time limits to review, as follows:

Level of Review	Design-Builder Reviewer	Department Reviewer	Time Limit
4	Executive Board	NDOT Director's Office	Issue Dependent
3	Regional Manager	Chief of Project Management / District Engineer	2 weeks
2	Project Manager	Project Manager / Resident Engineer	1 week
1	Technical Lead	Technical Lead	3 days

The individuals from the Department's and Design-Builder's respective organizations filling the roles of reviewers in the Issue Resolution Ladder, and the documentation required for each level of review in the Issue Resolution Ladder, shall be identified by the Partnering Team as set forth in Section 19.1.3.3. If reviewers at any level of the Issue Resolution Ladder cannot resolve a Dispute within the time limits set forth in this Section 19.2.3.2, the reviewers shall elevate the Dispute to the next level of review. If all four (4) levels of review have been exhausted, then Section 19.2.3.3(b) shall apply.

19.2.3.3 Outcome of Issue Resolution Ladder

(a) If the Department and Design-Builder succeed in resolving an issue using the Issue Resolution Ladder, the Parties shall memorialize the resolution in writing, including execution of any Change Order as appropriate, and promptly perform their respective obligations in accordance therewith.

(b) If a Dispute is not timely resolved using the Issue Resolution Ladder, then the Parties may mutually agree to resolve the Dispute using the DRT process described in Section 19.2.4.

19.2.4 Disputes Review Team

19.2.4.1 General Provisions

(a) It is the intent of the Parties to resolve a Dispute between them whenever possible by mutual and voluntary settlement rather than through the Dispute Resolution Procedures described in this Contract. In support of this, the Parties acknowledge that, except as otherwise provided herein, if the Dispute cannot be settled through the Issue Resolution Ladder described in Section 19.2.3, the Parties agree to submit their Dispute to the DRT as a condition precedent to filing litigation under Section 19.2.5.

(b) The DRT will assist in and facilitate the timely and equitable resolution of Disputes in an effort to avoid construction delay and litigation. The DRT's responsibilities are described in Article 2 of Appendix 10.

(c) The process to convene the DRT may be initiated by either the Department or Design-Builder, as described in Article 7 of Appendix 10 for informal reviews of Disputes, and in Article 8 of Appendix 10 for formal reviews of Disputes. The Party initiating the process shall notice the other Party of its intent to convene the DRT.

(d) The Parties shall establish the three- (3-) member DRT by no later than thirty (30) days prior to the anticipated issuance of NTP2.

(e) Upon appointment of the three (3) members of the DRT, the Department, Design-Builder, and all three (3) members of the DRT shall execute the Disputes Review Team's Controlling Document, in generally the form set forth in Appendix 10, which, in addition to this Section 19.2.4, shall govern the DRT process.

(f) The DRT shall remain in effect as a standing board from the date first formed until it concludes all proceedings respecting Disputes up to and before Final Acceptance.

19.2.4.2 Dispute Review Team Membership

The DRT shall be a three- (3-) member board established by the Department and Design-Builder to assist in the resolution of Disputes arising out of this Agreement. The requirements that govern the composition, qualifications, selection, termination, resignation, and replacement of the DRT member are set forth in Article 5 of Appendix 10.

19.2.4.3 Payment of DRT Fees and Related Costs

(a) The Department and Design-Builder shall share equally the allowable fees and expenses of all three (3) members of the DRT ("Allowable DRT

Expenses"). The Allowable DRT Expenses and applicable rates are set forth in Article 11 of Appendix 10.

(b) Design-Builder shall initially pay the full amount of the Allowable DRT Expenses, and the Department shall reimburse Design-Builder one-half (1/2) of these costs. Design-Builder shall submit to the Department the invoices for these costs no later than thirty (30) days after the DRT's services are rendered. The Department will provide administrative services in connection with the assembly of and communications with the DRT, and will solely bear the costs of these administrative services. Design-Builder shall pay all other fees, expenses, and costs in connection with the DRT, and may bill and, thereafter, be reimbursed by the Department for one-half (1/2) of all Allowable DRT Expenses for which the Department is responsible as determined herein.

(c) Regardless of the DRT recommendation, neither Party shall be entitled to reimbursement of DRT costs from the other Party.

(d) Design-Builder shall provide a meeting facility at the Site for all DRT meetings and secretarial support and copying services, the cost of which shall be shared equally by the Parties. The meeting facility shall be large enough to accommodate no less than thirty (30) persons.

19.2.5 State Court Litigation

(a) Only if the Parties are unable to settle a Dispute using the Dispute Review Team process described in Section 19.2.4, then either Party may thereafter file a lawsuit in the Nevada Eighth Judicial District Court located in Clark County, Nevada. Said lawsuit shall be filed no later than 180 days following issuance of the DRT Report. Service of the complaint shall be as prescribed by law.

(b) If the Party that rejected the DRT's determination and thereafter brings a lawsuit under this Section 19.2.5 does not obtain a more favorable result at the trial court level in the state court litigation, that Party shall be responsible to pay for the litigation costs, including the attorneys' fees, incurred by the other Party in the state court litigation.

19.2.6 Confidentiality of Settlement Negotiations and Other Documents Used in Dispute Resolution Process

19.2.6.1 All discussions, negotiations, procedures, and proceedings between the Parties connection with a Dispute pursuant to the Issue Resolution Ladder described in Section 19.2.3 or the DRT process described in Section 19.2.4, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, procedures or proceedings shall be considered confidential and not subject to disclosure by either Party.

19.2.6.2 During any judicial or other proceeding regarding a Dispute, all information that has been deposited into the EPDs maintained under Section 21.1 shall be available as evidence but treated as confidential and subject to a protective order issued by the court to protect the information from public disclosure.

19.2.6.3 The Parties may also request a protective order in any judicial or other proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the court shall be governed by the standards in Rule 26(c) of the Nevada Rules of Civil Procedure.

19.2.7 Administrative Hearings; Venue and Jurisdiction

19.2.7.1 The Department acknowledges that Design-Builder Claims are not subject to the jurisdiction of any Nevada administrative agency, and the Department agrees that no defense based on failure to exhaust administrative remedies not otherwise set forth in this Contract may be raised in any court proceeding arising out of or relating to the Project.

19.2.7.2 The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at Law or in equity, that is permitted to be brought by a Party in court arising out of the Contract Documents shall be the Nevada Eighth Judicial District Court located in Clark County, Nevada.

19.2.8 Continuation of Disputed Work and Payments

19.2.8.1 At all times during Dispute Resolution Procedures, Design-Builder and all DB-Related Entities shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Contract, except to the extent enjoined by order of a court or otherwise approved by the Department in its sole discretion. Design-Builder acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the disputed Work even if Design-Builder's position in connection with the Dispute ultimately prevails.

19.2.8.2 During the course of any Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals, and applicable Governmental Rules.

19.2.8.3 Throughout the course of any disputed Work, Design-Builder shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of disputed Work and that of undisputed Work. Design-Builder shall provide the Department access to all Project-related books and records on an open-book basis as the Department desires to evaluate the Dispute. The DRT shall have similar access to all such records. These records shall be retained for a period of not less than one (1) year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the Contract Documents).

19.2.8.4 During the course of any Dispute Resolution Procedures, the Department shall continue to pay to Design-Builder, when due, all undisputed amounts owing under this Agreement.

19.3 Joinder

Design-Builder agrees that, (a) at the Department's request, Design-Builder shall take appropriate action to join third parties and Subcontractors involved in the design or construction of any part of the Project as parties in dispute resolution proceedings under this Section 19, and (b) Design-Builder will allow itself to be joined as a participant in any dispute, arbitration or other proceeding that involves the Department and any other Person relating to the Project. This provision is for the benefit of the Department and not for the benefit of any other party.

19.4 Effect on Surety and Guarantor

Any decisions made in accordance with this Section 19 that are binding on Design-Builder shall also be binding on the Surety under the Performance Bond and any Guarantor; provided, however that unless the Surety or Guarantor, as applicable, is a party to such proceedings, such decisions shall not affect any defenses which are special to the Surety or Guarantor, as applicable (i.e. defenses available to the Surety or Guarantor, as applicable, which could not have been asserted by Design-Builder in the underlying proceeding). In the event that the Surety or Guarantor, as applicable, is a party to any proceedings, it shall have the right to, and must, assert any such special defenses therein.

19.5 Emergency Dispute Resolution

If a Dispute arises which must be resolved expeditiously in order to prevent serious damage to person or property, or serious interference with a Critical Path, both Parties shall make every effort to resolve such Dispute quickly. In such case, if Design-Builder's Project Manager and the Department's Project Manager cannot reach a resolution of that Dispute within twenty-four (24) hours, they must refer the Dispute to the Department's Director and Design-Builder's Chief Executive Officer (or other officer with authority to make final decisions subject only to board approval and any required third party approvals) for a meeting between the Department's Director and Design-Builder's Chief Executive Officer to occur within the following twenty-four (24) hours. Once the urgent aspects of the Dispute have been resolved, the Parties may continue with the remaining procedures for dispute resolution if necessary and to the extent applicable.

19.6 Time Limitation

Design-Builder acknowledges and agrees that the Department is subject to substantial constraints which have resulted in limitations on its ability to increase the Contract Price or extend a Completion Deadline. Design-Builder acknowledges and agrees that, due to limitations on funding for the Project, prompt resolution of Disputes is of vital importance to the Department. Design-Builder agrees that the time limitations stated in the Contract for the filing of Claims and/or complaints with the Disputes Review Team and any subsequent State court litigation pursuant to Section 19.2.5 are necessary and reasonable.

SECTION 20. ACCEPTANCE

20.1 Substantial Completion

20.1.1 Requirements

20.1.1.1 The Department will issue a written Certificate of Substantial Completion at such time as Substantial Completion occurs for the Project.

20.1.1.2 In determining whether Substantial Completion has occurred, the Department may consider and require satisfaction of the following criteria:

(a) Whether all major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections, and crash attenuators;

(b) Whether required illumination is installed and functional;

(c) Whether required pavement markings, signs, and signals are installed and functional;

(d) Whether the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the Transportation Management Plan solely in order to complete Punch List items);

(e) Whether all lanes of traffic (including freeway lanes, ramps, interchanges, collector distributor, HOV facilities, overpasses, underpasses, other crossings and Local Agency roads) set forth in the Design Documents are in their final configuration and available for public use;

(f) Whether required ITS systems are installed and functional in accordance with Section 19 of the Technical Provisions; and

(g) Whether Design-Builder has otherwise completed the Work, in accordance with the Contract Documents and Design Documents, including the construction of noise/sound walls, retaining walls, drainage facilities, bicycle and pedestrian facilities such that the Project is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, including bicycle and pedestrian access, subject only to Punch List items and other items of work that do not affect the ability to safely open the Project for such normal use and operation by the traveling public.

20.1.1.3 The Parties shall disregard the status of the vegetative ground cover landscaping and aesthetic features, except noise/sound walls, included in the Design Documents in determining whether Substantial Completion has occurred, except

to the extent that its later completion will affect public safety or satisfaction of the criteria in Section 20.1.1.2(d).

20.1.2 Notification of Substantial Completion

20.1.2.1 Design-Builder shall provide the Department with not less than 120 days' prior written notification of the date Design-Builder determines it will achieve Substantial Completion. During such 120-day period, Design-Builder and the Department shall meet and confer and exchange information on a regular cooperative basis with the goal being the Department's orderly, timely inspection and review of the Project and the Final Design Documents and Construction Documents, and the Department's issuance of a Certificate of Substantial Completion.

20.1.2.2 During such 120-day period, the Department shall conduct an inspection of the Project and its components, a review of the Final Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved.

20.1.2.3 Design-Builder shall provide the Department a second written notification when Design-Builder determines it has achieved Substantial Completion.

20.1.2.4 The Department will then conduct such inspections, surveys and/or testing as it deems desirable. If such inspections, surveys and/or tests disclose that any of Work does not meet the requirements of the Contract Documents, the Department will promptly advise Design-Builder as to any Errors in the Work necessary to be corrected as a condition to Substantial Completion and as to any Errors which may be corrected as Punch List items. Upon correction of the Errors identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to the Department, and the Department will conduct additional inspections, surveys and/or testing as it deems desirable. This procedure shall be repeated until the Department finds that all prerequisites to Substantial Completion have been met.

20.1.2.5 Within five days after expiration of the 120-day period and the Department's receipt of the second notification described in Section 20.1.2.3, the Department shall either: (a) issue the Certificate of Substantial Completion or (b) notify Design-Builder in writing setting forth, as applicable, why the Project has not reached Substantial Completion. If the Department and Design-Builder cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

20.2 Punch List

20.2.1 The Project Management Plan shall establish procedures and schedules for preparing a Punch List and completing Punch List work. Punch List(s) shall include an itemized list of Construction Work which remains to be completed, the existence, correction and completion of which will have no adverse effect on the normal and safe operation and use of the Project. Such procedures and schedules shall conform to this Section 20.2. The Project Management Plan shall provide for development of Punch Lists for each of Interim Milestone Completion, Substantial Completion and Final Acceptance.

20.2.2 For Substantial Completion, the schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

20.2.3 Design-Builder shall prepare and maintain the Punch List. Design-Builder shall deliver to the Department not less than five Business Days' prior written notice stating the date when Design-Builder will commence Punch List field inspections and Punch List preparation. The Department may, but is not obligated to, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If Design-Builder objects to the addition of an item by the Department, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures. Design-Builder shall deliver to the Department a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

20.2.4 Design-Builder shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the Contract Documents, within the time period to be set forth in the Project Management Plan and in any case by the Final Acceptance Completion Deadline; provided, however, that the Punch Lists for Interim Milestone Completion shall be completed prior to, and as a condition of, any determination by the Department of Interim Milestone Completion.

20.3 Final Acceptance

20.3.1 Conditions to Final Acceptance

20.3.1.1 Promptly after Substantial Completion has occurred, Design-Builder shall perform all Work, if any, which was deferred for purposes of Final Acceptance, and shall satisfy all of its other obligations under the Contract Documents (other than completion of the Plant Establishment obligation), including ensuring that the Project has been completed and all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested, and provision of all deliverables described in Section 20.3.2. When all of the foregoing have occurred, Design-Builder shall provide an executed sworn Affidavit of Final Acceptance to the Department including the following statement:

To the best of Design-Builder's knowledge and belief, except for Plant Establishment Work not yet performed, all Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed work under the Contract Documents, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract Documents or under any adjustment issued thereunder for said undisputed work; there are no outstanding claims, Liens or stop payment notices relating to the

Project, including claims by Utility Owners, railroads, and Local Agencies, there is no existing default of the Department's obligations under any Utility Agreement that are Design-Builder's responsibility pursuant to the Contract Documents, 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 an event of default under any Utility Agreement; and upon receipt of final payment, Design-Builder and Subcontractors acknowledge that the Department and any and all employees of the Department and their authorized representatives will thereby be released, discharged and acquitted from any and all claims or liability for additional sums on account of undisputed work performed under the Contract Documents.

20.3.1.2 If Design-Builder is unable to provide the affidavit in the above form as it relates to outstanding claims, Liens or stop payment notices relating to the Project, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by the Department. The affidavit 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. The Department may condition its acceptance of such affidavit in such form by requiring that Design-Builder post security or take other actions which, in the Department's discretion, will adequately protect the Department and the Project against such outstanding matters.

20.3.2 Final Acceptance

Final Acceptance shall be deemed to have occurred when all of the following have occurred:

- (a) All requirements for Substantial Completion shall have been fully satisfied;
- (b) The Department shall have received all Design Documents, original working drawings, shop drawings and final Record Drawings of the Project, right-of-way record maps, surveys, test data and other deliverables required under the Contract Documents;
- (c) Design-Builder shall have submitted and received the Department approval of the all Submittals required by the Contract Documents, including but not limited to the Submittals identified in Section 25 of the Technical Provisions;
- (d) All special tools, equipment, furnishings and supplies purchased and/or used by Design-Builder as provided in the Contract Documents shall have been delivered to the Department and all replacement spare parts shall have been purchased and delivered to the Department free and clear of Liens; and
- (e) The items on the Final Acceptance Punch List shall have been completed to the satisfaction of the Department, and 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, including Plant Establishment Work) shall have been satisfied in full or waived in writing by the Department.

20.3.3 Inspection and Issuance of Certificate of Final Acceptance

Upon receipt of notification from Design-Builder that all conditions to Final Acceptance have been met, the Department will make final inspection and the Department will either issue a Certificate of Final Acceptance or notify Design-Builder regarding any Work remaining to be performed. If the Department fails to issue a Certificate of Final Acceptance, Design-Builder shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Builder shall give the Department a revised Affidavit of Final Acceptance 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 the Department has given Design-Builder an executed Certificate of Final Acceptance.

20.3.4 No Relief from Liability

Final Acceptance will not prevent the Department from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall it prevent the Department from recovering from Design-Builder, any Guarantor, the Surety(ies), or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Design-Builder to fulfill the obligations under the Contract Documents. A waiver on the part of the Department of any breach of any part of 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 or surviving obligations hereunder, including Warranty obligations.

20.4 Opening Sections of Project to Traffic

20.4.1 Plan for Opening to Traffic

The Project Schedule shall set forth Design-Builder's plan for completing sections of the Project and opening them to traffic. The Department 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 in consideration of safety to the public and construction personnel and without significant disruption to its schedule or a significant increase in its costs. Notwithstanding the foregoing, if the Department 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 Department-Directed Change provided that Design-Builder has provided the Department notice and otherwise followed the process for Department-Directed Changes in Section 13. No early openings shall constitute Substantial Completion or Final Acceptance.

20.4.2 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, the Department 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 20.4.1, Design-Builder

shall not receive any added compensation due to the added costs or any time extension due to the schedule impacts attributable to the opening of the Project to traffic.

20.4.3 No Waiver

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

20.5 Expiration of Plant Establishment Period

Expiration of the Plant Establishment Period shall be deemed to have occurred when Design-Builder has fully satisfied the Plant Establishment obligation in accordance with the requirements of Section 10.2.1.2 of the Contract and Section 5.3.2 of the Technical Provisions.

SECTION 21. DOCUMENTS AND RECORDS

21.1 Escrowed Proposal Documents

Prior to execution of this Contract, Design-Builder has delivered to the Department one copy of all documentary information used in preparation of the Proposal Price (the "Escrowed Proposal Documents" or "EPDs"), which are initially being held by the Escrow Agent. At the time Design-Builder has established the co-located offices described in Section 1.6.6 of the Technical Provisions, Design-Builder and the Department will transfer the EPDs to a jointly keyed and locked fireproof cabinet supplied by Design-Builder and located in the co-located offices or another location acceptable to both Parties. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the Contract and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation, amendment or Change Order, as applicable, shall be added to the escrow or cabinet, as applicable, to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained subject to Section 21.1.1 until all of the following have occurred: (a) 180 days have elapsed from Final Acceptance or termination of the Work, as applicable; (b) all Disputes regarding the Contract Documents have been settled; and (c) Final Payment on the Contract has been made by the Department and accepted by Design-Builder.

21.1.1 Availability for Review

The EPDs shall be available during regular business hours for joint review by Design-Builder and the Department, and its successors and assigns, in connection with negotiations of Change Orders and Contract amendments, the resolution of Disputes and Claims and as described in Section 21.1.6. The Department shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. The Department shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters; provided, however that the Department has executed and delivered to Design-Builder a confidentiality statement specifying that, to the extent consistent with applicable law, all proprietary information contained in such documents will be kept confidential, that copies of such documents will not be distributed to any third parties other than the Department's attorneys and experts, the Disputes Review Team and any judicial referee, arbitrator or court considering a Dispute or Claim, and that all copies of such documents (other than those delivered to dispute resolvers) will be either destroyed or returned to the depository (or to Design-Builder if the EPDs have been returned to it) upon final resolution of the negotiations or Disputes or Claims.

21.1.2 Proprietary Information

The EPDs are, and shall always remain, the property of Design-Builder and shall be considered to be in Design-Builder's possession, subject to the Department's right to review and use the EPDs as provided in this Section 21. The Department acknowledges that Design-Builder may consider that the EPDs constitute trade secrets or proprietary information. This acknowledgment is based upon the Department's

understanding that the information contained in the EPDs is not known outside Design-Builder's business, is known only to a limited extent and by a limited number of employees of Design-Builder, is safeguarded while in Design-Builder's possession, and may be valuable to Design-Builder's construction strategies, assumptions and intended means, methods, and techniques of construction. The Department further acknowledges that Design-Builder expended money in developing the information included in the EPDs and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Department acknowledges that the EPDs and the information contained therein are being made accessible to the Department only because it is an express prerequisite to award of the Contract.

21.1.3 Representation

Design-Builder represents and warrants that the EPDs constitute all of the information used in the preparation of its Proposal Price and pricing related to Contract amendments and Change Orders and agrees that no other Proposal Price, Contract amendment or Change Order preparation information will be considered in resolving Disputes or Claims. Design-Builder agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify the Contract Documents.

21.1.4 Contents of EPDs

The EPDs shall, inter alia, clearly detail how the components of the Proposal Price were determined and shall be in sufficient detail as is adequate to enable a complete understanding and interpretation of how Design-Builder arrived at the Proposal Price. The EPDs provided in connection with quotations, Contract amendments, and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined. In this regard, crews, equipment, materials, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into Design-Builder's usual cost categories such as direct labor, repair labor, equipment ownership, rental and operation, expendable materials, permanent materials, and Subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Design-Builder's usual format. Design-Builder's allocation of plant and equipment, indirect costs, risk contingencies, markup, and other items to each direct cost item shall be clearly identified. The EPDs shall itemize the estimated costs of the Payment Bond, Performance Bond and the insurance premiums for each coverage required to be provided by Design-Builder under Section 9. The EPDs shall include electronic media data files associated with all assumptions, detailed quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and Suppliers, quotes for insurance and bond premiums, memoranda, narratives, and all other information used by Design-Builder to arrive at the Proposal Price or amendment or Change Order.

21.1.5 Form of EPDs

Except as otherwise provided in the RFP, Design-Builder shall submit the EPDs in such format as is used by Design-Builder in connection with its Proposal. It is not intended that Design-Builder perform any significant extra work in the preparation of

these documents. However, Design-Builder represents and warrants that the EPDs provided with the Proposal were personally examined prior to delivery by an authorized officer of Design-Builder and that they meet the requirements of Section 21.1.4, that the EPDs provided in connection with quotations, Contract amendments, and Change Orders will be personally examined prior to delivery by an authorized officer of Design-Builder, and that they will meet the requirements of Section 21.1.4.

21.1.6 Review by the Department

The Department may at any time conduct a review of the EPDs to determine whether they are complete. In the event the Department determines that any data is missing, Design-Builder shall provide such data within three (3) Business Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary EPD information, and added to the EPDs. Design-Builder shall have no right to add documents to the EPDs except upon the Department's request. At the Department's option, which may be exercised at any time, the EPDs associated with any Change Order or Contract amendment shall be reviewed, organized, and indexed as described in Section 5.10.3 of the ITP.

21.2 Subcontractor Pricing Documents

Design-Builder shall require the principal design Subcontractor (including any joint venture) and each Major Subcontractor to submit to Design-Builder a copy of all documentary information used in determining its Subcontract price (or the price for Subcontract Work included in any Change Order or Contract amendment), immediately prior to executing the Subcontract and each Change Order and Subcontract amendment, to be held in the same manner as the EPDs and which shall be accessible by Design-Builder and its successors and assigns (including the Department) and the Disputes Review Team, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of Design-Builder and the Department, stating that its EPDs constitute all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of Design-Builder and the Department together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate, and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Design-Builder and/or the Department in connection with any claim made by such Subcontractor.

21.3 Financial Reporting Requirements

21.3.1 Design-Builder shall deliver to the Department financial and narrative reports, statements, certifications, budgets, and information as and when required under the Contract Documents.

21.3.2 Design-Builder shall furnish, or cause to be furnished, to the Department such information and statements as the Department may reasonably request from time to time for any purpose related to the Project, the Work or the Contract Documents. In

addition, Design-Builder shall deliver to the Department, at the times specified below, the following financial statements, stated in United States Dollars and prepared in accordance with U.S. GAAP as set forth in Section 21.3.2.2 for Design-Builder and each Guarantor:

21.3.2.1 Within sixty (60) days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of Design-Builder and each Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of Design-Builder and each Guarantor, respectively;

21.3.2.2 Within 120 days after the end of each fiscal year, duplicate copies of the financial statements (which shall include a balance sheet and a consolidated statement of financial condition of Design-Builder and each Guarantor and their respective consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of Design-Builder and each Guarantor and their respective consolidated subsidiaries for such year, and all related notes to the financial statements, setting forth in each case in comparative form the figures for the previous fiscal year), all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by Design-Builder and each Guarantor, as applicable, which opinion shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances. If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP is required; and

21.3.2.3 Upon request of the Department for particular fiscal quarters, copies of all other financial statements and information reported by Design-Builder and each Guarantor to its shareholders generally and of all reports filed by Design-Builder and each Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to the Department as soon as practicable after furnishing such information to the shareholders of Design-Builder and each Guarantor, as applicable, or filing such reports with the Securities and Exchange Commission, as the case may be.

21.3.3 Design-Builder shall cooperate and provide, and shall cause each Guarantor and the Subcontractors to cooperate and provide, such information as determined necessary or desirable by the Department in connection with any Project financing. Without limiting the generality of the foregoing, Design-Builder shall provide such information deemed necessary or desirable by the Department for inclusion in the Department's securities disclosure documents and in order to comply with Securities

and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events as well as summary financial information detailing Design-Builder's financial capacity to perform the Work. Design-Builder shall provide customary representations and warranties to the Department and the capital markets as to the correctness, completeness, and accuracy of any information furnished.

21.3.4 Design-Builder shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by the Department to assist or facilitate the submission by the Department of any documentation, reports or analysis required by the State, FHWA and/or any other Governmental Entity with jurisdiction over the Project.

21.3.5 All reports and information delivered by Design-Builder under Sections 21.3.3 and 21.3.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

21.4 Maintenance of, Access to and Audit of Records

Except for EPDs (which shall be maintained as set forth in Section 21.1), Design-Builder shall maintain at its Project administration office in Clark County, Nevada, a complete set of all books, records, and documents prepared or employed by Design-Builder in its management, scheduling, cost accounting, and otherwise with respect to the Project, Project ROW, Utility Adjustments or Work, including copies of all original documents delivered to the Department. Design-Builder shall keep and maintain such books, records, and documents in accordance with applicable provisions of the Contract Documents and of the Project Management Plan, and in accordance with Good Industry Practice. Design-Builder shall grant to the Department and its Authorized Representatives and legal counsel and FHWA such audit rights and allow such Persons such access to and the right to copy such books, records, and documents (including all tax returns and supporting documentation filed with any Governmental Entity) as such Persons may request from time to time in connection with the issuance of Change Orders and Contract amendments, the resolution of disputes and claims and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Contract Documents and Governmental Rules. The right of inspection includes the right to make copies and extracts and take notes.

21.4.1 Where the payment method for 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 progress report or progress payment, that overcredit will, at the Department's sole option, be credited against current progress reports or payments or reimbursed to the Department by Design-Builder upon demand therefor.

21.4.2 For cost and pricing data submitted in connection with pricing Change Orders or Contract amendments, unless such pricing is based on adequate price competition (as determined by the Department), established catalog or market prices of

commercial items sold in substantial quantities to the public, or prices set by Governmental Rule, 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 Change Orders and Contract amendments 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.

21.4.3 The Department shall have such rights to review and audit Design-Builder, its Subcontractors, and their respective books and records as and when the Department deems necessary for purposes of verifying compliance with the Contract Documents, the Governmental Approvals, and applicable Governmental Rules. Without limiting the foregoing, the Department shall have the right to audit Design-Builder's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. The Department may conduct any such audit of books and records upon forty-eight (48) hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud or other criminal activity.

21.4.4 All Claims or Disputes filed against the Department shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of the Department or by an auditor under contract with the Department. No notice is required before commencing any audit before sixty (60) days after the Final Acceptance Date. Thereafter, the Department shall provide twenty (20) days' notice to Design-Builder, any Subcontractors or their respective agents before commencing an audit. Design-Builder, Subcontractors or their agents shall provide adequate facilities, acceptable to the Department, for the audit during normal business hours. Design-Builder, Subcontractors or 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 Dispute or to permit the auditor access to the books and records of Design-Builder, Subcontractors or their agents shall constitute a waiver of the Claim or Dispute and shall bar any recovery thereunder.

21.4.5 At a minimum, the Department and the auditors shall have available to them the following documents, including email, network servers, data storage devices, backup tapes/media and correspondence containing or relating to such documents:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare, and benefits records;
- (d) Payroll registers;
- (e) Earnings records;

- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution work sheet;
- (i) Equipment records (list of company equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers') invoices;
- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks;
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) Project Schedules;
- (r) All documents that relate to each and every Claim and Dispute, together with all documents that support the amount of damages as to each Claim or Dispute; and
- (s) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, 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.

21.4.6 Full compliance by Design-Builder with the provisions of this Section 21.4 is a contractual condition precedent to Design-Builder's right to seek relief under Section 19.

21.4.7 Any rights of FHWA to review and audit Design-Builder, its Subcontractors, and their respective books and records are set forth in Appendix 13.

21.4.8 Design-Builder represents and warrants the completeness and accuracy of all information it or its agents provide in connection with the audits identified herein, and shall cause all Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provide in connection with this Section 21.4.

21.4.9 Design-Builder's internal and third party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements set forth in Section 2.2.10.2 of the Technical Provisions.

21.5 Retention of Records

Design-Builder shall maintain all records and documents relating to the Work and the Project (including copies of all original documents delivered to the Department) in Clark County, Nevada, until five (5) years after the Final Acceptance Date or the termination of this Contract, whichever is applicable. Design-Builder shall notify the Department where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or Disputes brought under the dispute resolution provisions hereof shall be retained and made available until such Disputes and Claims have been finally resolved. Records to be retained include all books, electronic information, and files and other evidence bearing on Design-Builder's costs under the Contract Documents. Design-Builder shall make these records and documents available for audit and inspection to the Department, at Design-Builder's offices in Clark County, Nevada, at all reasonable times, without charge, and shall allow the Department to make copies of such documents (at no expense to Design-Builder). If approved by the Department, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

21.6 Public Records Law

21.6.1 Design-Builder acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the Department's possession, including materials submitted by Design-Builder, are subject to the provisions of the Nevada Public Records Law (NRS 239.001 et seq.) (the "Public Records Law"). If Design-Builder believes information or materials submitted to the Department constitute trade secrets, proprietary information or other information that is not subject to or excepted from disclosure under the Public Records Law, Design-Builder shall be solely responsible for specifically and conspicuously designating that information by placing the term "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of legal reasoning supporting the claim. Nothing contained in this Section 21.6 shall modify or amend requirements and obligations imposed on the Department by the Public Records Law or other applicable Governmental Rule, and the provisions of the Public Records Law or other Governmental Rules shall control in the event of a conflict between the procedures described above and the applicable Governmental Rules. Design-Builder is advised to contact legal counsel concerning such Governmental Rules and its application to Design-Builder.

21.6.2 If the Department receives a request for public disclosure of materials marked "CONFIDENTIAL," the Department will use reasonable efforts to notify Design-Builder of the request and give Design-Builder an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable Governmental Rules within the time period specified in the notice issued by the Department and allowed under the Public Records Law. Under no circumstances, however, will the Department be responsible or liable to Design-Builder or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Governmental Rules, or court order, or occurs through inadvertence,

mistake or negligence on the part of the Department or its officers, employees, contractors or consultants.

21.6.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Design-Builder to the Department, the Department's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Design-Builder shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the Department reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of the Department's voluntary intervention or participation in litigation, Design-Builder shall pay and reimburse the Department within thirty (30) days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs the Department incurs in connection with any litigation, proceeding or request for disclosure.

21.7 Ownership of Documents

Subject to Section 21.8, all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence, reports, analyses, studies, and other documents and materials created or collected under the terms of the Contract Documents shall be considered "works made for hire" for which the Department owns the copyright. Design Documents shall become the Department's property upon preparation; Construction Documents shall become the Department's property upon delivery to the Department; and other documents prepared or obtained by Design-Builder in connection with the performance of its obligations under the Contract Documents, including studies, manuals, Record Drawings, technical, and other reports and the like, shall become the property of the Department upon Design-Builder's preparation or receipt thereof. Copies of all Design Documents and Construction Documents shall be furnished to the Department upon preparation or receipt thereof by Design-Builder. Design-Builder shall maintain all other documents described in this Section 21.7 in accordance with the requirements of Section 21.4 and shall deliver copies to the Department as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to the Department as a condition to Final Acceptance.

21.8 Intellectual Property

21.8.1 All Proprietary Intellectual Property, including with respect to Source Code and Source Code Documentation, shall remain exclusively the property of Design-Builder or its Affiliates or Subcontractors that supply the same, notwithstanding any delivery of copies thereof to the Department.

21.8.2 The Department shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the Proprietary Intellectual Property of Design-Builder, including with respect to Source Code and Source Code Documentation, solely in connection with the Project and any interstate or state highway owned and operated by the Department or a State

or regional Governmental Entity; provided that the Department shall have the right to exercise such license only at the following times:

(a) From and after the expiration or earlier termination of this Contract for any reason whatsoever; and

(b) During any time that a receiver is appointed for Design-Builder, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Design-Builder is the debtor, in which case the Department may exercise such license only in connection with the Project.

21.8.3 Subject to the license and rights granted to the Department pursuant to Section 21.8.2, the Department shall not at any time sell any Proprietary Intellectual Property of Design-Builder or use, reproduce, modify, adapt, and disclose, or allow any party to use, reproduce, modify, adapt, and disclose, any such Proprietary Intellectual Property for any other purpose.

21.8.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of the Department generally or with respect to the Project.

21.8.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate an interstate or state highway or other road and to the lessees, operators, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of the Department or any such State or regional Governmental Entity in connection with the Project or an interstate or another state highway or other road. All such sublicenses shall be subject to Section 21.8.6.

21.8.6 Subject to Section 21.6, the Department shall:

(a) Not disclose any Proprietary Intellectual Property of Design-Builder to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of the Department relating thereto; and

(b) Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Design-Builder and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

21.8.7 Notwithstanding any contrary provision of this Contract, in no event shall the Department or any of its directors, officers, employees, consultants or agents be liable to Design-Builder, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 21.8.6 if such breach is not the result of gross negligence or intentional misconduct. Design-Builder hereby irrevocably waives all claims to any such damages.

21.8.8 Design-Builder shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

21.8.9 With respect to any Proprietary Intellectual Property, including with respect to Source Code and Source Code Documentation, owned by a Person other than Design-Builder, including any Affiliate, and other than the Department or a Governmental Entity acting as a Subcontractor, Design-Builder shall obtain from such owner, concurrently with the execution of any contract, Subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for Design-Builder and the Department, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt, and disclose such Proprietary Intellectual Property solely in connection with the Project and any state highway owned and operated by the Department or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 21.8.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as “shrink wrap software”) owned by such a Person where such a license cannot be extended to the Department using commercially reasonable efforts. The limitations on sale, transfer, sublicensing, and disclosure by the Department set forth in Sections 21.8.3 through 21.8.6 shall also apply to the Department’s licenses in such Proprietary Intellectual Property.

SECTION 22. VALUE ENGINEERING

22.1 General

This Section 22 sets forth the requirements applicable to preparation, review, and approval of value engineering recommendations (“Value Engineering Change Proposals” or “VECPs”) for the purpose of enabling Design-Builder and the Department to take advantage of potential cost savings or provide potential improvements to the Work through changes in the requirements relating to the Work. Design-Builder is encouraged to submit VECPs whenever it identifies potential savings or improvements for the Project. The Department may also request Design-Builder to develop and submit a specific VECP (“the Department-Initiated VECP”). Design-Builder shall have the right to refuse to consider such Department-Initiated VECP; provided, however that nothing herein is intended to alter the Department’s right to issue Department-Directed Changes in accordance with Section 13.

22.2 Value Engineering Recommendation

A VECP is a proposal developed and documented by Design-Builder which:

- (a) Would modify or require a change in any of the commitments, requirements of or constraints set forth in the Contract Documents in order to be implemented; and
- (b) Reduces the Project cost without impairing essential functions or characteristics of the Project (including the meeting of requirements contained in all Governmental Approvals) including service life, economy of operation, ease of maintenance, desirability, and safety, and provided that it is not based solely upon a change in quantities, performance or reliability or a relaxation of the requirements contained in the Contract Documents.

22.3 Information to be Provided

At a minimum, the following information shall be submitted by Design-Builder with each VECP:

- (a) A statement that the submission is a VECP, and a narrative description of the proposed change;
- (b) Description of the existing requirements of the Contract Documents which are involved in the proposed change;
- (c) Description of the proposed change;
- (d) Discussion of differences between existing requirements in the Contract Documents and the proposed change, together with advantages and disadvantages of each changed item;

(e) Itemization of the requirements of the Contract Documents which must be changed if the VECP is approved (e.g., document sections, drawing numbers, and specifications);

(f) A complete cost analysis including: (i) Design-Builder's cost estimate for performing the subject Work in accordance with the Contract Documents compared to Design-Builder's cost estimate for performing the subject Work in accordance with the proposed changes, (ii) an estimate of additional costs that will be incurred by the Department, including estimated impact on future maintenance costs; and (iii) costs of development and implementation of the VECP by Design-Builder. The cost of any additional Governmental Approvals, rights of way or easements and other costs or impacts to the Project, shall be included in the cost analysis;

(g) Justification for changes in function or characteristics of each item, and the effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents, including environmental compliance and requirements contained in Governmental Approvals;

(h) If available, a description of any previous use or tests of the VECP and the conditions and results; and

(i) Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Project Schedule.

Any additional information requested by the Department shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

22.4 Review by the Department

Design-Builder shall submit VECPs directly to the Department. Each VECP shall be prepared in a form acceptable to the Department, and shall meet all applicable requirements of this Section 22. The Department will determine whether a VECP qualifies for consideration and evaluation. VECPs that require excessive time or costs for review, evaluation or investigations, or that are not consistent with the Department's design policies and basic design criteria may be rejected without evaluation. Design-Builder shall have no Claim for any additional costs or delays resulting from the rejection of a VECP initiated by Design-Builder, including VECP development costs, loss of anticipated profits or increased material or labor costs. The Department will consider only proven features that have been employed under similar conditions or projects acceptable to the Department. The Department shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section 22. Design-Builder may withdraw all or part of any VECP at any time prior to approval by the Department. Subject to Section 22.6, in all other situations each Party shall bear its own costs in connection with preparation and review of VECPs.

22.5 Approval of VECPs

The Department may approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Designs for approved VECPs shall be prepared by

Design-Builder for incorporation into the Design Documents. Until a Change Order is issued based on a VECP, Design-Builder shall remain obligated to perform in accordance with the final Design Documents and other Contract Documents. The Department shall have sole discretion as to rejection or approval of any VECP.

The following provisions shall apply to any Dispute between the Department and Design-Builder regarding Design-Builder's performance of Work that the Department believes should have properly been submitted as a VECP. Design-Builder agrees that, within thirty (30) days following a request from the Department for a VECP with regard to any such Work, Design-Builder shall deliver a VECP to the Department meeting all of the requirements of this Section 22, but may specify that the VECP is delivered under protest. In such case, either Party shall have the right to submit the question of Design-Builder's entitlement to proceed without an approved VECP to dispute resolution pursuant to Section 19. If a determination is ultimately made that Design-Builder is not entitled to proceed without an approved VECP, the Department shall be entitled to a credit against the Contract Price as provided in Section 22.6. If a determination is ultimately made that Design-Builder is entitled to proceed without an approved VECP, the VECP shall be deemed withdrawn and have no effect. If Design-Builder fails to deliver a complete VECP within the foregoing deadline, the Department shall have the right to submit the issue to dispute resolution at any time. In such event, if the dispute resolution proceeding ultimately results in a determination that Design-Builder was not entitled to perform such Work without a prior approved VECP, the Department shall be entitled to receive a credit against the Contract Price equal to 100% of Design-Builder's cost savings, plus profit, rather than 50% of estimated net savings as provided in Section 22.6.

Unless Design-Builder has received specific written permission from the Department to proceed with VECP work pending approval of a VECP, Design-Builder shall not have the right to proceed with such work until the VECP is approved. Furthermore, if Design-Builder proceeds with any work that might have been the basis for a VECP price increase based on savings in the Department's right of way costs, without first submitting a VECP, Design-Builder shall be deemed to have performed such work as a volunteer and shall not have the right to later submit a VECP hereunder.

22.6 Contract Price Adjustment

If the Department accepts a VECP submitted by Design-Builder pursuant to this Section 22, the Contract Price shall be adjusted in accordance with the following:

22.6.1 The term "estimated net savings" as used herein shall mean (a) the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform it according to the proposed change, less (b) the reasonable costs of studying and preparing the VECP as proven by Design-Builder and approved by the Department in accordance with the Change Order procedures set forth herein, less (c) any additional costs incurred or to be incurred by the Department resulting from the VECP, including the cost of the Department's review of the VECP and implementation and maintenance costs associated therewith. Design-Builder's profit shall not be considered part of the cost.

22.6.2 Except as specified in Section 22.6.4, Design-Builder is not entitled to share in either collateral or future contract savings. The term “collateral savings” means additional revenues that may arise as a result of the VECP and those measurable net reductions in the Department’s costs resulting from the VECP, including operations and maintenance costs and cost of the Department-furnished property. The term “future Contract savings” shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VECP submitted by Design-Builder.

22.6.3 Subject to Sections 22.6.4 and 22.6.5, the Contract Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by the Department resulting from the VECP plus (b) 50% of estimated net savings; provided, however, that Design-Builder’s profit shall not be reduced by application of the VECP.

22.6.4 In a case where Design-Builder proposes that an adjustment be made to the planned acquisition of real property in order to result in an overall cost savings to the Project (such as a proposal that additional real property be purchased outside of the Planned ROW Limits in order to save on construction costs, or a proposal which would enable a reduction in the real property required to be obtained by the Department hereunder by incurring additional construction costs), the VECP shall compare (a) the incremental reduction in costs (such as for not designing and building a wall), and (b) the costs involved in adjusting the real property limits or Environmental Approvals (which shall be based on Design-Builder’s additional costs, such as for providing real property acquisition support services (including profit) plus the Department’s additional costs, including costs of personnel as well as out-of-pocket costs such as the price of the additional real property), or (as appropriate) shall compare (y) the incremental reduction in costs (if any) for not acquiring the unnecessary real property, and (z) the additional construction costs to be incurred. The estimated net savings shall be shared 50-50 between the Department and Design-Builder. Reimbursements for Utility Adjustment expenses owed to Utility Owners shall be addressed in calculating estimated net savings to be shared between the Department and Design-Builder. Design-Builder shall include in its VECP an analysis of any impacts on Utility Owners for consideration by the Department. If Design-Builder wishes to propose such a VECP, Design-Builder shall provide a separate notification to the Department describing the proposed impact concurrently with delivery of the VECP to the Department

22.6.5 Design-Builder’s share of any VECP cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the VECP had the VECP not been implemented.

22.6.6 A VECP shall not be required for any Deviations from Project Standards allowed by the Department, except for changes based on concepts submitted by other proposers, or changes that also entail a modification of commitments contained in the Proposal or requirements of or constraints set forth in the Contract Documents.

22.7 Use of VECPs by the Department

All approved or disapproved VECPs will become the property of the Department, and shall contain no restrictions imposed by Design-Builder on their use or disclosure, except as permitted in Section 22.8 below. Notwithstanding any restrictions pursuant to Section 22.8, the Department retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the VECP on any other or subsequent projects without any obligation to Design-Builder. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

22.8 Public Records Law Exclusion

If Design-Builder proposes any VECP that incorporates intellectual property or other proprietary information developed prior to award of the Contract, or developed by Design-Builder after award of the Contract (provided that Design-Builder establishes to the Department's satisfaction that it was developed apart from, and in isolation from, the Contract), Design-Builder may identify such data and information included in the VECP as "Trade Secret" or "Confidential," in which event the provisions of Section 21.6.2 shall be applicable.

SECTION 23. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS

23.1 Cooperation with Other Contractors

The Department reserves the right to contract for and perform other or additional work on or near the Site. Design-Builder shall fully cooperate and coordinate with such other contractors to the extent reasonably necessary for the performance by such other contractors of their work, and shall cause all DB-Related Entities to so cooperate. Design-Builder and any DB-Related Entities shall fully cooperate and be solely responsible for coordinating with such other contractors and projects, and shall schedule and sequence the Work as reasonably necessary to accommodate the work of such other contractors and projects. If other separate contracts are awarded, or separate projects are performed by the Department, Local Agencies, railroads or Utility Owners which affect the Work, Design-Builder shall conduct its Work without interfering with or hindering the progress or completion of the work being performed by such other contractors, entities or agencies.

23.2 Interference by Other Contractors

23.2.1 If Design-Builder asserts that any Governmental Entity (other than the Department), any Utility Owner, railroads or any of their respective contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then Design-Builder's sole remedy shall be to seek recourse against such other contractors. Design-Builder shall have the right to ask the Disputes Review Team to resolve such dispute; provided, however, that the other entity or contractor and its sureties have agreed to submit the dispute to the Disputes Review Team, and provided that such proceeding shall be conducted at no cost to the Department.

23.2.2 In no event shall Design-Builder have any Claim or other right to compensation, time extension or other relief against the Department for the actions or omissions of any contractor retained, or work performed, by the Department, Local Agencies, any other Governmental Entities, railroads or any Utility Owner except as expressly provided otherwise in the Contract.

23.3 Coordination with Utility Owners, Railroads, Local Agencies and Adjacent Property Owners

Design-Builder shall coordinate with Utility Owners, Railroads, Local Agencies and owners of property adjoining the Project, and with their respective contractors, as more particularly described in the Contract Documents.

SECTION 24. MISCELLANEOUS PROVISIONS

24.1 Amendments

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

24.2 Waiver

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

24.2.2 The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not create a course of conduct or be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.2.3 Except as provided otherwise in the Contract Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to create a course of conduct or waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents.

24.2.4 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 create a course of conduct or limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

24.3 Independent Contractor

Design-Builder is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the Department other than that of Project Design-Builder and independent contractor. In no event shall the relationship between the Department and Design-Builder be construed as creating any relationship whatsoever between the Department and Design-Builder's employees. Neither Design-Builder nor any of the employees of any DB-Related Entity is or shall be deemed to be an employee of the Department. Except as otherwise specified in the Contract Documents, Design-Builder has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole

responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that Design-Builder or any Subcontractor hires to perform or assist in performing the Work.

24.4 Successors and Assigns

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

24.4.1 The Department may assign all or part of its right, title, and interest in and to any Contract Documents and performance security, including rights with respect to the Payment Bonds and Performance Bonds, the Warranty Bond, and the Guaranty, to any other Person.

24.4.2 Design-Builder shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Design-Builder's interest in and to the Contract Documents or any portion thereof without the Department's prior written approval, except to any entity in which the organizations signing this Agreement for Design-Builder, or the shareholder(s), general partner(s) or member(s) that exercise management control over such organizations, hold and exercise effective management control and hold the same percent of equity interest in Design-Builder that exists as of the Proposal Date. Design-Builder shall not sublease or grant any other special occupancy or use of the Project to any other Person, without the Department's prior written approval. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this provision shall be null and void ab initio and the Department, at its option, may declare any such attempted action to be a material Design-Builder Default.

24.4.3 Design-Builder shall not voluntarily or involuntarily cause, permit or suffer any Change of Control prior to Final Acceptance without the Department's prior written approval. If there occurs any voluntary or involuntary Change of Control without the Department's prior written approval, the Department, at its option, may declare it to be a material Design-Builder Default.

24.4.4 Where the Department's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control prior to Final Acceptance, the Department may withhold or condition its approval in its sole discretion. Any such decision of the Department to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures. If for any reason the Department does not act within thirty (30) days after receiving all required information, or any extension thereof by mutual agreement of the Parties, the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control shall not be permitted.

24.4.5 Assignments and transfers of Design-Builder's interest permitted under this Section 24.4 or otherwise approved in writing by the Department shall be effective only upon the Department's receipt of written notice of the assignment or transfer and a

written recordable instrument executed by the transferee (and any Guarantor and any Surety), in form and substance acceptable to the Department, in which the transferee, without condition or reservation, assumes all of Design-Builder's obligations, duties, and liabilities under this Contract and the other Contract Documents then in effect and agrees to perform and observe all provisions thereof applicable to Design-Builder. Each transferee shall take Design-Builder's interest subject to, and shall be bound by, the Project Management Plan, the Major Subcontracts, the Utility Agreements, all Department-Provided Approvals, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by the Department in writing, in its sole discretion.

24.4.6 No assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant by Design-Builder or any permitted successor and assign thereto shall release Design-Builder, any Guarantor, any Surety or the assignor from any liabilities or obligations under the Contract Documents and each of such entities shall remain liable and obligated therefor.

24.4.7 Design-Builder shall not change the legal form of its organization without the prior written approval of the Department, which consent may be granted or withheld in the Department's sole discretion.

24.5 Designation of Representatives; Cooperation with Representatives

24.5.1 The Department and Design-Builder shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents ("Authorized Representatives"). Appendix 11 hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 24.11. The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the Parties but who do not have authority to bind the Department or Design-Builder.

24.5.2 Design-Builder shall cooperate with the Department and all representatives of the Department designated as described above.

24.6 Gratuities and Conflicts of Interest

24.6.1 Except to the extent explicitly disclosed in Design-Builder's Proposal, Design-Builder affirms that no Department officer, official or employee has any interest (whether contractual, non-contractual, financial, or otherwise) in this transaction or in the business of Design-Builder. If any such interest becomes known to Design-Builder at any time, Design-Builder shall submit a full and complete written disclosure of such information to the Department.

24.6.2 Neither Design-Builder nor any of its employees, agents and representatives shall offer or give to an officer, official or employee of the Department gifts, entertainment, payments, loans or gratuities. The Department may, by written notice to Design-Builder, terminate the right of Design-Builder to proceed under the

Contract if it is found that gratuities (in the form of gifts, entertainment, or otherwise) were offered or given by Design-Builder, or any agent of Design-Builder, to any member of the Department's Board of Directors or any officer, agent and/or employee of the Department.

24.6.3 Employment (whether as an employee, consultant, or independent contractor) of personnel on the Department's payroll by any DB-Related Entity is not permitted in the performance of the Contract, even though such employment may be outside the Department's employee's regular working hours or on Saturdays, Sundays, holidays or vacation time; further, employment by any DB-Related Entity of personnel who have been on the Department's payroll within one year prior to the date of Contract award is also prohibited.

24.6.4 The rights and remedies of the Department specified in this Section 24.6 are not exclusive and are in addition to any other rights and remedies allowed by law.

24.7 Survival

Design-Builder's representations and warranties, the Warranty provisions contained in Section 11 the dispute resolution provisions contained in Section 19, the indemnifications and releases contained in Section 18 and elsewhere in the Contract Documents, the express rights and obligations of the Parties following termination of this Contract under Sections 15 and 16, the provisions regarding invoicing and payment under Section 12, the obligations regarding Application for Final Payment under Section 12.4, and all other provisions which by their express terms or their inherent character should survive termination of the Contract and/or Final Acceptance, shall survive the termination of the Contract and the Final Acceptance Date.

24.8 Limitation on Third Party Beneficiaries

The City of Las Vegas is an intended third party beneficiary to the Contract Documents (with respect only to the Local Agency Project Infrastructure) and the Indemnified Parties are intended third party beneficiaries of the indemnity provisions of the Contract Documents. It is not intended by any of the provisions of the Contract Documents to create any other third party beneficiary hereunder or to authorize anyone not a Party hereto (other than the City of Las Vegas with respect only to the Local Agency Project Infrastructure or the Indemnified Parties) to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.8, the duties, obligations, and responsibilities of the Parties pursuant to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Department and a Subcontractor or any Person other than Design-Builder.

24.9 Personal Liability of the Department Employees

The Department's Authorized Representatives are acting solely as agents and representatives of the Department when carrying out the provisions of or exercising the

power or authority granted to them under the Contract. They shall not be liable either personally or as employees of the Department for actions in their ordinary course of employment.

No agent, consultant, officer or authorized employee of the Department nor any member of the Department's Transportation Board of Directors, shall be personally responsible for any liability arising under the Contract.

24.10 Governing Law; Venue; Forum

The Contract Documents shall be governed by and construed in accordance with the law of the State of Nevada, without regard to conflict of law principles. The venue of any court, judicial or referee proceeding under the Contract Documents shall be in Clark County, Nevada, unless changed by the judicial officer. The forum for any judicial action shall be the Nevada Eighth Judicial District Court in and for Clark County, Nevada.

24.11 Notices and Communications

24.11.1 Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with Design-Builder shall be sent to Design-Builder's Authorized Representative or as otherwise directed by Design-Builder's Authorized Representative. The address for such communications shall be:

Kiewit Infrastructure West Co.
8965 S. Eastern Avenue
Suite 370
Las Vegas, NV 89123
Attention: Mr. Chris Koenig
Phone: (702) 560.2277
Facsimile: (602) 437-7719
email address: Chris.Koenig@Kiewit.com

All communications to the Department shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by the Department's Authorized Representative:

Nevada Department of Transportation
1263 South Stewart Street, Room 101
Carson City, NV 89712
Attention: Mr. Mark Stewart
Phone: (775) 888-7070 ext. 2124
Facsimile: (775) 888-7101
email address: agreeservices@dot.state.nv.us

24.11.2 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Design-Builder's Project Manager and technical representatives designated by the Department. Design-Builder's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 24.5.1, each Party's Authorized Representative shall be authorized to act on behalf of such Party in matters concerning the Work.

24.12 Taxes

Design-Builder shall pay, prior to delinquency, all applicable taxes. Design-Builder shall have no right to an adjustment to the Contract Price or any other Claim due to its misinterpretation of Governmental Rules respecting taxes or incorrect assumptions regarding applicability of taxes.

24.13 Further Assurances

Design-Builder shall promptly execute and deliver to the Department all such instruments and other documents and assurances as are reasonably requested by the Department to further evidence the obligations of Design-Builder hereunder, including assurances regarding the validity of (a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

24.14 Severability

If any clause, provision, section or part of the Contract Documents is ruled invalid under Section 19 or otherwise by a court having proper 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 Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall

be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.15 Headings

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

24.16 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to its subject matter. No modification of the terms and conditions of this Contract shall be binding on the Parties hereto unless such provision is contained in a written amendment expressing a clear intent to so modify this Contract and is executed by the Parties hereto and approved by the Nevada Attorney General.

24.17 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Contract has been executed as of the date first above written.

Design-Builder

KIEWIT INFRASTRUCTURE WEST CO.

By: _____
Name: _____
Title: _____

Department

State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

By: _____
Name: Brian Sandoval
Title: Chairman of the Board

RECOMMENDED:

By: _____
Name: Rudy Malfabon, P.E.
Title: Director

Nevada Department of
Transportation

APPROVED AS TO LEGALITY AND
FORM

By: _____
Name: _____
Title: Deputy Attorney General